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ORIGINES ECCLESIASTICÆ;  
OR THE  
ANTIQUITIES  
OF  
THE CHRISTIAN CHURCH.

AND  
OTHER WORKS,

OF THE  
REV. JOSEPH BINGHAM, M.A.

Formerly Fellow of University College, Oxford; and afterwards Rector of  
Headbourn Worthy, and Havant, Hampshire;

WITH A  
SET OF MAPS OF ECCLESIASTICAL GEOGRAPHY,

TO WHICH ARE NOW ADDED,

**SEVERAL SERMONS,**

AND OTHER MATTER, NEVER BEFORE PUBLISHED,

The whole Revised and Edited, together with

**A Biographical Account of the Author,**

BY HIS GREAT GRANDSON,

THE REV. RICHARD BINGHAM, B.C.L.

Prebendary of Chichester, Vicar of Hale Magna,  
Incumbent of Gosport Chapel, and formerly Fellow of New College, Oxford.

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# CONTENTS.

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## BOOK XVI.

### OF THE UNITY AND DISCIPLINE OF THE ANCIENT CHURCH.

#### CHAP. I.

*Of the Union and Communion observed among Catholics in the Ancient Church.*

SECT. 1. Of the Fundamental Unity of Faith and Obedience to the Laws of Christ.—2. Of the Unity of Love and Charity, as an Essential part of Christian Obedience.—3. Other Sorts of Unity necessary to the Well-being of the Church.—4. Among these was reckoned, first the necessary Use of One Baptism, ordinarily to be administered by the Hands of a Regular Ministry.—5. Secondly, Unity of Worship, in joining with the Church in Prayers and Administration of the Word and Sacraments.—6. Thirdly, the Unity of Subjection of Presbyters and people to their Bishop, and Obedience to all Public Orders of the Church in Matters of an indifferent Nature.—7. Fourthly, the Unity of Submission to the Discipline of the Church.—8. How different Churches maintained Communion with one another. First in the Common Faith.—9. Secondly, in mutual Assistance of each other for Defence of the Common Faith.—10. Thirdly, in joining in Communion with each other in all Holy Offices, as occasion required.—11. Fourthly, in mutual consent to ratify all Legal Acts of Discipline, regularly exercised in any Church whatsoever.—12. Fifthly, in receiving Unanimously the Customs of the Universal Church, and submitting to the Decrees of General Councils.—13. Sixthly, in submitting to the Decrees of National Councils.—14. No Necessity of a visible Head to unite all parts of the Catholic Church into one Communion.—15. Nor any Necessity that the whole Church should agree in the same Rites and Ceremonies, which were things of an indifferent Nature.—16. What allowance was made for Men, who, out of simple ignorance break Communion with one another.—17. Of different Degrees of Unity; and that no one was esteemed to be in the perfect Unity of the Church, who was not in full Communion with her.

## CHAP. II.

*Of the Discipline of the Church, and the various Kinds of it; together with the various Methods observed in the Administration of it.*

SECT. 1. That the Discipline of the Church did not consist in Cancelling or Disannulling any Man's Baptism.—2. But in excluding Men from the common Benefits and Privileges consequent to Baptism.—3. This Power originally a mere spiritual Power; though in some Cases the secular Arm was called in to give its Assistance.—4. This Assistance never required to proceed so far, as for mere Error to take away Life, or shed Blood.—5. The Discipline of the Church deprived no Man of his natural or civil Right; much less the Magistrate of his Power, or Allegiance due to him.—But, consisted, first, in Admonition of the Offender.—7. Secondly, in Suspension from the Communion, called the lesser Excommunication.—8. Thirdly, in Expulsion from the Church, called, the greater Excommunication, total Separation, Anathema, and the like. 9. This Sort of Excommunication commonly notified to other Churches. 10. After which he that was excommunicated in one Church, was held excommunicate in all Churches.—11. And avoided also in civil Commerce and outward Conversation: and allowed no Memorial after Death. 12. The Grounds and Reasons of this Practice.—13. No Donations or Oblations allowed to be received from excommunicate Persons.—14. No one to marry with excommunicate Heretics, or receive their *Eulogiae*, or read their Books, but burn them.—15. What meant by delivering unto Satan.—16. What by *Anathema Maranatha*. And whether any such Forms were in Use in the Ancient Church.—17. Whether Excommunication was ever pronounced with Execration, or devoting the Sinner to temporal Destruction.

## CHAP. III.

*Of the Objects of Ecclesiastical Censures, or the Persons, on whom they might be inflicted: with a General Account of the Crimes, for which they might be inflicted.*

SECT. 1. All Members of the Church, falling into great and scandalous Crimes, made liable to ecclesiastical Censures without Exception.—2. Women as well as Men.—3. The Rich as well as the Poor. No Commutation of Penance allowed, nor Friendship, nor Favour.—4. What Privilege some claimed upon the Intercession of the Martyrs in Prison for them: and how this was answered by Cyprian.—5. Magistrates and Princes subject to Ecclesiastical Censures as well as any others.—6. In what cases the greater excommunication was forborne

for the Good of the Church.—7. The Innocent never involved among the Guilty in ecclesiastical Censures. The Original and Novelty of popish Interdicts.—8. The Danger of excommunicating innocent Persons.—9. No one to be excommunicated without being first heard and allowed to speak for himself.—10. Nor without legal Conviction, either by his own Confession; or credible Evidence of Witnesses, against whom there was no just Exception; or such Notoriety of the Fact, as made a Man liable to Excommunication *Ipsa Facto*, without any formal Denunciation.—11. Excommunication not ordinarily inflicted on Minors, or Children under Age.—12. How Persons were sometimes excommunicated after Death.—13. The Censures of the Church not to be inflicted for small Offences.—14. What the Ancients meant by small Offences in this Matter, and how they distinguished them from the greater.—15. Excommunication not inflicted for temporal Causes.—16. No Bishop allowed to use it to avenge any private Injury done to himself.—No Man to be excommunicated for Sins only in Design and Intention.—18. Nor for forced or involuntary Actions.

## CHAP. IV.

*A Particular Account of those called, Great Crimes. Of Transgressions of the First and Second Commandment. Of the Principal of these, viz. Idolatry. Of the several Species of Idolatry, and Degrees of Punishment allotted to them according to the Proportion and Quality of the Offences.*

SECT. 1. The Mistake of some about the Number of great Crimes, in confining them to Idolatry, Adultery, and Murder.—2. The Account given of great Crimes, in the civil Law extended much further.—3. In the ecclesiastical Law the Account of great Crimes extended to the whole Decalogue.—4. A particular Enumeration of the great Crimes against the first and second Commandments. Of Idolatry, and the several Species or Branches of it.—5. Of the *Sacrificati* and *Thurificati*, or such as fell into Idolatry by offering Incense to Idols, or partaking of the Sacrifices.—6. Of the *Libellatici*. Wherein their Idolatry consisted.—7. Of those, who feigned themselves mad, to avoid Sacrificing.—8. Of Contributors to Idolatry. Of the *Flamines*, *Munerarii*, and *Coronati*. What they were, and how guilty of Idolatry.—9. How the Office of the Duumvirate made Men guilty of Idolatry, and how it was punished.—10. How Actors and Stage-players, and Charioteers, and other Gamblers, and Frequenters of the Theatre and the Circus were charged with Idolatry, and punished for it.—11. Idol-makers, their Crime and Punishment.—12. The Idolatry of building heathen Temples and Altars.—13. Of Merchants selling Frankincense to the Idol Temples; and the Buyers and Sellers of the public Victims.—14. Of eating Things offered to Idols. How and when it stood chargeable with Idolatry.—15. Whether a Christian out of Curiosity might be present at an Idol-Sacrifice, not joining in the Service.—16. Whether he might eat his own Meat in an Idol-Temple.—17. Or feast with the Heathen on their Idol-Festivals.—18. Of the Idolatry of worshipping Angels, Saints, Martyrs, Images, &c.—19. Of Encouragers of Idolatry and Connivers at it. And of the contrary Extreme in demolishing Idols without sufficient Authority to do it.

## CHAP. V.

*Of the Practice of curious and forbidden Arts, Divination, Magic, and Inchantment: and of the Laws of the Church made for the Punishment of them.*

SECT. 1.—Of several Sorts of Divination. Particularly of judicial Astrology.—2. Of Augury and Soothsaying.—3. Of Divination by Lots.—4. Of Divination by express Compact with Satan.—5. Of Magical Inchantment and Sorcery.—6. Of Amulets, Charms, and Spells to cure Diseases. 7. Of the *Præstigiæ*, or false Miracles wrought by the Power of Satan. 8.—Of the Observation of Days and Accidents, and making Presages and Omens upon them.

## CHAP. VI.

*Of Apostacy to Judaism, and Paganism; of Heresy and Schism; and of Sacrilege and Simony.*

SECT. 1.—Of such as apostatized totally from Christianity to Judaism.—2. Of such as mingled the Jewish Religion and the Christian together.—3. Of such as communicated with the Jews in their unlawful Rites and Practices.—4. Of such as apostatized voluntarily into Heathenism.—5. Of Heretics and Schismatics, and their Punishments both ecclesiastical and civil.—6. A particular Account of the civil Punishments inflicted on them by the Laws of the State.—7. How Heretics were treated by the Discipline of the Church. First, they were anathematized, and cast out of the Church.—8. Secondly, Debarred from entering the Church by some Canons, though not by all.—9. Thirdly, No one to encourage Heretics and Schismatics by frequenting their Assemblies.—10. Fourthly, No one to eat or converse with Heretics, or receive their Presents, or retain their Writings, or make Marriages with them, &c.—11. Fifthly, Heretics not allowed to be Evidence in any ecclesiastical Cause against a Catholic.—12. Sixthly, Heretics not allowed to succeed to any paternal Inheritance.—13. No Heretic to have promotion among the Clergy after his Return to the Church.—14. No one to be ordained, who kept any in his Family that were not of the catholic Faith.—15. No one to bring his Cause before an heretical Judge under Pain of Excommunication.—16. What Term of Penance imposed upon relenting Heretics.—17. How this varied according to the Age and State, and Condition of several Sorts of Heretics.—18. Heresiarchs more severely treated than their Followers.—19. And voluntary Deserters more severely than they, who complied only out of Fear.—20. A Difference made between such Heretics as retained the Form of Baptism, and such as rejected or corrupted it.—21. No one to be reputed a formal Heretic, before he contumaciously resisted the Admonition of the Church.—22. The like Distinctions observed in inflicting the Censures of the Church upon Schismatics, according to the different Nature, and various Degrees of their

Schism.---23. Of Sacrilege. Particularly of diverting things appropriated to sacred Uses, to other Purposes.---24. Of Sacrilege committed in robbing Graves.---25. The Sacrilege of the ancient Traditors, who delivered up their Bibles and sacred Utensils to the Heathen to be burnt.---26. The Sacrilege of profaning the Sacraments, and Altars, and the Holy Scriptures, &c.---27. The Sacrilege of depriving Men of the Use of the Scripture, and the Word of God, and the Sacraments, particularly the Cup in the Lord's-Supper.---28. Of Simony in buying and selling spiritual Gifts.---29. Of Simony in purchasing spiritual Preferments.---30. Of Simony in ambitious Usurpation of holy Offices, and Intrusion into other Men's Places and Preferments.

## CHAP. VII.

*Of Sins against the Third Commandment, Blasphemy, Profane Swearing, Perjury, and Breach of Vows.*

SECT. 1. The Blasphemy of Apostates.---2. The Blasphemy of Heretics and profane Christians.---3. The Blasphemy against the Holy Ghost. Where is particularly enquired, what Notion the Ancients had of it; In what sense they believed it unpardonable; and what Censures they inflicted on it.---4. Of profane Swearing. All Oaths not forbidden.---5. But only the Custom of vain and common Swearing.---6. And Swearing by the Creatures.---7. And by the Emperor's Genius, and Saints, and Angels, &c.---8. Of Perjury and its Punishments.---9. Of Breach of Vows.

## CHAP. VIII.

*Of Sins against the Fourth Commandment, or Violations of the Law enjoining the Religious Observation of the Lord's-Day*

SECT. 1. Absenting from religious Assemblies on the Lord's-Day how punished by the Laws of the Church.---2. Of frequenting some Part of the Lord's Day Service, and neglecting the Rest.---3. Fasting on the Lord's-Day prohibited under Pain of Excommunication.---4. Frequenting the Theatres and other Shews and Pastimes on this Day how punished.

## CHAP. IX.

*Of great Transgressions against the Fifth Commandment, viz. Disobedience to Parents and Masters; Treason and Rebellion against Princes; and Contempt of the Laws of the Church.*

SECT. 1. Children not to desert their Parents under Pretence of Religion. The Censure of such as taught otherwise.---2. Children not to marry

without the Consent of their Parents.---3. Nor slaves without the Consent of their Masters.---4. The Punishment of Treason, and Disrespect to Princes.---5. Contemners of the Laws of the Church how censured.

## CHAP. X.

*Of great Transgressions against the Sixth Commandment; of Murder and Manslaughter, Parricide, Self-murder, Dismembering the Body, exposing of Infants, causing of Abortion, &c.*

SECT. 1. Murder ever reckoned a Capital and Unpardonable Crime by the Laws of the State.---2. How punished by the Laws of the Church.---3. The Heinousness of Murder when joined with other crimes, as Idolatry, Adultery, and magical Practices.---4. Causing of Abortion condemned and punished as Murder.---5. The Punishment of Parricide.---6. Self Murder.---7. Of Dismembering the Body.---8. Of involuntary Murder by Chance or Manslaughter.---9. False Witness against any Man's Life reputed Murder.---10. Informers against the Brethren in Time of Persecution, treated as Murderers.---11. Exposing of Infants reputed Murder.---12. If a Virgin, deflowered by a Rape, kills herself for Grief, the Corrupter is reputed guilty of the Murder.---13. The *Lanistæ*, or *Fencing-Masters* reputed Accessories to Murder, and their calling condemned.---14. Spectators of the Murders committed on the Stage, accounted Accessories to Murder also.---15. Famishers of the Poor and Indigent reputed guilty of Murder.---16. And all they, by whose Authority Murder was committed.---17. Enmity, and Strife and Quarrelling, punished as lower Degrees of Murder.

## CHAP. XI.

*Of great Transgressions against the Seventh Commandment, Fornication, Adultery, Incest, Polygamy, &c.*

SECT. 1. The Punishment of Fornication.---2. Of Adultery---3. Of Incest.---4. Whether the Marriage of Cousin-Germans was reckoned Incest.---5. Polygamy and Concubinage.---6. Of marrying after unlawful Divorce.---7. Of Second, Third and Fourth Marriages.---8. Of Ravishment.---9. Of unnatural Impurities.---10. Of maintaining and allowing Harlots.---11. Of writing and reading lascivious Books.---12. Frequenting the Theatre and Stage-plays forbidden upon this Account.---13. As also all Excess of Riot and Intemperance for the same Reason.---14. And promiscuous Bathing of Men and Women together.---15. And promiscuous and lascivious Dancing, wanton Songs, &c.---16. As also promiscuous Clothing, or Men and Women interchanging Apparel.---17. And suspected Vigils, or Pernoctations of Women in Churches under Pretence of Devotion.

## CHAP. XII.

*Of great Transgressions of the Eighth Commandment, Theft, Oppression, Fraud, &c.*

SECT. 1. The Censure of those Heretics, who taught the Doctrine of Renunciation, or Necessity of having all Things Common.—Of Plagiarism or Man-stealing.—3. Of malicious Injustice.—4. Of simple Theft.—5. Of detaining lost Goods from the true Owner.—6. Of refusing to pay just Debts.—7. And what Men are bound to by the Obligation of Promise and Contract.—8. Of removing Bounds and Landmarks.—9. Of Oppression.—10. Of the Exactions and Bribery of Judges.—11. Of the Exactions of Publicans, and Collectors of the Public Revenues, and other Officers of the Roman Empire.—12. Of the Exactions of Advocates and Lawyers, and Apparitors of Judges.—13. Of griping Usury and Extortion.—14. Of Forgery.—15. Of Calumny with Regard to Men's Estates and Fortunes: and the Reverse of it, the Fraud of Adulation and Flattery.—16. Of Deceitfulness in Trust.—17. Of Deceitfulness in Traffic.—18. Of abetting and concealing of Robbers; buying stolen Goods, &c.—19. Idleness censured as the Mother of Robbery.—20. And Gaming as an Occasion of Fraud, and Ruin of many poor Families, who by these Means were reduced to the greatest Exigence.

## CHAP. XIII.

*Of great Transgressions against the Ninth Commandment, False Accusation, Libelling, Informing, Calumny and Slander, Railing and Reviling.*

SECT. 1.—Of false Witness.—2. Of Libelling.—3. Of Detraction, Whispering, and Back-biting.—4. Of Railing and Reviling, or scurrilous and abusive Language: and of revealing Secrets.—5. Of Lying. How far it brought Men under the Discipline of the Church.

## CHAP. XIV.

*Of great Transgressions against the Tenth Commandment, Envy, Covetousness, &c.*

SECT. 1.—Whether Envy brought Men under the Discipline of the Church.—2. Of Pride, Ambition, and Vain-glory.—3. Of Covetousness.—4. Of Carnal Lusts.

## BOOK XVII.

OF THE EXERCISE OF DISCIPLINE UPON THE CLERGY IN  
THE ANCIENT CHURCH.

## CHAP. I.

*Of the Difference of Ecclesiastical Censures inflicted on Clergymen and Laymen.*

SECT. 1. The peculiar Notion of Communion ecclesiastical, and Excommunication ecclesiastical, as applied to the Clergy.—2. The Clergy usually punished by a Removal from their Office, but not always subjected to public Penance, as Mea wholly cast out of the Communion of the Church.—3. Yet in some special Cases both Penalties inflicted.—4. Of Suspension from their Revenues.—5. Of Suspension from their Office.—6. Of Deposition or Degradation.

## CHAP. II.

*Of reducing the Clergy to the State and Communion of Laymen, as a Punishment for great Offences.*

SECT. 1. Lay-Communion not the same as Communion in one Kind only.—2. Neither does it signify barely communicating among Laymen without the Rails of the Chancel.—3. But a total Degradation, or Deprivation of Orders, and Reduction to the State and Condition of Laymen.—4. Clergymen thus reduced, seldom allowed to recover their ancient Station.—5. Notwithstanding the indelible Character of Ordination.—6. But sometimes excommunicated, as well as deposed, and denied the Communion of Laymen.—7. Sometimes removed and corrected by the Assistance and Authority of the secular Power.—8. What meant by the Punishment called *Curiae tradi*, or delivering up to the secular Court.

## CHAP. III.

*Of the Punishment, called Peregrina Communio, or reducing Clergymen to the Communion of Strangers.*

SECT. 1. The several Canons wherein this Punishment is mentioned.—2. The Communion of Strangers not the same as Lay-Communion.—3. Nor Communion in one Kind.—4. Nor Communion at the Hour of Death.—5. Nor the Communion of such as were enjoined to go on Pilgrimage on Earth, which was a Piece of Discipline unknown to the Ancients.—



6. Nor any private and peculiar Oblation for Strangers.—7 But communicating only as Strangers travelling without commendatory Letters, who might partake of the Church's Charity, but not of the Communion of the Altar.—8. This Notion confirmed from several Parts of ancient History.—9. What Sort of Penance was necessary to restore such delinquent Clergymen to their Office and Station again.

#### CHAP. IV.

##### *Of some other special and peculiar Ways of inflicting Punishment on the Clergy.*

SECT. 1. Sometimes the Clergy perpetually suspended from their Office, yet allowed to retain their Title and Dignity.—2. Sometimes degraded not totally, but partially, from one Order to another.—3. Sometimes deprived of a Part of their Office, but allowed to exercise the Rest.—4. Sometimes deprived of their Power over a Part of their Flock, but allowed it over the Rest.—5. Bishops in Afric punished by depriving them of their Seniority, and Right of succeeding to the Primacy or metropolitanical Power.—6. Also by confining them to the Communion of their own Church.—7. Or by removing them from a greater Diocese to a lesser.—8. The Clergy in general punished by a Loss of their Seniority among those of their own Order.—9. The inferior Clergy punished by rendering them incapable of being promoted to any higher Order.—10. The Clergy sometimes punished by denying them the public Exercise of their Office, whilst they were allowed to officiate in private.—11. Of Intrusion of Offenders into a Monastery to do Penance in private.—12. Of corporal Punishment. How far used as a Piece of Discipline upon the inferior Clergy.

#### CHAP. V.

##### *A particular Account of the Crimes for which Clergymen were liable to be punished with any of the forementioned Kinds of Censure.*

SECT. 1. All Crimes that were punished with Excommunication in a Layman, punished with Suspension or Deprivation in the Clergy.—2. Some Crimes rendered an Ordination originally void: and for such Crimes the Clergy were immediately liable to be degraded from the very Moment of their Ordination.—As 1. For Ignorance or Heterodoxy in Religion.—3. Secondly for great Immorality before their Ordination: and for being ordained against any of the known Rules of Ordination. As if he were a Digamist, or married to a Widow, or to one that had been divorced from another Man. If he were ordained *ἀπολελυμένως*, without being fixed to some particular Diocese. If he were ordained without Letters dimissory against the Consent of his own Bishop; or without the Consent of any of the Parties, that had a Right to vote in his Election. If any Bishop was ordained, who had before been degraded from his Orders. Or if he was ordained into a full See, where another

was regularly ordained before him. If any was an *Emergumen*, or under the agitation of an evil Spirit, when he was ordained. If any had voluntarily mangled his own Body; if any one was ordained, who had never been baptized, or not baptized in due Form, or was baptized by Heretics, or re-baptized by them; if any made Use of the secular Powers to gain a Promotion in the Church; if a Bishop ordained any of his own unworthy Kindred; if a Bishop clandestinely ordained his own Successor without the Consent of the Metropolitan or a provincial Council; or if two Bishops clandestinely ordained a Bishop without the Consent of their Fellow Bishops and the Metropolitan; in all these Cases the Clergy so ordained were liable to be deposed for transgressing the Rules of Ordination.—4. No Remedy allowed in this Case by doing public Penance for Offences. For all public Penitents were for ever incapable of Ordination. And if any such were ordained, they were immediately liable to be deposed and degraded.—5. Some Impediments of Ordination arising from Men's outward State and Condition in the World, were also sometimes Occasions of Deprivation. As if any Soldier was ordained, or any Slave or Vassal without the Consent of his Master; or any Member of a civil Corporation, or any of the Curiales in the Roman Government.—6. What Crimes might occasion the Deprivation of the Clergy, or other Censures to befall them, in the Performance of their Office, or rather Non-performance of it after Ordination. Clergymen to be censured for Contempt of the Canons in general.—7. More particularly for Negligence in their Duty.—8. For neglecting to use the public Liturgy, Lord's Prayer, Hymns, &c.—9. For making any Alteration in the Form of Baptism.—10. For not frequenting divine Service daily.—11. For meddling with secular Offices.—12. For deserting their own Church without Licence, to go to another.—13. For officiating after the Condemnation of a Synod.—14. For Appealing from the Censure of a provincial Synod to any foreign Churches.—15. For refusing to end Controversies before Bishops, and flying to a secular Tribunal.—16. For suffering themselves to be re-baptized or re-ordained.—17. For denying themselves to be Clergymen.—18. For publishing Apocryphal Books.—19. For superstitious Abstinence from Flesh, Wine, &c.—20. For eating of Blood.—21. For contemning the Fasts or Festivals of the Church.—22. For not observing the Rules about Easter.—23. For wearing an indecent Habit.—24. For keeping Hawks or Hounds, and following any unlawful Diversions.—25. For suspicious Cohabitation with strange Women. 26. For marrying after Ordination.—27. For retaining an adulterous Wife. 28. For Non-residence.—29. For attempting to hold Preference in two Dioceses. 30. For needless frequenting of public Inns and Taverns. 31. For conversing familiarly with Jews, Heretics, or Gentile Philosophers. 32. For using over rigorous Severity towards Lapsers.—33. For want of Charity to indigent Clergymen in their Necessity.—34. For judging in Cases of Blood.—35. Crimes, for which Bishops in particular might be suspended or degraded. For giving Ordinations contrary to the Canons. 36. For neglecting to put the Laws of Discipline in Execution. 37. For dividing their Diocese, and erecting new Bishoprics without Leave. Or for extending their Claim to other Men's Rights beyond their own Limits and Jurisdiction.—38. For not attending Provincial Councils, 39. For oppressing the People with unjust Exactions.—40. For harbouring such as fled from another Diocese without Leave.—41. *Chorcypiscopi* might be censured for acting beyond their Commission.—42. And Presbyters for usurping upon the Episcopal Office.—43. And Deacons for assuming Offices and Privileges above their Order and Station.

## BOOK XVIII.

OF THE SEVERAL ORDERS OF PENITENTS, AND THE METHOD OF PERFORMING PUBLIC PENANCE IN THE CHURCH, BY GOING THROUGH THE SEVERAL STAGES OF REPENTANCE.

## CHAP. I.

*A particular Account of the several Orders of Penitents in the Church.*

SECT. I. Penitents divided into four distinct Orders or Stations. 2. The first Original of this Distinction. 3. Of the first Order, called *Flentes*, or Mourners. 4. Of the second Order, called *Audientes*, or Hearers. 5. Of the third Order, called Prostrators, or Kneelers, and Penitents in the strictest Sense. 6. Of the fourth Order, called *Consistentes*, or Co-standers.

## CHAP. II.

*Of the Ceremonies used in admitting Penitents to do public Penance, and the Manner of performing public Penance in the Church.*

SECT. I. Penitents first admitted to Penance by Imposition of Hands. 2. At which Time they were obliged to appear before the Bishop with Sackcloth and Ashes upon their Heads. This Ceremony anciently not confined to Ash-Wednesday, or the Beginning of Lent, but Persons were admitted to Penance at any Time, as the Bishop judged most proper in his own Discretion. 3. Penitents obliged to cut off their Hair, or go veiled, as another Token of Sorrow and Mourning. 4. Penitents to abstain from Bathing and Feasting, and other innocent Diversions of Life. 5. Penitents to observe all the public Fasts of the Church. 6. Penitents to restrain themselves in the Use of the conjugal State. 7. For which Reason no married Persons were admitted to Penance, but by Consent of both Parties. 8. Penitents not allowed to marry in the Time of their Penance. 9. Penitents obliged to pray kneeling, whilst others prayed standing, on all Festivals and Days of Relaxation. 10. Penitents obliged to shew great Liberality to the Poor. 11. And to minister and serve the Church in burying the Dead

## CHAP. III.

*A particular Account of the Exomologesis, or penitential Confession of the ancient Church; shewing it to be a different Thing from the private or auricular Confession introduced by the Church of Rome.*

SECT. 1. The gross Mistake of those, who make the *Exomologesis* of the ancient Church to signify auricular Confession.—2. No Necessity of auricular Confession ever urged by the ancient Church.—3. This proved further from the Practice of the Ancients in denying all Manner of Absolution to some relapsing Sinners, without excluding them from the Mercy and Pardon of God, upon Confession to Him alone.—4. And from above twenty Considerations of the like Nature.—5. Yet private Confession allowed and encouraged in some Cases.—As first for lesser Sins, Men were advised mutually to confess to one another, to have each other's Prayers and Assistance.—6. Secondly in case of Injuries done to private Persons, Men were obliged to confess, and ask Pardon of the injured Party.—7. Thirdly, when they were under any Troubles of Conscience they were advised to make private Confession to a Minister, to have his Counsel and Direction.—8. Fourthly, to take his Advice also, whether it was proper to do public Penance for private Offences.—9. Fifthly, when there was any Danger of Death arising from the Laws of the State against certain Offences.—10. Sixthly, private Confession was also required in Case of private Admonition for Offences.—11. The Office of the penitentiary Priest set up in many Churches to receive and regulate such private Confessions.—12. This Office was afterwards abrogated in the East by Nectarius, and Men were left to their Liberty as to what concerned private Confession.

## CHAP. IV.

*Of the great Rigour, Strictness, and Serenity of the Discipline and Penance of the ancient Church.*

SECT. 1. Public Penance ordinarily allowed but once to any sort of Sinners.—2. Some Sinners held under a strict Penance all their Lives to the very Hour of Death.—3. Such as were absolved upon a Death-bed, were obliged to perform their ordinary Penance, if they recovered.—4. Some Sinners were denied Communion at their last Hour.—5. How this may be vindicated and cleared from the Charge of Novatianism.—6. This Rigour abated in after Ages, without any Reflection on the preceding Practice.—7. What Liberty was allowed to Bishops in imposing of Penance, and exacting proper Satisfaction of Sinners. Some Sinners allowed to do Penance twice.—8. Bishops had also Power to moderate the Term of Penance upon just Occasion.—9. And this was the true ancient Notion of an Indulgence.—10. Which was sometimes granted at the Intercession of the Martyrs, or the Instance of the civil

Magistrate.—11. Bishops had also a Power to alter the Nature of the Penalty in some Measure, as well as the Term of it.—12. What the Ancients mean by the Term, *Legitima Pœnitentia*.—13. What meant by the Phrase, *Inter Hyemantes orare*.

## BOOK. XIX.

### OF ABSOLUTION, OR THE MANNER OF RE-ADMITTING PENITENTS INTO THE COMMUNION OF THE CHURCH AGAIN.

#### CHAP. I.

*Of the Nature of Absolution, and the several Sorts of it: More particularly of such as relate to the penitential Discipline of the Church.*

SECT. 1.—All Church-absolution only ministerial, not absolute.—2. Of the grand Absolution of Baptism. That this was of no use in penitential Discipline to Persons once baptized. 3. Of the Absolution granted by the Eucharist. 4. Of Absolution declaratory and effective by the Administration of the Word and Doctrine. 5. Of the precatory Absolution given by Imposition of Hands and Prayer. 6. Of the Judicial Absolution of Penitents by restoring them to the Peace and full Communion of the Church.

#### CHAP. II.

*Of the Circumstances, Rites and Customs anciently observed in the public Absolution of Sinners.*

SECT. 1. No Sinners anciently absolved, till they had performed their regular Penance, except in Case of imminent Death. 2. Penitents publicly reconciled in Sackcloth at the Altar. 3. Sometimes more publicly before the *Apsis*, or Reading-desk. 4. Absolution at the Altar always given in a supplicatory Form by Imposition of Hands and Prayer. 5. Absolution in the indicative Form, *Ego te absolvo*, not used till the twelfth Century. 6. In what Sense that Form may be allowed. 7. Why Chrism or Unction was sometimes added to Imposition of Hands in the Reconciliation of certain Heretics and Schismatics to the Church. 8. Why some Heretics could be reconciled no other way but by a new Baptism. 9. What Conditions were required of those, who fell from the Church into any Heresy or Schism, when they were reconciled to the Church again. 10. Of the Time of Absolution. 11. How the Church absolved some Penitents, and received them into Communion after Death.

## CHAP. III.

*Of the Minister of Ecclesiastical Discipline, and particularly of the Minister of Absolution.*

SECT. 1. All the Power of Discipline primarily lodged in the Hands of the Bishop.—2. This in many Cases committed to Presbyters, either by a general or particular Commission.—3. And to Deacons also.—4. How far, and in what Sense Absolution might be said to be given by a Layman.

THE  
ANTIQUITIES  
OF THE  
CHRISTIAN CHURCH

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BOOK XVI.  
OF THE UNITY AND DISCIPLINE OF THE  
ANCIENT CHURCH.

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CHAP. I.

*Of the Union and Communion observed in the Ancient  
Church.*

SECT. 1.—Of the fundamental Unity of Faith and Obedience to the Laws  
of Christ.

THE design of ecclesiastical discipline being chiefly to preserve the unity of the Church in all necessary things, and keep it in purity, and free from corruption, by turning out unworthy members from her society and communion, and denying them all the privileges that belong to it; nothing will be more proper to usher in a discourse concerning the discipline of the ancient Church, than first to give a preliminary account of that union and communion, which she laboured to preserve in all her members united in one mystical body under Christ, her universal head. And here first of all, the unity of faith was principally insisted on, as the foundation, on which all other sorts of Christian unity were built: and next to this, they required the unity of ho-

liness or obedience, that the Church might be one in observing all the laws and institutions of Christ.<sup>1</sup> Some reckon the first sort of unity fundamental and essential to the very being of the Church, and all others only necessary to the well-being of it. But I conceive the Ancients accounted both the unity of faith and obedience necessary as fundamentals to the very being of the Church,<sup>2</sup> being both joined together by our Saviour, as the rock on which his Church should be built. For, as he says of faith, "Upon this rock will I build my Church, and the gates of hell shall not prevail against it," Matth. xvi. 18. So he says of obedience to his laws, "Whosoever heareth these sayings of mine, and doth them, I will liken him to a wise man, which built his house upon a rock: and the rain descended, and the floods came, and the winds blew, and beat upon that house: and it fell not, for it was founded upon a rock. But every one, that heareth these sayings of mine, and doeth them not, shall be likened unto a foolish man, which built his house upon the sand: and the rain descended and the floods came, and the winds blew, and beat upon that house; and it fell: and great was the fall of it." Matth. vii. 26-27. St. Luke, in relating the same passage, words it thus: "he that heareth, and doeth not, is like a man that without a foundation built an house upon the earth, against which the stream did beat vehemently, and immediately it fell; and the ruin of that house was great." Luke vi. 49. So that obedience, as well as faith, is part of that foundation upon which the Church of Christ is built: and he, that retains not the unity of obedience, wants an essential part of its foundation, and is not a real living member of Christ's mystical body; but only a broken, or a withered branch of it. In regard to which, our Saviour says in another place, "Whosoever shall break one of these least commandments, and shall teach men so; he shall be called the least in the kingdom of heaven," Matth. v. 19.

Upon this account, when he sent his Apostles to teach all nations, he enjoined them two things, first, "To baptise

<sup>1</sup> Claget of Church Unity, p. 196.  
cap. xxi.

<sup>2</sup> Vide Aug. de Unit. Eccles.



them in the name, (or faith) of the Father, and of the Son, and of the Holy Ghost:" and secondly, "To teach them to observe all things whatsoever he had commanded them." Matth. xxviii. 20. And for the same reason the ancient Church never admitted any persons to baptism, which was the ordinary door of admitting proselytes, and uniting them as members to the body of the Church, without first obliging them to do these two things: first, to make profession of the primary articles of the Christian faith: and secondly, to promise, or bind themselves by a strict engagement and vow, to live in holy obedience to the laws and institutions of Christ. As I have fully shewn in a former book,<sup>1</sup> treating of the necessary conditions required of men before their baptism. Where I have particularly remarked out of St. Austin, that he wrote that excellent book, *De Fide et Operibus*, to shew the necessity of obedience and good works, as well as faith, to the being of a Christian: against some who pretended, that the profession of faith in Christ, and not the profession of obedience to his laws, was necessarily to be required of men, in order to unite them as Christians to the body of the Church by baptism. They said, men were to be baptised, and united to the Church, so long as they kept the foundation of faith entire, whatever wicked works they built thereupon: for these would be purged away by certain punishments of fire, and they would obtain salvation at the last by virtue of the foundation, which they retained. To which St. Austin replies, that this was a false interpretation of the Apostle's meaning; and that however these men were so impudent, as to charge the Church's practice with novelty; yet it was always a firm custom obtaining in the Church, to reject professed workers of iniquity from baptism, and constantly refuse them the communion of the Church: and this was grounded upon the rules of ancient truth, which manifestly declared, that they, which do such things, shall not inherit the kingdom of God. Since therefore both faith and obedience were reckoned essentially necessary to baptism, they must be concluded

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<sup>1</sup> Book. ii. chap. vii. sect. 6.

equally necessary to preserve men in the real and perfect unity of the Church; unless we could suppose, that any thing was necessary to make a man a Christian, that was not necessary to make or keep him a member of the Church.

If it be now inquired, what articles of faith, and what points of practice were reckoned thus fundamental, or essential to the very being of a Christian, and the union of many Christians into one body or Church: the Ancients are very plain in resolving this. For as to fundamental articles of faith, the Church had them always collected or summed up out of Scripture in her creeds, the profession of which was ever esteemed both necessary on the one hand, and sufficient on the other, in order to the admission of members into the Church by baptism; and consequently both necessary and sufficient to keep men in the unity of the Church, so far as concerns the unity of faith generally required of all Christians, to make them one body and one Church of believers. Upon this account, as I have had occasion to shew in a former book,<sup>1</sup> the creed was commonly called by the Ancients, the *Kavòn* and *Regula Fidei*, because it was the known *standard* or *rule of faith*, by which orthodoxy and heresy were judged and examined. If a man adhered to this rule, he was deemed an orthodox Christian, and in the union of the Catholic faith: but if he deviated from it in any point, he was esteemed as one that had cut himself off, and separated from the communion of the Church, by entertaining heretical opinions, and deserting the common faith. Thus the Fathers, in the Council of Antioch,<sup>2</sup> charge Paulus Samosatensis with departing from the rule or canon, meaning the Creed, the rule of faith, because he denied the divinity of Christ. Irenæus calls it the unalterable canon or rule of faith:<sup>3</sup> And says,<sup>4</sup> this faith was the same in all the world; men professed it with one heart and one soul: for though there were different dialects in the world, yet the power of the faith was one and the same. The Churches in Germany had no other faith or tra-

<sup>1</sup> Book x. chap. iii. sect. 2.  
lib. vii. c. 30.

<sup>2</sup> Epist. Con. Ant. ap. Euseb.  
<sup>3</sup> Iren. lib. i. cap. i. p. 44.

<sup>4</sup> Ibid. cap. iii.

dition, than those in Spain, or in France, or in the East, or Egypt, or Libya. Nor did the most eloquent ruler of the Church, say any more than this ; for no one was above his master : nor the weakest diminish any thing of this tradition. For the faith being one and the same, he that said most of it, could not enlarge it ; nor he, that said least, take any thing from it. So Tertullian says,<sup>1</sup> there is one rule of faith only, which admits of no change or alteration, that which teaches us to believe in one God Almighty, the maker of the world, and in Jesus Christ his Son, &c. This rule, he says,<sup>2</sup> was instituted by Christ Himself, and there were no disputes in the Church about it, but such as heretics brought in, or such as made heretics. To know nothing beyond this, was to know all things. This faith<sup>3</sup> was the rule of believing from the beginning of the Gospel, and the antiquity of it was sufficiently demonstrated by the novelty of heresies, which were but of yesterday's standing in comparison of it. Cyprian says,<sup>4</sup> it was the law, which the whole Catholic Church held, and that the Novatians themselves baptised into the same Creed, though they differed about the sense of the article relating to the Church. Therefore Novatian, in his book of the Trinity,<sup>5</sup> makes no scruple to give the Creed the same name, *Regula Veritatis, the rule of truth*. And St. Jerom after the same manner,<sup>6</sup> disputing against the errors of the Montanists, says, the first thing they differed about, was the rule of faith. For the Church believed the Father, Son, and Holy Ghost to be each distinct in his own person, though united in substance : but the Montanists, following the doctrine of Sabellius, contracted the Trinity into one person. From all which it is evident, that the fundamental articles of faith were those, which the primitive Church summed up in her creeds, in the profession of which she admitted men as members into the unity of her body by baptism ; and if any deserted or corrupted this faith, they were no longer reputed

<sup>1</sup> Tertul. de Veland. Virgin. cap. i.  
advers. Hereticos. cap. xiii.

<sup>2</sup> Idem. de Præscript.

<sup>3</sup> Idem. cont. Prax. cap. ii.

<sup>4</sup> Cypr. Ep. lxi. al. 76. ad Magnum. p. 183.

<sup>5</sup> Novatian. de Trinit.

cap. i. et ix.

<sup>6</sup> Hieron. Ep. liv. ad Marcellam.

Christians, but heretics, who brake the unity of the Church by breaking the unity of the faith, though they had otherwise made no further separation from her communion. For as Clemens Alexandrinus says,<sup>1</sup> out of Hermes Pastor, “faith is the virtue that binds and unites the Church together.” Whence Hegesippus, the ancient historian, giving an account of the old heretics, says,<sup>2</sup> “they divided the unity of the Church by pernicious speeches against God and his Christ: that is, by denying some of the prime, fundamental articles of faith. He, that makes a breach upon any one of these, cannot maintain the unity of the Church, nor his own character as a Christian.” “We ought therefore,” says Cyprian,<sup>3</sup> “in all things to hold the unity of the Catholic Church, and not to yield in any thing to the enemies of faith and truth. For he cannot be thought a Christian,<sup>4</sup> who continues not in the truth of Christ’s Gospel and faith.” “If men be heretics,” says Tertullian,<sup>5</sup> “they cannot be Christians.” The like is said by Lactantius, and Jerom, and Athanasius, and Hilary, and many others of the Ancients, whose sense upon this matter I have fully represented in another place.<sup>6</sup> As therefore there was an unity of faith, necessary to be maintained in certain fundamental articles in order to make a man a Christian: so these articles were always to be found in the Church’s creeds; the profession of which was esteemed keeping the unity of the faith; and deviating in any point from them, was esteemed a breach of that one faith, and a virtual departing from the unity of the Church.

As to the other points of obedience to the laws and in-

<sup>1</sup> Clem. Strom. lib. ii. p. 458. Edit. Oxon. Ἡ συνέχευσα τὴν ἐκκλησίαν ἀρετῇ, ἢ πίστει ἐστὶ. Hermes Pastor. lib. i. Vision. iii. cap. 8. Prima earum, quæ turrim, (nempe Ecclesiam) continet manu, fides vocatur: per hanc salvi fiunt electi Dei. &c.

<sup>2</sup> Hegesip. ap. Euseb. lib. iv. cap. xxii. Ἐμέρισαν τὴν ἔνωσιν τῆς ἐκκλησίας φθοριμαίους λόγοις κατὰ τῶ Θεῷ, &c.

<sup>3</sup> Cypr. Ep. lxxi. ad Quintum p. 191. Per omnia debemus ecclesie catholice unitatem tenere, nec in aliquo fidei et veritatis hostibus cedere.

<sup>4</sup> Cypr. de Unit. Eccles. p. 114. Nec Christianus videri potest, qui non permanet in evangelii ejus et fidei veritate.

<sup>5</sup> Tertul. de Præscript. cap. xxxvii. Si Hæretici sunt, Christiani esse non possunt.

<sup>6</sup> Book. i. chap. iii. sect. 4.

stitutions of Christ, which were reckoned fundamental and essential to the being of a Christian, and the unity of the Church, they were generally summed up in those short forms of renouncing the devil and his service, and his works, and covenanting with Christ to live by the rules of his Gospel. By which they understood the renouncing all gross sins, such as idolatry, witchcraft, murder, injustice, intemperance, uncleanness, and whatever might be called worldly and fleshly lusts, contrary to the general tenor of the Gospel, and “the grace of God which had appeared unto all men, teaching us, that denying ungodliness and worldly lusts, we should live soberly, righteously, and godly in this present world.” They that walked after this rule, and squared their lives by these general measures and lines of duty; “adding to their faith virtue, and to virtue knowledge, and to knowledge temperance, and to temperance patience, and to patience godliness, and to godliness brotherly kindness, and to brotherly kindness charity;” these were the true Israel of God, and in the perfect unity of his Church: as long as they did these things, they could never fall: nothing could separate them from his Church, or from the love of God in Christ Jesus: “for so an entrance was ministered to them abundantly into the everlasting kingdom of our Lord and Saviour Jesus Christ.” But if men went contrary to this rule, “Walking in the works of the flesh, and not of the Spirit, professing to know God, but in works denying him;” though they might be corporeally and externally united to the visible body of the Church, yet internally and spiritually they were divided from it. St. Austin says expressly,<sup>1</sup> “That though men were regenerated by baptism, yet none but the good were spiritually built up into the body and members of Christ: the good only compose that Church, of which it is said, ‘As the lily among thorns

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<sup>1</sup> Aug. de Unit. Eccles. cap. xxi. Nec regenerati spiritaliter in corpus et Membra Christi coedificentur nisi boni: profectò in bonis est illa ecclesia, cui dicitur. Sicut lilium in medio spinarum, ita proxima mea in medio filiarum. In his est enim qui aedificant super l’etram, id est, qui audiunt verba Christi, et faciunt. Non est ergo in eis, qui aedificant super arenam, id est, qui audiunt verba Christi, et non faciunt. &c.

so is my love among the daughters. Cant. ii. 2. That Church consists only of those, who build upon the rock, that is, who hear the words of Christ, and do them. They therefore are not of that Church, who build upon the sand, that is, who hear the words of Christ, and do them not. And as they, who by the ligaments of charity are incorporated into the building that is founded upon the rock, and into the lily that shines among thorns, shall inherit the kingdom of God: so they, who build upon the sand, and, are numbered among the thorns, shall as certainly not inherit the kingdom of God." A little after<sup>1</sup> reciting those words of the Apostle, Gal. v. "The works of the flesh are manifest, which are these, adultery, fornication, uncleanness, lasciviousness, idolatry, witchcraft, hatred, variance, emulations, wrath, strife, seditions, heresies, envyings, murders, drunkenness, revellings, and such like; of the which I tell you before, as I have also told you in time past, that they which do such things, shall not inherit the kingdom of God." He adds, "all those are not in the lily, nor upon the rock, and heretics are in that number." Again, speaking of the grace of the spirit, which sanctifies good men, he says,<sup>2</sup> "This is wanting in all the wicked, and sons of hell, although they be baptised with the baptism of Christ, as Simon Magus was baptised." "There are many such,<sup>3</sup> who communicate in the sacraments with the Church, and yet they are not now in the Church. Such are cut off, before they be visibly excommunicated: and if they be visibly excommunicated, and visibly restored to communion; if they come with a feigned mind, and an heart opposing the truth and the Church, they are not reconciled, they are not inserted into the Church, although the solemnity of reconciliation be performed upon them." In another place, he says,<sup>4</sup> "The wicked multitude of the Church are not reckoned to

<sup>1</sup> Aug. de Unit. Eccles. cap. xxii.      <sup>2</sup> Aug. ibid. cap. xxiii. Hoc deest omnibus malignis et gehennæ filiis, etiamsi Christi baptismo baptizentur, sicut Simon fuerat baptizatus.

<sup>3</sup> Ibid. cap. xxv. Multi tales sunt in sacramentorum communione cum ecclesiâ, et tamen jam non sunt in ecclesiâ, &c.

<sup>4</sup> Aug. ibid. cap. xlii. Sermo divinus redarguit impias turbas ecclesiæ, quæ nec in ecclesiâ deputantur, &c.

be in the Church, save only so far as they have the same sacraments in common with the saints, because they have only a form of godliness, but deny the power of it." He repeats the same frequently in his books against Cresconius<sup>1</sup> and other places, which it is needless here to repeat at length. I only observe, that as charity was reckoned one essential part of a Christian's virtues: our Saviour having made it the characteristic note of his disciples: "by this shall all men know that ye are my disciples, if ye have love one for another:" so the Ancients laid a great stress upon this one virtue, without which they never reputed any man to be truly in the unity of the Church, whatever claim he could otherwise lay to the communion of it.

SECT. 2.—Of the Unity of Love and Charity, as an essential Part of Christian Obedience.

"I do not think any man," says St. Austin,<sup>2</sup> "so vain and foolish, as to believe such an one to appertain to the unity of the Church, who has not charity. For St. James speaking against those, who thought it sufficient to believe, but would not do good works, says, Thou believest that there is one God; thou dost well: the devils also believe and tremble. Certainly the devils are not in the unity of the Church; and yet we cannot say, they believe otherwise of Christ than the Church believes, seeing they said to the Lord Jesus Christ himself, What have we to do with Thee, Thou Son of God? and St. Paul says, Though I have all faith, so that I could remove mountains, and have not charity, I am nothing." "They that are enemies to this brotherly charity," says St. Austin again,<sup>3</sup> "whether they

<sup>1</sup> Aug. cont. Crescon. lib. i. cap. 29. lib. ii. cap. 15, 21, 33, 34. Qui cum sint à bonis vitâ moribusque spiritaliter separati, corporaliter tamen eis in ecclesiâ videntur esse premixti usque in diem judicii.

<sup>2</sup> Aug. cont. Crescon. lib. i. cap. 29. Non autem existimo quenquam ita desipere, ut credat ad ecclesiâ pertinere unitatem eum, qui non habeat charitatem, &c.

<sup>3</sup> Aug. de Bapt. lib. iii. cap. 19. Hujus autem fraternæ charitatis inimici, sive apertè foris sint, sive intus esse videantur, pseudochristiani sunt et antichristi. Cum intus videntur, ab illâ invisibili charitatis compage separati sunt. &c.

are openly out of the Church, or seem to be within, they are false Christians and Antichrists. When they seem to be within, they are separated from that invisible union or bond of charity. Whence St. John says of them, They went out from us; but they were not of us. He does not say, they were made aliens by going out, but because they were aliens before, he declares, that therefore they went out." "This charity was necessary to incorporate men into that building;<sup>1</sup> which was founded upon the rock of obedience, without which it could not stand: to uphold the structure, charity was required as a principal part of the foundation, whereupon the whole building rested, being fitly framed together, and united by charity into one, as members of the mystical body of Christ."

SECT. 3.—Other Sorts of Unity necessary to the Well-being of the Church.

After this manner the Ancients commonly discoursed of these sorts of unity, which I call fundamental to the very being of a Church; being so absolutely necessary and essential, as that the Church could not consist without them, they were necessary to every individual, and necessary in all cases and circumstances whatsoever: there being no case, in which it was lawful to deny the faith: nor any case that could dispense with a man's obligations to sobriety, godliness, righteousness and charity. There were other sorts of unity, necessary indeed to the well-being of the Church, but yet not so absolutely essential, but that a man in some extraordinary cases and circumstances might be incapacitated or hindered in the actual performance of them, without incurring the censure of breaking the unity of the Church, or being wholly excluded out of her communion. It is every Christian's duty to unite himself to the Church by baptism, and to receive it from the hands of a regular ministry; it is his duty to join in communion with the Church where he

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<sup>1</sup> Vid. Aug. de Unit. cap. **xxi**. Compagne charitatis incorporati sunt ædificio super petram constituto.



lives, and assemble with them for worship and prayers, and administration of the word and sacraments, and all other holy offices; it is his duty to live under the government of a regular and lawful ministry, and submit himself to all the rules of the Church in worship and discipline, that are not contrary or repugnant to the word of God: but then it may happen, that a man cannot have baptism, though he be never so desirous of it; sudden death may prevent him, whilst he is seriously preparing for it. In this case, the Church did not deny him her communion, though he was never formally entered into it, but accepted the will for the deed, and treated him after death as one of her sons dying in her bosom and communion. Which was the case of many martyrs, and others dying without baptism, not out of contempt, but by the exigence of some unforeseen accident preventing them. So again, it might happen, that a man in extremity, when he was desirous of baptism, could not have it but from the hands of an heretic, or a layman. In this case the Church was equally favourable to the party so baptised, because he was united in heart and will to the Church, and it was not contempt of her ministry, but necessity that drove him to receive baptism from an heretic or a layman, rather than die without it. In like manner, a man, that was very desirous to join with the Church in her public assemblies, might notwithstanding by some great exigence be debarred from this privilege, as by sickness, or imprisonment, or banishment: in which case he was not divided from the communion of the Church in worship or prayers; but his spirit was still present in her religious assemblies, though necessity obliged him in body to be absent from them. Or if it were but the care of the indigent, that required his help, and kept him away from the solemn meeting in God's house, his reason was good, and such an act was no breach of Christian unity, because God himself allows it; nay, requires it by his own rule, "I will have mercy, and not sacrifice:" which in such cases, where men act sincerely, and trifle not with God, is always their justification both before God, and his Church. It was further required, that men should comply with all the inno-

cent customs, and lawful orders of the Church; and especially submit to her discipline in case of any scandalous transgression or immorality: but if men by reason of sickness, or infirmity, or old age, could not observe her rules about fasting; or by reason of their poverty could not abstain from their ordinary labour to attend her festivals; these were not reckoned transgressions of her rules, or good order, because they naturally admitted of such limitations and exceptions: and no man was accused as a divider of the Church's unity for going against her customs in such cases. So though it was required, that penitents under discipline should be reconciled to the Church by imposition of hands and absolution; yet if any real penitent, who was desirous of absolution, happened to be struck dumb, or die before he could receive it; this was reckoned no prejudice to his condition: in this case, his good will, and desire, and intention of being reconciled, was reputed sufficient to restore him to the peace and unity of the Church, though he wanted the formality of an external absolution.

This was the great difference between those sorts of unity, which were reckoned fundamental, and essential to the very being of a Church and those which were required as necessary to the well-being of it: the former admitted of no dispensations; but the latter did in these and the like cases. No case could dispense with a man's putting away a good conscience, or making shipwreck of faith: no necessity could be so great as to justify a man in denying an essential or fundamental truth, or in living in open and professed violation of those necessary rules and great lines of duty, which require the practice of universal holiness in a godly, righteous, sober life, as the indispensable condition of salvation: but several necessities might dispense with men in the non-observance of the things of the latter kind; and therefore it is of great use carefully to distinguish these things in speaking of the unity of the Church. As therefore I have spoken particularly of the former, so I will now speak a little more distinctly of these latter, and shew how far the Ancients urged the necessity of them.

SECT. 4.—Among these they reckoned, First, the necessary Use of one Baptism, ordinarily to be administered by the Hands of a regular Ministry.

And here first of all they required, that men should unite themselves to the Church by baptism; and that administered but once; and this also to be administered ordinarily by the hands of a regular ministry, except some urgent necessity obliged them to do otherwise. The necessity of baptism they urged from the tenour of the commission given to the Apostles, “Go, baptise all nations:” and from those words of our Saviour, John iii. 5. “Except a man be born of water and the Spirit, he cannot enter into the kingdom of God.” There were many heretics, who contemned the use of water-baptism, as a carnal ordinance, and wholly denied the necessity of it to salvation in any case whatsoever, of whom I have given a particular account in a former book.<sup>1</sup> Against these they urged the necessity of baptism in all ordinary cases, to make men members of the Church; and strenuously maintained, that men who wilfully neglected or despised baptism, could not by any other means be united to the Church of Christ, or have any grounds for hope of eternal life; because they despised that ordinance of Christ, which he had made the regular and ordinary way of admitting members into his Church, and refused to enter by that door, which he had appointed to be the general entrance to eternal life. This opinion of the Ancients concerning the necessity of baptism in all ordinary cases, maintained against those several heresies, the reader may find fully discoursed in a foregoing part of this work;<sup>2</sup> where I observed, that though they strictly urged the necessity of baptism in order to make men members of the Church, and sons of God; expressing themselves severely against all that either carelessly neglected it, or profanely despised it; yet they did not believe it to be so simply and absolutely necessary as the unity of faith and

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<sup>1</sup> Book ii. ca. ii.

<sup>2</sup> Book x. chap. ii. sect. 19.

repentance: because they always maintained, that the bare want of baptism, where there was no contempt, might be supplied by martyrdom; where the exhibiting of faith, and the greatest testimony of obedience that could be given, was sufficient to unite them to Christ and his Church in that ease, and grant them all the privileges of Christian communion. And the like was determined concerning the faith and repentance of such catechumens, as were piously preparing for baptism, but were snatched away by sudden death before they had any opportunity to receive it. Which shews, that they put a manifest difference between the unity of faith and obedience, as fundamental and essential to the very being of a Church, the want of which nothing could supply; and the unity of baptism, which though ordinarily necessary to the well-being of the Church, yet was not so absolutely necessary and essential, but that the want of it might be supplied in some cases by faith and obedience; and by these a martyr or a pious catechumen might be presumed to die in the unity of the Church without baptism, when they had no opportunity to receive it.

The form of baptism itself indeed, whenever it was administered, was a little more necessary, because that implied a profession of faith in the Holy Trinity, and universal obedience to the laws of Christ; and therefore baptism administered in any other form was reputed null and void even in the Church itself, and was of necessity to be repeated; but then this necessity did not rise from the bare necessity of baptism, which might, as we have heard, be dispensed with in some cases, but from the necessity of faith and obedience, presupposed as antecedent qualifications, essential to the very being of a Church, and the character of a Christian in the largest denomination. So that what made this so absolutely necessary, was not the absolute necessity of baptism itself, which might be dispensed with in some extraordinary cases, where those qualifications were really in the hearts of men before baptism: but it was the want of those qualifications, or at least the want of professing them in due form, that made the baptism void; because there was a strong presumption, that they had not

those qualifications that were essential to the very being of a Christian, since no profession was made of them in their baptism. For which reason, whether it was given in the Church, or out of the Church, it was always to be repeated, as a thing null and void, for want of those qualifications of faith and obedience, which were so indispensably required to make a man a Christian.

It was necessary also to the unity of the Church in its well-being, that baptism should ordinarily be administered only by the hands of a regular ministry: and therefore for either laymen without a commission in the Church to usurp this authority, or for heretics and schismatics without the Church to assume this power, was always esteemed a great breach of the Church's unity. And though the Church did not always annul such baptisms, if given in due form of words; yet she always condemned the thing as an usurpation, and an act of criminal schism, and manifest prevarication both in the giver and voluntary receiver. Insomuch that one of the ancient Councils orders,<sup>1</sup> "that if any Catholic offered his children to be baptised by heretics, his oblation should not be received in the Church." This was in effect to punish him with excommunication, as an encourager of heretics, and a divider of the unity of the Church. And St. Jerom says,<sup>2</sup> to the same purpose, "if a man, who is orthodox in his own faith, is wittingly and willingly baptised by heretics, he deserves no pardon for his crime." But then it might happen, that a man in extremity might be so distressed as to have none but an heretic to baptise him; in which case to receive baptism from the hands of an heretic or schismatic, was reckoned no breach of Catholic unity, because the man in heart and mind was still united to the Catholic Church. This is St. Austin's<sup>3</sup> resolution of the case. "If a man," says he,

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<sup>1</sup> Con. Herdense, can. xiii. Catholicus, qui filios suos in hæresi baptizandos obtulerit, oblatio illius in ecclesiâ nullatenus recipiatur.

<sup>2</sup> Hieron. Dial. cum Lucifer, cap. v. Si jam ipse bene credebat, et sciens ab hæreticis baptizatus est, erroris veniam non meretur.

<sup>3</sup> Aug. de Bapt. lib. i. cap. ii. Si quem forte coegerit extrema necessitas, ubi catholicum per quem accipiat non invenerit, et in animo pace

“ is compelled by extreme necessity, where he cannot have a Catholic to give him baptism, to take it at the hands of one who is not in Catholic unity; in that case we reckon him no other than a Catholic still, though he died immediately, because he was in heart and mind a Catholic, and would have been baptised in Catholic unity, if there had been any opportunity to have done it. If such an one survives, and corporally joins himself to the Catholic congregation, from which in heart he never departed, we not only not disallow what he has done, but securely and truly commend him for it: because he believed God to be present in his heart, where he preserved unity, and would not depart out of this life without the sacrament of baptism, which he knew to be God’s, and not men’s, wheresoever he found it. But if any one, when he might receive it in the Catholic Church, by some perverseness of mind, chuses rather to be baptised in schism, though he afterward design to return to the Church, because he is certain the sacrament will profit him in the Church, but not elsewhere, though he may receive it elsewhere: this is a perverse and wicked man, and so much the more perniciously such, by how much the more knowing he is.” In another place he proposes the same question, whether a Catholic without breach of unity might receive baptism from a schismatic? and he answers it after the same manner,<sup>1</sup> “ that he may safely receive it of a separatist, if he himself be no separatist, when he receives it; for so it often happens to men, who have a Catholic mind, and an heart no ways alienated from the unity of peace, that in extreme necessity and danger of imminent death they light upon some heretic, and receive the baptism of Christ at his hands, but not with the perverseness, or

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catholicâ custoditâ, per aliquem extra catholicam unitatem acceperit, quod erat in ipsâ catholicâ unitate accepturus, si statim etiam de hâc vitâ migraverit, non eum nisi catholicum deputamus, &c.

<sup>1</sup> Aug. de Bapt. lib. vi. cap. 5. Potest salubriter accipere à separato, si ipse non separatus accipiat: sicut plerisque accidit, ut catholico animo et corde ab unitate pacis non alienato, aliquâ necessitate mortis urgentis in aliquem hæreticum irruerent, et ab eo Christi baptismum sine illius perversitate acciperent, &c.

heretical pravity of the administrator. For whether they die or live, they do not remain among heretics, to whom in heart they never went over." So again, distinguishing baptised persons into three sorts; first, such as are baptised in the house of God, and are truly and spiritually of the house of God; secondly, such as are baptised in the house of God, but are spiritually by wicked works separated from it; thirdly, such as are baptised in heresy or schism, who are corporally separated from the house of God, and worse than those who live carnally within it, and are only spiritually divided from it; he adds concerning this last sort,<sup>1</sup> who are rather to be said to be of the house of God, than in it, being further separated by corporal division, than those who are only spiritually divided from it, that they neither have baptism to any profit themselves, neither is it received with any profit from them, except where the necessity of receiving it forces a man to receive it from them, and the mind of the receiver does no ways recede from the bond of unity. By which is intimated that to receive baptism in case of necessity from the hands of an heretic or schismatic, does not involve a man in the guilt of schism, so long as it is a case of extreme necessity, and the man in heart and mind is all the time in the unity of the Catholic Church.

The case was the same with those that were baptised by laymen. The rules of the Church required, that none should baptise in ordinary cases, but the regular and lawful ministers of the Church; and to do otherwise, was always a note of criminal schism: but in case of extremity, she granted a general commission even to laymen to baptise, rather than any person in such an exigence should die without baptism; and in such a case, to receive baptism from a layman, was neither usurpation nor schism in the giver or receiver, because they had the Church's authority for the action. I produce no proofs or evidence for this

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<sup>1</sup> Aug. de Bapt. lib. vii. cap. 52. Qui autem separatiores non magis in domo quàm ex domo sunt, neque omnino utiliter habent, neque ab eis utiliter accipiuntur, nisi fortè accipiendi necessitas urgeat, et accipientis animus ab unitatis vinculo non recedat.

here, because I have done it fully in a separate discourse before, treating historically of the practice of the Church in reference to her allowance of baptism administered by laymen, in cases extraordinary, when men were in apparent danger of death, and could not have a minister to baptise them.

In all these cases, we see, nothing but extreme necessity could excuse men from criminal schism, in dividing themselves from the Church, either by the neglect of baptism, or seeking to heretics, or schismatics, or laymen for the administration of it. And the like is to be said of any man's suffering himself to be rebaptised, after he had once received a true baptism, whether in the Church or out of it. For the unity of baptism was such, that it was never to be repeated. The greatest apostates were never rebaptised by the Catholic Church upon their admission again, but taken in by imposition of hands and absolution upon their repentance. Neither did the Church ever rebaptise those that were baptised in heresy or schism, except when some doubt was made, whether the baptism was defective in some essential part of it. And therefore because many heretics were inclined to rebaptise the Catholics, very severe laws were made both in Church and State, to repress this insolence: of which I have given a particular account in handling the subject of baptism heretofore,<sup>1</sup> and need only now observe, that this practice of rebaptising was always esteemed a schismatical act, and a notorious breach of Catholic unity, which never allowed of more than one baptism, according to that rule of the Apostle, "One Lord, one faith, one baptism," in the Church, as many of the Ancients expound it; or at least, because by the divine will it was so appointed.

SECT. 5.—2dly, The Unity of Worship in joining with the Church in Prayers, Administration of the Word, and Sacraments.

Another sort of unity, requisite to the well-being of the Church, was the unity of worship, whereby all Chris-

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<sup>1</sup> Book xii. chap. v. sect. 7.



tians were obliged to join with their respective Churches in the performance of all holy offices in public; such as common-prayer, and the administration of the word and sacraments. Which did not require, that all Churches should exactly agree in the same form of words, which were not essential to these things: for, as we shall presently see, every Church was at liberty to make choice for herself, in what method and form of words she should perform these things: and it was no breach of unity for different Churches to have different modes, and circumstances, and ceremonies, in performing the same holy offices, so long as they kept to the substance of the institution: but that, which was required to keep the unity of the Church in these matters, was, that every particular member of any Church should comply with the particular custom and usages of his own Church, (nothing being inserted into her offices that was unlawful,) and meet for religious worship, and hold constant communion with her in the performance of all divine service. And to do otherwise, either by neglecting wholly the service of religious assemblies, or setting up opposite communions, or raising unnecessary disputes about the lawful usages and innocent practices of the Church, whereof a man was a member, was always esteemed an act of criminal schism, as giving scandal and offence to the Church and his brethren. There are several canons in the Council of Gangra, made against the separatists called Eustathians, directly to this purpose. The fourth canon runs thus: "If any one separate from a married presbyter, upon pretence that it is unlawful to partake of the oblation, when he performs the Liturgy, or celebrates the office of communion, let him be anathema, that is, excommunicate, or cut off from the Church." The fifth canon is to the same effect: "If any one teach, that the house of God, and the assemblies held therein, are to be despised, let him be anathema." The sixth forbids all private and irregular assemblies: "If any hold other assemblies privately out of the Church, and contemning the Church will have ecclesiastical offices performed without a presbyter licensed by the bishop, let him be anathema." The eleventh censures those in like manner, who despised the feasts of charity, made in honour of the Lord,

refusing to partake of them. The eighteenth censures such as fasted on the Lord's day, under pretence of leading an ascetic life; this being a thing contrary to the general rule and custom of the Church. The nineteenth, on the other hand, censures such ascetics, as without the excuse of bodily infirmity, out of mere pride, contemptuously broke the common fasts handed down by tradition to be observed in the Church. And the twentieth canon anathematises those, who, from an insolent disposition, contemned the assemblies that were wont to be held in the churches of the martyrs, and the service performed there, and the commemorations of them. Among the Apostolical Canons there is one to the same purpose, which orders,<sup>1</sup> "that if any presbyter, despising his bishop, gather a separate congregation, and erect another altar, having nothing to object against his bishop in point of godliness or righteousness, he should be deposed as a lover of pre-eminence, and arbitrary power or tyranny in the Church. And if any of the clergy conspired with him, they were likewise to be deposed, and laymen to be suspended from the communion, after a third admonition given them from the bishop." These were some of the ancient rules relating to separatists, dividing wholly from the Church, and refusing contemptuously to communicate with her in divine service. And for such as frequented some part of the service, but fell off from the rest, she set an equal mark of reproach upon them, as disobedient children also. One of the Apostolical Canons orders all communicants,<sup>2</sup> who came to Church to hear the Scriptures read, but did not stay to join in prayers and receiving the eucharist, to be suspended, as authors of confusion and disorder in the Church. And the Council of Antioch<sup>3</sup> repeats, and reinforces this canon. The Council of Eliberis<sup>4</sup> forbids the bishop to receive the oblations of such as did not communicate: which was in effect to cut them off from communion with the Church, for the neglect of that principal part of divine service. The same Council in ano-

<sup>1</sup> Canon. Apost. xxxi.

<sup>2</sup> Con. Antioch. can. ii.  
Con. Tolet. i. can. 13.

<sup>3</sup> Canon. Apost. vii.

<sup>4</sup> Con. Eliber. can. xxviii. Vid.

ther canon orders,<sup>1</sup> “ that if any one, being at home in his own city, did for three Lord’s days together absent himself from church, he should be suspended from the communion for an equal term, that he might be made sensible of his crime by the Church’s censure.” The Council of Sardica, not long after, made a decree to the same purpose, referring to some former canon that had been made upon this matter, which, though some learned men are at a loss to know what canon it was, seems plainly to be this canon of the Council of Eliberis. For Hosius, bishop of Corduba, was present at both these councils, and presided in that of Sardica, which makes it probable, that he referred to the canon of Eliberis, when he proposed it to the Fathers at Sardica for their consent and approbation. For the Council of Sardica<sup>2</sup> repeats a canon made in some former Council, importing, that a layman absenting from church for three Lord’s days together, without just cause or impediment, was to be excommunicated for his transgression. And the same is repeated in the Council of Trullo.<sup>3</sup> So careful was the Church to preserve her members in the unity of divine worship, and discountenance all separatists whether partial or total, that an occasional communicant was liable to censure as well as any other.

But then there were some necessary reasons, that might justly excuse a man from this duty of constant communion with his own Church. As if a man was in a journey, the very nature of the thing was his excuse: for he could not communicate with his own Church in such a necessity, and therefore the Council of Trullo delivers the rule with that limitation. If a man was sick and infirm, his infirmity was such an impediment, as all laws both human and divine would allow of as a reasonable cause of absenting. And the same reason would excuse his non-observance of the severe fasts of the Church, which were imposed upon none but those that were able to bear them, as appears from the

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<sup>1</sup> Con. Eliber. can. xxi. Si quis in civitate positus, tres dominicas ecclesiam non accesserit, tanto tempore abstineat, ut correptus esse videatur.

<sup>2</sup> Con. Sardic. can. xi.

<sup>3</sup> Con. Trull. can. lxxx.

forecited canon of the Council of Gangra.<sup>1</sup> The stationary days of fasting and prayer were chiefly designed for the exercise of religious ascetics, those who had both strength and leisure to attend them: and therefore an infirm man, or a poor man, who was to live by his bodily labour, was under no obligation to spend so much time in those ordinary returns of fasting and prayer. If he communicated with the Church religiously on the Lord's days, his omissions of the rest were not imputed to him as breaking communion with the Church. If men were in prison or in banishment, the necessity of their confinement was their natural excuse. For how should they join bodily in communion with the Church, who had not the liberty of their own bodies, whilst they were entirely at the mercy and disposal of others? It was sufficient for them in such a case to join in spirit, when they could not in bodily presence; and to say with David, "As the hart panteth after the water-brooks, so panteth my soul after thee, O God. My soul thirsteth for God, for the living God: When shall I come and appear before God?" psal. xlii. 1. And, "Woe is me, that I am constrained to dwell with Mesech, and to have my habitation among the tents of Kedar." psal. exx. 4. "O God, my soul thirsteth for Thee, my flesh longeth after Thee, in a dry and thirsty land, where no water is; to see thy power and thy glory, so as I have seen Thee in the sanctuary," psal. lxxiii. 1. It was their misfortune, and not their crime in that case to be absent from the house of God: mean while the whole world was to them the temple of God: "For the earth is the Lord's and the fullness thereof:" their prison was their oratory, and the wilderness a sanctuary; their own hearts a sacrifice, and their own bodies an altar. When Lucian the martyr made use of his own breast in chains instead of a communion-table to offer the eucharist on, his sacrifice was as acceptable to God, as if it had been in the midst of the Church upon an altar. For as St. Basil words it,<sup>2</sup> in such a case it is not the place, but the

<sup>1</sup> Con. Gangren. can. xiv.

alii ap. Durant. de Ritibus, lib. i. cap. 2.

<sup>2</sup> Basil Exhort. ad Bapt. et

mind and affection of the supplicant, that God regards. Moses was heard in the bottom of the sea, Job upon a dunghill, Ezekias in his bed, Jeremy in the dungeon, Jonas in the whale's belly, Daniel in the lion's den, the three children in the burning fiery furnace, the penitent thief upon the cross, and Peter and Paul in prison. "Every place," says Dionysius of Alexandria,<sup>1</sup> "is instead of a temple in time of persecution, whether it be a field, or a wilderness, or a ship, or an inn, or a prison." There is a great difference to be made between necessity and contempt. If a man voluntarily absents himself from the assemblies of the Church, when he may enjoy them, he is a divider of her unity, by contemning her service: but if necessity obliges him to be absent, when he is desirous to be present, he is spiritually present with her even whilst he is absent in body: which is as much preserving her unity, as his case will allow, or the Church can require: seeing this sort of unity is not simply essential to the being of a Church in all states, but only necessary to her well-being in peaceable times and ordinary cases. And happy would it be for the Church, if men would never deny themselves the benefit of her communion in religious assemblies, but upon such reasons of necessity, which carry their own apology at first sight in their very nature: if they were merely passive, and not active, in their separation, such a separation would not involve them in the guilt of schism, being so rationally to be accounted for both before God and his Church. The primitive Church was exceedingly happy in these two things, which relate to this sort of unity in communion, the want of which is so much to be lamented both in its causes and effects in this unhappy divided state of the Church in later ages; First. That no Church then ever assumed to herself an authority of imposing upon her members any things unlawful, or contrary to the word of God, either in faith or practice, as necessary terms of communion, they required no belief of any articles of faith, as necessary to salvation, but such as were contained in their common creeds, and

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<sup>1</sup> Ap. Euseb. lib. vii. cap. 22.

founded upon the infallible authority of Scripture. They inserted nothing into their public forms of worship, repugnant to the word of God, or intrrenching upon any divine rule given in Scripture about the object or matter or manner of adoration, as any one may perceive, by considering the account that has been given of their public worship and Liturgy in the three last books, where we examined every particular office of it. Things being thus secured for the substance of their worship, all Christian people in the next place thought it their duty to submit to the wisdom and prudence of their governors in establishing things external and circumstantial, relating to expedience, edification, and good order. And this was the second thing to be admired in the economy of the ancient Church, that the people never had any dispute with their superiors about matters of this kind, but left all indifferent things, and things of expedience, decency, circumstance, and form, to the judgment and choice of their governors, or persons invested with authority to determine such matters; readily complying with the innocent customs of the Church, and all the rules of public order, and never dividing into sects and parties upon the account of rites and ceremonies, though differently practiced in different Churches. This was according to the wise and peaceable rule laid down by St. Austin in his advice to Casulanus: "in those things,"<sup>1</sup> says he, "concerning which the holy Scripture has given no positive direction, the custom of the people of God, or the rules of our ancestors or superiors are to be taken for a law." He instances in the custom of the Church, never to fast on the Lord's day, which was become so much a rule, that whoever should pretend to introduce the contrary custom, to make it a fast, should be thought to give great scandal to the Church, and that not without good reason. Nay, he says, it would be to

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<sup>1</sup> Aug. Ep. lxxxvi. ad Casulan. In his enim rebus, de quibus nihil certi statuit Scriptura divina, mos populi Dei, vel instituta majorum pro lege tenenda sunt.—Quisquis hunc diem jejunio decernendum putaverit, non parvo scandalo erit ecclesie, nec immerito.—Quis non Deum offendet, si velit eum scandalo totius, que ubique dilatata est, ecclesie, die dominico jejunare?

offend God, so to scandalize the universal Church by holding a fast on the Lord's day; especially since it was become the practice of the impious Manichees so to fast in opposition to the Church. The Saturday fast was not a custom of so general observation; for some Churches kept it a fast, and some a festival: but his advice as to this is much of the same nature, that a man should observe the custom of every Church,<sup>1</sup> where he happened to be, if he was minded neither to give offence to them, nor take offence from them; and this advice, he says, he had in his younger days from the mouth of St. Ambrose. But because in such a matter as this is, it might happen, that not only different Churches might practice differently, but also the members of the same Church might differ in their practice one from another without breach of communion, as it was in some of the African Churches, where in one and the same Church some chose to fast, others to dine upon the sabbath, his advice to Casulanus as a presbyter was,<sup>2</sup> "to follow the custom of those, who had the care and government of the Churches committed to them:" "Resist not your bishop in such a matter as this, but follow what he does without any scruple or disputation."

SECT. 6.—3dly, The Unity of Subjection of Presbyters and People to their Bishop, and Obedience to all public Orders of the Church in Matters of an indifferent Nature.

And this leads us to consider another sort of unity, very necessary for the well-being of the Church: which was, that the clergy and people should be united under one single bishop in every Church, paying a due respect to his authority, and not dividing from him, either by setting up anti-bishops against him, or withdrawing from his communion

<sup>1</sup> Aug. *ibid.* Ad quameunque ecclesiam veneritis, ejus morem servate si pati scandalum non vultis, aut facere.

<sup>2</sup> *Ibid.* Sed quoniam contingit maximè in Africa ut una ecclesia, vel minus regionis ecclesie, alios habeant sabbato prandentes, alios jejuantes, mos eorum mihi sequendus videtur, quibus eorum populorum congregatio regenda commissa est—Episcopo tuo in hæc re noli resistere, et quod facit ipse, sine ullo scrupulo vel disceptatione seclare.

or government, or despising the public orders of his Church, which were made for expedience and edification in matters of an indifferent nature. Cyprian has abundance relating to this sort of unity, considering both the state of his own and other Churches. "The Church," he says,<sup>1</sup> "is a people united to their bishop, and a flock adhering to their pastor." Whence he infers, that the bishop is in the Church, and the Church in the bishop; and that whoever are not with the bishop, are not in the Church: that is, none who voluntarily withdraw from his communion, and set up others in opposition to it. To the same purpose he says again,<sup>2</sup> "That the ordination of bishops, and the constitution of the Church came down by succession from the Apostles, so as that the Church stood upon its bishops, and every act of the Church was regulated by their direction, as the chief governors of it." And therefore when some lapsers wrote to him, giving themselves the name of the Church, he gave them a very sharp answer, telling them, "He could not but wonder at their temerity and boldnes, that they should style themselves the Church, when it was so plain by the divine law, that a Church consisted of a bishop and clergy together with a people standing firm without lapsing in time of persecution; whereas no number of lapsers could be called a Church, since God was not the God of the dead, but of the living." In another place he severely rebukes the presumption of those presbyters, who took upon themselves by their own authority to reconcile lapsers without consulting him, who was the chief manager and director of the discipline of the Church. This, he tells them,<sup>3</sup>

<sup>1</sup> Cyp. Ep. lxxix. al. lxxvi. ad Florentium. p. 168. *Ecclesia sunt plebs sacerdoti aduanta, et pastori suo grex adhaerens. Unde scire debes episcopum in ecclesiâ esse, et ecclesiam in episcopo; et si qui cum episcopo non sint, in ecclesiâ non esse.*

<sup>2</sup> Cyp. Ep. xxvii. al. xxxiii. ad Lapsos, p. 66. *Inde per temporum et successionum vias, episcoporum ordinatio et ecclesiae ratio deuenit. ut ecclesia super episcopos constituatur, et omnis actus ecclesiae per eosdem prepositos gubernetur. Cum hoc itaque divinâ lege fundatum sit, miror quosdam auidae temeritate sic mihi scribere voluisse, ut ecclesiae nomine literas facerent; quando ecclesia in episcopo et clero et in omnibus stantibus sit constituta. &c.*

<sup>3</sup> Cyp. Ep. x. al. xvi. ad Clerum. p. xxxvi. *Aliqui de presbyteris, nec evan-*



“ was to forget both the rules of the Gospel, and their own station; neither thinking of the future judgment of the Lord, nor the bishop that was now set over them, but assuming to themselves the whole power of discipline, both to the dishonour and contempt of their bishop, and to the detriment of their brethren’s salvation.” It was an ancient rule in the Church, that presbyters should do no ministerial act but by the authority of their bishop, and in dependence upon and subordination to him. This I have had occasion to shew at large in a former book, out of Ignatius, Cyprian, and the ancient Councils,<sup>1</sup> which need not here be repeated. Therefore it was always reputed a tendency toward schism, for presbyters to do any such act in contempt of their bishop, though they made no formal separation from him. But the most flagrant act of schism was, when in despite of his authority, their factious humour and pride pushed them on to divide from his communion, and set up separate assemblies in opposition to him. “ This,” says St. Cyprian, “ is the first beginning of heretics, the first rise and attempt of schismatics, men of evil dispositions, to please themselves, and with a swelling pride condemn the bishop that is set over them. The effect of which is presently to forsake the Church, and set up another profane altar without, and to rebel against the peace of Christ, and the ordination and unity of God.”<sup>2</sup> “ Most heresies and schisms take their birth,” (says he again) “ from this original,<sup>3</sup> that men refuse to submit to the bishop appointed by God, and consider not that there ought to be but one bishop at once in a Church, and but one judge in the room of Christ.”

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elli, nec leci sui memores, sed neque futurum Domini iudicium, neque nunc sibi præpositum episcopum cogitantes——cum contumeliâ et contemptu præpositi totum sibi vendicant, &c.

<sup>1</sup> Book ii. chap. iii. sect. 2. &c. <sup>2</sup> Cypr. Ep. lxxv. al. iii. ad Rogatian. p. 6. Hæc sunt enim initia hæreticorum, et ortus atque conatus schismaticorum malè cogitantium, ut sibi placeant, et præpositum superbo tumore contemnant. Sic de ecclesiâ receditur, sic altare profanum foris collocatur, sic contra pacem Christi et ordinationem atque unitatem Dei rebellatur.

<sup>3</sup> Ep. iv. al. lxxix ad Cornel. p. 129. Neque enim aliundè hæreses abortivæ sunt, aut nata sunt scandala, quàm inde quod sacerdoti Dei non obtemperatur, nec unus in ecclesiâ ad tempus sacerdos, et ad tempus iudex vice Christi rogatur.

This he speaks particularly against those, who thought to justify their schism by setting up an anti-bishop in opposition to the true one: which did not diminish the schism, but heighten and augment it, and commonly render it more inveterate and lasting. As it was in the case of the Meletians in Egypt, and the Donatists in Africa, and the Novatians at Rome, who all carried on their schisms more powerfully by the help of anti-bishops to strengthen their party, and uphold their faction. But this was no just pretence for schism; but a manifest violation of the standing rule of the Catholic Church, which was, to have but one bishop in a Church as the centre of unity: and to set up another in opposition to him, was not to make another true bishop or pastor of the flock, to whom the people were obliged to join themselves as the minister of God; but to introduce a wolf, an adulterer, a sacrilegious usurper, a stranger and an alien, from whom they were obliged to fly, as from one who had no title to their obedience by any divine appointment or allowed rule of ordination. I have more than once fully demonstrated this<sup>1</sup> out of the writings of Cyprian, and others of the Ancients, to which it is here sufficient to refer the reader. I only note one thing out of Cyprian, which he applies particularly to the case of the Novatian schism, that to set up such an anti-bishop to head a faction,<sup>2</sup> was to act against the settlement of the Church, the laws of the Gospel, and the unity of the catholic institution: it was to make another Church, to tear the members of Christ, and disjoint that one body and soul of the Lord's flock by a dividing emulation. And therefore he tells Maximus, and Nicostratus, and other confessors, who were concerned in upholding and abetting the Novatian schism, "that they were not asserting the gospel of Christ, whilst they divided themselves from the flock of Christ, and were not in peace and concord

<sup>1</sup> Book ii. chap. xiii. sect. 1. See also Scholast. Hist. of Lay-Baptism, part ii. chap. 2.

<sup>2</sup> Cypr. Ep. xlv. al. xlvi. ad Maxim. et Nicostrat. Confessores. Gravatus me—cùm vos illic comperissem contra ecclesiasticam dispositionem, contra evangelicam legem, contra institutionis catholicæ unitatem, alium episcopum fieri consensisse, id est, quod nec fas est nec licet fieri, ecclesiam aliam constitui; Christi membra discerpi, deminici gregis animum et corpus unum discissâ emulatione lucrari. &c.

with his Church." It is usual with him upon this account to say,<sup>1</sup> " He has not God for his father, who has not the Church for his mother. Whoever is separated from the Church, to be joined to an adulteress, is separated from the promises of the Church: he cannot come to the rewards of Christ, who leaves the Church of Christ: he is an alien, he is profane, he is an enemy: and that martyrdom itself, which was accounted in many cases equivalent to baptism, would not expiate this crime, unless the offended party returned to the unity of the Church. For what peace," says he,<sup>2</sup> " can they promise themselves, who die in enmity with their brethren? What sort of sacrifices do they think they offer, who rival the priests with emulation? Do they imagine Christ is with them, when they are assembled, who assemble out of the Church of Christ? Such men though they be slain for the confession of his name, do not wash away the stain with their blood. The inexpiable and grievous crime of dissension is not purged away by their passion: he cannot be a martyr, that is not in the Church: he cannot attain to the kingdom, who deserts the Church, which is to have the kingdom. Christ commended peace to us; he commanded us to be unanimous and united together in concord; he enjoined us to keep the bonds of love and charity firm and inviolable. He cannot make himself a martyr, that retains not brotherly charity. St. Paul teaches us this, and testifies saying, 'Though I have all faith, so that I could remove mountains, and have not charity, I am nothing. And though I bestow all my goods to feed the poor, and though I give my body to be burned, and have not charity, it profiteth me nothing. Charity suffereth long and is kind; charity envieth not; doth not behave itself unseemly, is not puffed up, is not easily provoked, thinketh no evil, loveth all things, believeth all things, hopeth all things, endureth all things. Charity never faileth: it will

<sup>1</sup> Cypr. de Unit. Eccles. p. 109. Habere jam non potest Deum Patrem, qui ecclesiam non habet matrem, &c.

<sup>2</sup> Ibid. p. 113. Vid. Cypr. Ep. Iv. ad Antonian. p. 108. et 114. Ep. lvii. ad Cornel. p. 118. Ep. lx. ad Cornel.

always be in possession of the kingdom; it will endure for ever in the unity of that fraternity, which adheres together. But discord cannot attain to the kingdom of heaven, nor come to the reward of Christ, who said, 'this is my commandment, that ye love one another, as I have loved you.' He cannot appertain to Christ, who violates the love of Christ by perfidious dissension. He that hath not love, hath not God. It is the voice of the blessed Apostle St. John:<sup>1</sup> 'God is love, and he that dwelleth in love, dwelleth in God, and God in him.' They cannot dwell with God, who would not abide unanimously in the Church of God: though they burn in the flames, though they be cast into the fire, or thrown to wild-beasts, and so lay down their lives; that will not be the crown of their faith, but the punishment of their perfidiousness; not the glorious exit of a religious virtue, but a death of desperation. *Such an one may be slain, but he cannot be crowned—Occidi talis potest, coronari non potest.*" Cyprian often repeats this assertion in other places of his writings, (which for brevity's sake I omit,) and particularly applies it to the schism of the Novatians, who broke the unity of the Church by setting up Novatian their leader, as anti-bishop against Cornelius, the lawful bishop of Rome; whom being once regularly chosen and invested in his office, no other could intrude himself into the same place without dividing the unity of the Church. Which was not the singular opinion of St. Cyprian, but the voice of the whole Catholic Church, as I have had occasion to demonstrate more fully in another discourse,<sup>1</sup> to which I refer the reader for greater satisfaction. Neither was it any private opinion of Cyprian, that a schismatic, continuing a schismatic without repentance, could not be a martyr; but herein he is followed by the greatest lights of the Church, St. Chrysostom,<sup>2</sup> St. Austin,<sup>3</sup> Fulgentius,<sup>4</sup> and others, who cite this saying of his with approbation, which shews,

<sup>1</sup> Scholast. Hist. of Lay-Baptism, part ii. chap. ii. sect. 4.

<sup>2</sup> Chrys. Hom. xi. in Ephes.

<sup>3</sup> Aug. Ep. 61. et 204. It. de

Bapt. lib. iv. cap. 17. Cont. Literas Petiliani. lib. ii. chap. 23. De Gestis cum merito, p. 249.

<sup>4</sup> Fulgent. de Fide ad Petrum.

chap. iii. and xxxix.

what weight they laid upon this sort of unity of submission and obedience to every lawful bishop in the regular management of the affairs of his own Church.

But we must note, that this obedience was only due to bishops, when they could make out a just title to it by the standing rules of the Catholic Church. For first, if any man came into his office by a simoniacal ordination, his ordination by the canons was declared null and void;<sup>1</sup> and then no obedience was due to him, nor any communion to be held with him, as a bishop of the Church. Secondly, if a man intruded himself into a full see, where another bishop was regularly ordained before him; it was so far from being a duty to pay obedience to him, that it was the very crime of schism, we have now been speaking of in the Novatians of old, to separate from the true bishop by joining with an invader, set up against him. Thirdly, if a bishop fell into manifest heresy or idolatry, the people were not only at liberty, but obliged in point of duty, to separate from his communion as an intolerable prevaricator and transgressor. Thus Cyprian<sup>2</sup> tells the people of Leon and Astorga, in Spain, with relation to Martialis and Bisilides, two bishops who fell into idolatry, that it was their duty, in obedience to the divine commands, to separate themselves from such apostatising bishops, and not join in their sacrilegious sacrifices; forasmuch as it was chiefly in their power either to chuse worthy bishops, or refuse the unworthy. And the same obligation lay upon them to separate from the communion of an heretical bishop, as is evident from the whole practice of the Church. Fourthly, if any bishops were legally deposed for any other misdemeanors, it was equally the people's duty to give vigour and effect to the censures of the Church by deserting their communion, and adhering to such as were by just authority substituted in their room.

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<sup>1</sup> Vid. Can. Apost. xxix. et Con. Caled. can. ii.

<sup>2</sup> Cypr. Ep. lxxviii. al. lxxvii. p. 171. Plebs obsequens præceptis Dominicis, et Deum metuens, à peccatore præposito separare se debet, nec se ad sacrilegi sacerdotis sacrificia miscere; quando ipsa maximè habeat potestatem vel eligendi dignos sacerdotes, vel indignos recusandi.

Fifthly, it sometimes happened that the dispute of right between two contending bishops was so nice, and doubtful, and hard to be determined, that good and wise men might join with either, till the matter of dispute was fully ended by a competent authority, from which there lay no further appeal. This was like the case of a *litis pendente*, where each party might be presumed to have a right, till the cause was fully heard and adjusted: and in such a case it would be hard to condemn innocent men, who joined with either side, till some better light and direction could be afforded them, which might give a final determination of the question in debate, and settle more perfectly the rule of communion. This was the case between Flavian and Evagrius, bishops of Antioch: Flavian was generally received in the Eastern Churches, but Evagrius had the countenance of the bishops of Rome, and the Western Churches; and during this contention, it was no great crime in men of honest minds to join with either party, since the matter was so hard to be determined by the greatest authority in the Church. Sixthly, sometimes a bishop, who might be presumed to have a right in a Church, was willing to resign to his opposite, to prevent a schism, and preserve the peace of the Church: and in that case there could be no harm in submitting to the opposite, because it was done by consent and cession of the true bishop, and was confirmed by the approbation of the Church. Seventhly, sometimes a bishop was willing to resign for the sake of peace, but a superior power would not permit him so to do: thus Flavian in the forementioned dispute with Evagrius, being summoned by the Emperor Theodosius to have his cause heard and decided at Rome, generously told the Emperor, “that if his faith was accused as erroneous, or his life as immoral and unqualifying him for a bishopric, he would freely let his accusers be his judges, and stand to their determination, whatever it were: but if the dispute be only about the throne and government of the Church,” said he, “I shall not stay for judgment, nor contend with any that has a mind to that, but freely recede, and abdicate the throne of my own accord: and you, great sir, may commit the see of Antioch to whom

you please." The historian says,<sup>1</sup> the Emperor was so much affected with this generous answer, that, instead of sending him to Rome for judgment, he sent him back to take care of his Church, and would never after hearken to any solicitations that were made to expel him. Now in this case it were unreasonable to think, that the people, which followed Flavian, among whom was St. Chrysostom, were in any fault, though the judgment of the Western bishops was against him. Lastly, sometimes two bishops were allowed to sit jointly in the same see, as some suppose Peter and Paul to have been at Rome, the one the bishop of the Jews, and the other of the Gentiles; or when one was to be coadjutor to the other; or when it was to cure an inveterate schism, as it was in the proposal made by the Catholic bishops to the Donatists in the Collation of Carthage; of all which cases the reader may find an exact account given in a former part of this work.<sup>2</sup> Now in such cases obedience might be paid to either bishop without schism, because there was no opposition between them: and, though it was not according to the common rule of the Church, to have two bishops ordinarily sitting together in one see at the same time, yet for extraordinary reasons this was sometimes allowed in special cases; then there was no schism or other evil in it, no breach of unity or encroachment upon any man's right, because it was done for expedience and benefit of the community, by common consent of all parties, and the general approbation of the Church. I have interposed these cautions, that it might be more particularly understood, wherein the due submission to every bishop in his own Church consisted, and under what limitations obedience was required to a single bishop, regularly appointed, to preserve the unity of the Church.

SECT. 7.—Fourthly, the Unity of Submission to the Discipline of the Church.

4. To preserve the unity of the Church in its well-being,

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<sup>1</sup> Theodor. lib. v. cap. 23.

<sup>2</sup> Book ii. chap. xiii.

it was required that every member of a Church should submit to the ordinary rules of discipline appointed for the punishment of delinquents; and neither despise the lawful censures of his own Church; nor seek clandestinely to be restored to communion in any other Church, without giving satisfaction to his own Church, whereof he was a member; nor betaking himself to the conventicles of heretics or schismatics, to be received by them as a communicant, when he was cast out of his own Church as a criminal. For all these were direct violations of the unity of discipline, which ought to be preserved entire in every Church. The effect of a legal excommunication and the power of the keys was always reputed such, as that if a man was justly cast out of the communion of his own Church for his offences, he was supposed to be excluded from all title to the kingdom of heaven, during his continuance in that state, by virtue of our Saviour's authority delegated to the Church in those words, "Whose soever sins ye retain, they are retained, and, whatsoever ye shall bind on earth, shall be bound in heaven." And therefore, unless men submitted to the ordinary way of restoring offenders, and sought to be reconciled to the peace of the Church by the proper methods of public confession and repentance, and intercession for pardon and absolution, they were treated as despisers of the Church's discipline; and if they died in that state, without being first reconciled, and received into communion again, they were looked upon as persons in a deplorable condition, as dying in a state of sin and rebellion against God, and out of the unity of the Church. For which reason no solemnity was ever used at their funeral, as was usual for those who died in the peace of the Church; nor were their oblations received, or any offerings or commemorations made for them, as for others, in the usual service of the Church. Only in one case a little favour was shewed to such as died in the bonds of excommunication, unrelaxed by any formal absolution: which was, when such penitents as obediently submitted to the Church's discipline, and gave evident tokens of their sincere repentance, happened to die suddenly, when they were desirous of reconciliation and absolution, but by unavoidable necessity could not have it.



In this case the canons ordered, that their oblations should be received, as a testimony of their submission, and being united in heart and mind to the Church, though they could not have the formality of an external absolution. In the fourth Council of Carthage there is a canon to this purpose; such penitents as are intent and diligent in observing the rules of penance,<sup>1</sup> if they chance to die in a journey, or at sea, where they can have no help or remedy, shall notwithstanding have their memory commended both in the prayers and oblations of the Church. The second Council of Vaison is a little more particular in declaring,<sup>2</sup> how such penitents shall be admitted to all the privileges of Church communion after death: if any of those, who are under penance, and live in the course of a good life with satisfactory compunction, happen to die suddenly and unexpectedly either in the country or in a journey, their oblations shall be received, and their funeral obsequies and memorials shall be celebrated in the usual manner and affection of the Church: because it were unjust, that their commemorations should be excluded from the salutary mysteries, who, whilst they were labouring earnestly with a faithful affection after those holy mysteries, were intercepted by sudden death from the *viaticum* of the sacraments, to whom the priest perhaps would have thought fit to have granted the most absolute reconciliation. There are a great many canons in the second Council of Arles,<sup>3</sup> and the second of Orleans, and the second of Toledo, and the Council of Epone, to the same purpose. By all which we may judge, that though the Church was severe against impenitent apostates and contemners of her discipline, yet she showed great favour and tenderness toward such as really honoured her discipline, and gave evident tokens of repentance: such men were not deemed to depart out of the unity and communion of the Church, though they happened to die without the for-

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<sup>1</sup> Con. Carthag. iv. can. lxxix. Pœnitentes, qui attentè leges pœnitentiæ exequuntur, si casu in itinere vel in mari mortui fuerint, ubi eis subveniri non possit, memoria eorum et orationibus et oblationibus commendetur.

<sup>2</sup> Con. Valense ii. can. 2.

<sup>3</sup> Con. Arelat. ii. can. 12. Con. Aurelian. ii. can. 14. Con. Tolet. iii. can. 12. Con. Epauense. can. xxxvi.

mality of an external absolution ; being internally reconciled both to God and the Church, by the testimonies of repentance, in such cases of extremity, where not their own will, but the necessity of their circumstances precluded them from a more formal reconciliation.

**SECT. 8.**—How different Churches maintained Communion with one another. 1st. in Faith.

And thus far we have considered the unity of every Church with relation to its own members : we are next to examine, what communion different Churches held with one another, that we may discover the harmonious unity of the Catholic Church. And here first of all we are to observe, that as there was one common faith, consisting of certain fundamental articles, essential to the very being of a particular Church and its unity, and the being of a Christian ; so this same faith was necessary to unite the different parts of the Catholic Church, and make them one body of Christians. So that if any Church deserted or destroyed this faith in whole or in part, they were looked upon as rebels and traitors against Christ, and enemies to the common faith, and treated as a conventicle of heretics, and not of Christians. Upon this account every bishop not only made a declaration of his faith at his ordination, before the provincial synod that ordained him, but also sent his circular or encyclical letters, as they were called, to foreign Churches, to signify that he was in communion with them. And this was so necessary a thing in a bishop newly ordained, that Liberatus tells us,<sup>1</sup> the omission of it was interpreted a sort of refusal to hold communion with the rest of the world, and a virtual charge of heresy upon himself or them.

**SECT. 9.**—2dly, In mutual Assistance of each other for Defence of the common Faith.

To maintain this unity of faith entire, every Church was ready to give each other their mutual assistance, to

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<sup>1</sup> Liberat. Breviar. cap. xvii.

oppose all fundamental errors, and beat down heresy at its first appearance among them. The whole world in this respect was but one common diocese, the episcopate was an universal thing, and every bishop had his share in it in such a manner, as to have an equal concern in the whole ; as I have more fully shewn in another place,<sup>1</sup> where I observed, that in things not appertaining to the faith, bishops were not to meddle with other men's dioceses, but only to mind the business of their own : but when the faith or welfare of the Church lay at stake, and religion was manifestly invaded ; then, by this rule of there being but one episcopacy, every other bishopric was as much their diocese as their own ; and no human laws or canons could tie up their hands from performing such acts of the episcopal office in any part of the world, as they thought necessary for the preservation of faith and religion. This was the ground of their meeting in synods, provincial, national, and general, and sending their joint opinions and advice from one Church to another. The greatest part of Church history is made up of such acts as these, so that it were next to impertinent to refer to any particulars. I only observe one thing further upon this head, that the intermeddling with other men's concerns, which would have been accounted a real breach of unity in many other cases, was in this case thought so necessary, that there was no certain way to preserve the unity of the Catholic Church and faith without it. And as an instance of this, I have noted in the fore-cited book, that though it was against the ordinary rule of the Church for any bishop to ordain in another man's diocese ; yet in case a bishop turned heretic, and persecuted the orthodox, and would ordain none but heretical men to establish heresy in his diocese ; in that case any orthodox bishop was not only authorised, but obliged, as opportunity served, and the needs of the Church required, to ordain Catholic teachers in such a diocese, to oppose the malignant designs of the enemy, and stop the growth of heresy, which might otherwise take deep root, and spread and over-run

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<sup>1</sup> Book ii. chap. v. sect. 2.

the Church. Thus Athanasius and the famous Eusebius of Samosata went about the world in the prevalency of the Arian heresy, ordaining in every Church, where they came, such clergy as were necessary to support the orthodox cause in such a time of distress and desolation: and this was so far from being reckoned a breach of the Church's unity, though against the letter of a canon in ordinary cases, that it was necessary to be done, in such a state of affairs, to maintain the unity of the Catholic faith, which every bishop was obliged to defend, not only in his own diocese, but in all parts of the world, by virtue of that rule, which obliges bishops in weighty affairs to take care of the Catholic Church, and requires all Churches in time of danger to give mutual aid and assistance to one another.

SECT. 10.—3dly, In joining in Communion with each other in all holy Offices, as Occasion required.

This unity of the Catholic Church was further maintained by the readiness of each Church, and every member of it, to join in communion with all other Churches in the performance of divine worship, and all holy offices, as their occasions required. To this purpose two things were necessary; first, that every Church should keep her Liturgy free from all superstitious and idolatrous worship, and not render her assemblies for holy duties inaccessible by intrrenching upon any divine rule, or making any unlawful conditions of communion. And how careful the ancient Church was in this point, may be seen by any one that will peruse the account I have lately given of the Liturgy of the ancient Churches in all the several parts of it; where none of those superstitious and idolatrous practices appear, that have so much divided the Church in later ages, since the exorbitant power of the Romish Church imposed so much upon the credulity of men in points of faith, and loaded their consciences so heavily in matters of unwarrantable practice. Secondly, it was necessary that every Christian, when he came to a foreign Church, should readily comply with the innocent usages and customs of that Church, where he happened to be, though they might chance in some circumstances to dif-

fer from his own. This was a necessary rule of peace, to preserve the unity of communion and worship throughout the whole Catholic Church. For it was impossible that every Church should have the same rites and ceremonies, the same customs and usages in all respects, or even the same method and manner of worship exactly agreeing in all punctilios with one another, unless there had been a general liturgy for the whole Church expressly enjoined by divine appointment. The unity of the Catholic Church did not require this, as we shall see more plainly by and by, and therefore no one ever insisted upon this as any necessary part of its unity: it was enough that all Churches agreed in the substance of divine worship; and for circumstantialia, such as rites and ceremonies, method and order, and the like, every Church had liberty to judge and choose for herself by the rules of expediency and convenience: and then, as it was the duty of every member of any particular Church to comply with the innocent customs of his own Church, in order to hold free communion with her; so it was the duty of every Christian to comply with the different customs of all other Churches, wherever he happened to travel, in order to hold communion with the Catholic Church in all places without exception. This rule is often inculcated by St. Austin, as the great rule of peace and unity with regard to all Churches: and he tells us, he received it as an oracle from the wise and moderate discourses of St. Ambrose, whom he consulted upon the occasion of a scruple, which had possessed the heart of his mother Monicha, and for some time greatly perplexed her. She having lived a long time at Rome, was used to fast on Saturday, or the Sabbath, according to the custom of the Church of Rome: but when she came to Milan, she found the contrary custom prevailing, which was to keep Saturday a festival: and being much disturbed about this, her son, though he had not much concern about such matters at that time, for her ease and satisfaction, consulted St. Ambrose upon the point, to take his advice and direction how to govern herself in this case, so as to be inoffensive in her practice. To whom St. Ambrose answered, that he could give no better advice

in the case, than to do as he himself was wont to do: "for," said he,<sup>1</sup> "when I am here, I do not fast on the Sabbath; when I am at Rome, I fast on the Sabbath: and so you, whatever Church you come to, observe the custom of that Church, if you would neither take offence at them, nor give offence to them." St. Austin says,<sup>2</sup> this answer satisfied his mother, and he always looked upon it as an oracle sent from heaven. He adds moreover, that he had often experienced with grief and sorrow the disturbance of weak minds, occasioned either by the contentious obstinacy of certain brethren, or by their own superstitious fears, who in matters of this nature, which can neither be certainly determined by the authority of holy Scripture, nor by the tradition of the universal Church, nor by any advantage in the correction of life, raise such litigious questions, as to think nothing right but what themselves do; only because they were used to do so in their own country, or because a little shallow reason tells them it ought to be so, or because they have perhaps seen some such thing in their travels, which they reckon the more learned, the more remote it is from their own country. Thus he handsomely and elegantly reflects upon the superstitious folly, and contentious obstinacy of such as disturbed the Church's peace for such things as every Church had liberty to use, and every good Christian was obliged to comply with. For, as he says, in the same place, all such customs as varied in the practice of different Churches, as, that some fasted on the Saturday,

<sup>1</sup> Aug. Ep. lxxxvi. Ad Casulan. Quando hic sum, non jejuno Sabbato; quando Romæ sum, jejuno Sabbato: et ad quameunque ecclesiam veneritis, ejus morem servate, si pati scandalum non vultis, aut facere.

<sup>2</sup> Aug. Ep. 118. ad Januar. Hoc cum matri renunciâssem, libenter amplexa est. Ego verò de hâc sententiâ etiam atque etiam cogitans, ita semper habui, tanquam eam cœlesti oraculo susceperim. Sensi enim sæpe dolens et gemens multas infirmorum perturbationes fieri, per quorundam fratrum contentiosam obstinationem, vel superstitiosam timiditatem, qui in rebus hujusmodi, quæ neque Scripturæ sanctæ auctoritate, neque universalis ecclesiæ traditione, neque vitæ corrigendæ utilitate ad certum possunt terminum pervenire, tantum quia subest qualiscunque ratiocinatio cogitantis, aut quia in suâ patriâ sic ipse consuevit, aut quia ibi vidit, ubi peregrinationem suam, quo remotiorem à suis, eo doctiorem factam putat, tam litigiosas excitant quæstiones, ut nisi quod ipsi faciunt, nihil rectum existiment.

and others did not; some received the eucharist every day, others on the Sabbath and Lord's day, and others on the Lord's day only; and whatever else there was of this kind they were all things of free observation:<sup>1</sup> and in such things there could be no better rule for a grave and prudent Christian to walk by, than to do as the Church did, wherever he happened to come. For whatever was enjoined, that was neither against faith nor good manners, was to be held indifferent, and to be observed according to the custom, and for the convenience of the society among whom we live. This he repeats over and over again,<sup>2</sup> as the most safe rule of practice in all such things, wherein the custom of Churches varied, that wherever we see any things appointed or know them to be appointed, that are neither against faith nor good manners, and have any tendency to edification and to stir men up to a good life, we should not only abstain from finding fault with them, but follow them both by our commendation and imitation. By this rule all wise and peaceable men always governed their practice in holding communion with other Churches: though they did not altogether like their customs, they did not break communion with them upon that account. Thus Irenæus observes to<sup>3</sup> Pope Victor, when he was rashly going to excommunicate the Asiatic Churches for their different way of observing Easter, that his predecessor Anicetus was far from this uncharitable temper. For when Polycarp came to Rome, though they could not come to a perfect agreement in this point, to have all the Churches observe Easter on the same

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<sup>1</sup> Aug. Ep. 118. Totum hoc genus rerum liberas habet observationes: nec disciplina ulla est in his melior, gravi prudentique Christiano, quam ut eo modo agat, quo agere viderit ecclesiam ad quancunque forte devenit. Quod enim neque contra fidem, neque contra bonos mores injungitur, indifferenter est habendum, et pro eorum inter quos vivitur societate servandum est.

<sup>2</sup> Aug. Ep. cxix. ad Januarium. cap. xviii. De iis, quæ variè per diversa loca observantur, una in his saluberrima regula retinenda est, ut quæ non sunt contra fidem, neque contra bonos mores, et habent aliquid ad exhortationem vitæ melioris, ubieunque institui videmus, vel instituta cognoscimus, non solùm non improbemus, sed etiam laudando et imitando sectemur, si aliquorum infirmitas non ita impedit, ut majus detrimentum sit.

<sup>3</sup> Ap. Euseb. lib. v. cap. 24.

day; yet this difference made no contention between them. For they gave each other the kiss of peace, and communicated together; Anicetus paying Polycarp the customary civility and respect, to let him consecrate the eucharist in his Church. Irenæus observes further, that though there were many disputes then on foot concerning the time, and length, and manner of observing the Ante-paschal or Lent fast; yet all Churches agreed to live in peace and union with one another: and the difference of their fasts served only to commend the unity of their faith. And because it was then a customary thing for Churches of different countries to send the eucharist mutually to each other, to testify that they were in communion with one another; he notes it likewise as a peculiar instance of the Catholic tempers of the bishops of Rome, Anicetus, Pius, Hyginus, Telesphorus, Xystus and Soter, who were Victor's predecessors in that Church, that though they differed from the Asiatic Churches about Easter, yet they lived in peace with them; not only receiving the members of those Churches into communion, when they came to Rome, but also sending the eucharist from Rome to those Churches. Which being so common a way of testifying their communion with distant Churches in those days, it was a very just complaint, which Chrysostom made against Theophilus, bishop of Alexandria, and his accomplices, that, when they came to Constantinople, they came not to church, according to custom and ancient law; they joined not themselves to him, nor communicated with him in the word or prayer,<sup>1</sup> or the communion of the eucharist; but as soon as they lauded, passing by the church, they took their lodging in an inn, when the bishop's house was ready prepared to entertain them. This he complains of, as a singular instance of their enmity, faction, and uncharitable spirit, in refusing to communicate with him, before any formal accusation had been brought against him, much less any legal sentence of condemnation pronounced upon him. By this account of things it is easy to judge, what stress the Ancients laid upon the law of communion, obli-

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<sup>1</sup> Chrys. Ep. ad Innocent, tom. iv, p. 677.



ging every Church to communicate with her sister Churches over all the world in all holy offices, in order to preserve the communion of worship one entire thing throughout the whole Catholic Church, without any notorious division or distraction.

SECT. 11.—4thly. In mutual Consent to ratify all legal Acts of Discipline, regularly exercised in any Church whatsoever.

The communion of the whole Catholic Church was further declared by the obligation of such laws, as laid a necessary injunction upon all Churches to ratify all such legal acts of discipline, as were regularly exercised in any Church whatsoever. Thus if any person was duly baptised, and thereby admitted to be a member of any particular Church, that qualification gave him a right to communicate in any part of the Catholic Church, travelling with commendatory letters from the bishop of his own Church, to signify that he was in perfect and full communion with her, and not cast out for any offence against the rules of her communion. This is what Optatus means, when he says,<sup>1</sup> that the whole world was united together in one common society, or society of communion, by the mutual commerce of those canonical or communicatory letters, which they called *Formatæ*, because these testifying that he was in the communion of his own Church, by the known laws and rules of discipline, gave him a title to communicate in any Church whatsoever, only observing the rites and customs of that Church whither his occasions happened to call him. So again, if a man was legally excommunicated for his crimes by his own Church, no Church would receive him to communion, till he had given proper satisfaction to his own Church, which had bound him by her censures. Such a perfect good understanding and harmony was there then among all the parts of the whole Catholic Church, in confirming each others discipline, and mutually strengthening their authority against all enemies of faith and virtue, whe-

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<sup>1</sup> Optat. lib. ii. p. 48. Totus orbis commercio formatarum in unâ communionis societate concordat.

ther they were such as tried by open violence and terror, or by secret arts and clandestine practices to get admission, in opposition to the Church, whose censures they lay under. No Church would admit them without communicatory letters: if they were rebels to their own Church, they were accounted rebels to the whole. Thus Epiphanius tells us,<sup>1</sup> when Marcion the heretic was excommunicated by his own father, and desired to be received into communion at Rome, they answered him, that they could not do it, without the permission of his father. For there was but one faith, and one rule of concord; and they could not do any thing in opposition to their good fellow-servant, and his father. This repulse was highly resented by Marcion, and it put him upon those wicked designs of inventing a new heresy to disturb the Church: for he told them directly in revenge, that he would divide their Church, and bring an eternal schism into it. Which, as Epiphanius rightly observes, was not so much to divide the Church, as to divide himself from it. There are a great many other instances of the Church's steadiness and resolution in thus proceeding against delinquents, to maintain the unity of discipline entire in all parts of the ecclesiastical body, and abundance of canons to this purpose; which, because I shall have occasion to speak more of hereafter,<sup>2</sup> I willingly omit them in this place, and go on to observe another instance of the Church's unity in point of practice: which was,

**SECT. 12.**—5thly. In receiving unanimously the Customs of the Universal Church, and submitting to the Decrees of General Councils.

That all Churches generally agreed in receiving such customs as were handed down by general consent from apostolical tradition, or otherwise settled and determined by the decrees of general councils. For these two ways many customs became in a manner universal, and almost of necessary observance in the Church over all the world: and then for any private man or Church to dispute against

<sup>1</sup> Epiphanius, *Har.* 42. Marcion, n. i.

<sup>2</sup> Chap. ii. sect. 10.

them, was to give scandal to the rest of the world, and bring disturbance into the Church by an unnecessary and unreasonable opposition to things innocent in themselves, and settled by general consent and approbation. St. Austin takes notice of this double source and original of general customs in the Church, for which though there be no express command in Scripture, yet a great deference ought to be paid to the general sentiments and authority, and practice and observation of the whole Church. Those things, says he, which we keep,<sup>1</sup> not from Scripture, but from tradition, and which are observed over all the world, are reasonably supposed to have come down to us recommended and appointed either by the Apostles themselves, or by some plenary councils, whose authority is of great use in the Church; such as the celebrating the anniversary memorial of our Saviour's passion, and resurrection, and ascension, and the descent of the Holy Ghost from heaven, and whatever else of the like nature is observed by the universal Church in all parts, wherever it spreads itself all the world over. Concerning which sort of things, he concludes,<sup>2</sup> that for any man to dispute against them, was most insolent madness, seeing they were authorised by the practice of the universal Church. He particularly applies this rule to the case of observing the Lord's day,<sup>3</sup> not as a fast, but as a festival: for since the whole Church observed it as a festival, no one could turn that day into a fast, without offending God, by giving scandal to the Church Universal: there being both general custom and canon against it.<sup>4</sup> For

<sup>1</sup> Aug. Ep. 118. ad. Januar. Illa autem, quæ non scripta, sed tradita custodimus, quæ quidem toto terrarum orbe observantur, dantur intelligi vel ab ipsis Apostolis, vel plenariis Conciliis, quorum in ecclesiâ saluberrima autoritas, commendata atque statuta retineri: sicuti quod Domini passio et resurrectio et ascensio in cælum, et adventus de cælo spiritûs Sancti, anniversariâ solennitate celebrantur, et si quid aliud tale occurrerit quod servatur ab universâ, quâcumque se diffundit, ecclesiâ.

<sup>2</sup> Ibid. Si quid horum tota per orbem frequentat ecclesia, quin ita faciendum sit, disputare, insolentissimæ insanie est.

<sup>3</sup> Aug. Ep. 86. ad Casulan. Quis non Deum offendet, si velit cum scandalo totius, quæ ubique dilatata est, ecclesiæ, die dominico jejunare?

<sup>4</sup> Vide Can. Apost. 64. Con. Gangren. can. 18. Con. Carthag. iv. can. 64. Con. Bracar. i. can. 4.

the same reason it was esteemed a crime to pray kneeling on that day, because the practice of the universal Church was to pray standing,<sup>1</sup> in memory of our Saviour's resurrection; and the Council of Nice thought it a thing worthy of a decree to bring all men to an uniformity in that practice. As she did also in the matter of observing the Easter festival, making a rule that all Churches should celebrate it on one and the same day, "because it was unlawful that in a business of so great moment, and the religious observation of such a festival, there should be any dissention," as Constantine expresses it in his epistle,<sup>2</sup> which he sent to all the Churches in the world upon this occasion. So that though several Churches had kept this festival on different days before this decree was made, yet when it was once past, there was no more liberty for dissension.

SECT. 13.—6thly, In submitting to the Decrees of National Councils.

The like may be observed of the decrees of national councils, when once the Roman Empire was divided into several kingdoms. A great many things were at first allowed to every bishop in the management of his own diocese, which were afterwards restrained by the decrees of national Councils. As to instance only in one particular; every bishop anciently had liberty to frame his own liturgy for the use of his own Church: but in process of time, when the world was divided into several kingdoms, rules were made that all the Churches of such or such a kingdom should have one and the same liturgy. Thus when Spain and Gallia Narbonensis became one distinct kingdom, a decree was made, that as there was but one faith, so there should be but one liturgy or order of divine service throughout the whole kingdom. The fourth Council of Toledo, under the reign of king Sisenandus, made an express canon to this purpose:<sup>3</sup> "After the confession of the

<sup>1</sup> Vid. Tertul. de Coron. Mil. cap. iii. et Con. Nic. can. 20.

<sup>2</sup> Ap. Euseb. de Vita Const. lib. iii. cap. 18.

<sup>3</sup> Con. Tolet. iv. can. ii. Post rectæ fidei confessionem, quæ in sanctâ Dei ecclesiâ prædicatur, placuit, omnes sacerdotes, qui catholicæ fidei unitate complectimur

true faith, which is preached in the holy Church of God, it seemed good, that all we bishops, who are joined together in the unity of the Catholic faith, should henceforth use no diversity or disagreement in the administration of the ecclesiastical mysteries; lest every such diversity be interpreted a schism among us by carnal men, and such as are unknown to us, and the variety of customs in our Churches become a scandal to many. Let one order therefore of prayers and psalmody be observed by us throughout all Spain and Gaul; one manner of celebrating mass, or the communion service; and one manner of performing vespers, or evening service: and let there henceforth be no diversity in our ecclesiastical customs, seeing we all live in one faith and in one kingdom." That canon also refers to more ancient canons, requiring uniformity in divine worship throughout provincial Churches. And it is most certain, that about this time, that is, in the sixth and seventh centuries, and before, decrees were made in several Councils, requiring the Churches of each respective province to conform their usages to the rites and forms of the metropolitane or principal Church among them. As may be seen in the canons of the Councils of Agde, Anno 506;<sup>1</sup> and Epone, and Girone, Anno 517;<sup>2</sup> and the Council of Vannes,<sup>3</sup> and the first of Braga,<sup>4</sup> Anno 465 and 563. For though by the most ancient rules every bishop had liberty to prescribe what he thought proper for his own Church, and no Church pretended to dictate magisterially in such things to any other; yet when Churches became subject to one political head, and national Churches arose from that distinction; then it was thought convenient by all the bishops of such a nation

ut nihil ultra diversum aut dissonum in ecclesiasticis sacramentis agamus; ne quælibet nostra diversitas apud ignotos seu carnales schismatis errorem videatur ostendere, et multis extet in scandalum varietas ecclesiarum. Unus ergo ordo orandi atque psallendi, à nobis per omnem Hispaniam atque Galliciam (leg. Galliam) conservetur: unus modus in missarum solennitatibus, unus in vespertiniis officiis; nec diversa sit ultra in nobis ecclesiastica consuetudo, quia in unâ fide continemur et regno. Hoc enim et antiqui canones decreverunt. &c.

<sup>1</sup> Con. Agathen. can. xxx.

<sup>2</sup> Con. Epauense. can. xxvii. Con. Gerund. can. i.

<sup>3</sup> Con.

Veneticum. can. xv.

<sup>4</sup> Con. Bracaren. i. can. 19, 20, 21. &c.

to unite more closely in rituals and circumstantialia of divine worship, as well as faith and substantialia: and from that time this also became a necessary part of the union of national Churches; in which all the bishops voluntarily combining, no one could depart from that unity, without incurring the guilt of an unnecessary breach of that union, which was so convenient for cementing the several members of a national Church into one communion.

SECT. 14.—No Necessity of a Visible Head to unite all the Parts of the Catholic Church into one Communion.

Thus we have seen, wherein the unity of the Catholic Church, considered in its utmost latitude, consisted. And hence one might safely infer these two things negatively without any further evidence: First, That there was no necessity of a visible head, as now is pretended in the Church of Rome, to unite all the parts of the Catholic Church into one communion. Nor, secondly, any necessity that the whole Catholic Church should agree in all rites and ceremonies, and customs in indifferent things, which might be various in different Churches without any breach of Catholic communion.

The former of these was sufficiently provided for by the agreement of all Churches in the same faith, and the obligation that lay upon the whole college of bishops, as equal sharers in one episcopacy, to give mutual assistance to each other in all things that were necessary to defend the faith, or preserve the unity of the Church entire in all respects, when any assault was made upon it. It was by this means, and not by any necessary recourse to any single, visible, standing head, that anciently the unity of the Church was preserved. Recourse was sometimes had to the bishop of Rome, as an eminent bishop, who made a considerable figure in the great body of bishops, and one, who by his station in the imperial city, might be able to succour those, that were oppressed, in times of great difficulty and distress: but his judgment or opinion was deemed no infallible rule, nor his decision such as was to conclude the rest of the world, so as to tie them down, in no case without the

charge of schism to vary from him. For sometimes the bishop of Rome fell into manifest heresy, as when Liberius subscribed to the Arian blasphemy: in which case any other bishop was not only at liberty to dissent from him, but was obliged, by virtue of his share in the common episcopacy of the Church, to oppose him, and, if occasion required, to pronounce *anathema* against him; as St. Hilary did against Liberius,<sup>1</sup> when he subscribed to the condemnation of Athanasius, and the Arian Creed made at Sirmium. Sometimes again the bishops of Rome took upon them to exercise a jurisdiction over other Churches, in whose affairs by right of canon, they had no power: as when Pope Victor set himself to excommunicate the Asiatic Churches for their different way of observing Easter, he was opposed not only by the Asiatic bishops, but by Irenæus and the rest of the world, as going beyond his bounds, and engaging himself in a rash and schismatical undertaking. For he, who by an undue stretch of power not belonging to him divides others from his communion, is properly the schismatic, by making an unnecessary division in the Church, and not they, who by necessity are forced to divide from him. So again, when Pope Zosimus and Celestine took upon them to receive appellants from the African Churches, and absolve those, whom they had condemned; St. Austin and all the African Churches sharply remonstrated against this as an illegal practice, violating the laws of unity, and the settled rules of ecclesiastical commerce, which required, that no delinquent, excommunicated in one Church, should be absolved in another, without giving satisfaction, to his own Church, that censured him: and therefore to put a stop to this practice, and check the exorbitant power, which the Roman bishops assumed to themselves, they first made a law in the Council of Milevis,<sup>2</sup> that no African clerk should appeal to any Church beyond sea, under pain of being excluded from communion in all the

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<sup>1</sup> Hilar. Fragment. p. 134. *Anathema tibi à me dictum, Liberi, et sociis tuis. Iterum tibi anathema, et tertio, prævaricator Liberi.*

<sup>2</sup> Con. Milevitan. can. xx<sup>ii</sup>

African Churches: and then afterward meeting in a general synod<sup>1</sup> they dispatched letters to the bishop of Rome, to remind him how contrary this practice was to the canons of Nice, which ordered, that all controversies should be ended in the places, where they arose, before a council and the metropolitan. And they withall tell him, it was unreasonable to think, that God should enable a single person to examine the justice of a cause, and deny his grace to a multitude of men assembled in council. This evidently shews, that they did not imagine any single person to be the centre of unity to the whole Church; or that all Churches were obliged to be in communion with the bishop of Rome, whether he were catholic or heretic; or that any Church, without the limits of his metropolitical power, was bound in any respect to submit to his jurisdiction: but it manifestly proves on the contrary, that there was no necessity of a visible head, as is now pretended in the Church of Rome, to unite all the parts of the Catholic Church into one communion; but that in matters of faith, every bishop was as much a guardian of the whole Church as the bishop of Rome; and in matters of discipline, all Churches were at liberty to hear and determine their own causes in a synod of bishops, without having recourse to any foreign jurisdiction, as has been more fully demonstrated in other parts of this work,<sup>2</sup> to which I refer the reader for greater satisfaction.

**SECT. 15.**—Nor any Necessity, that the whole Church should agree in the same Rites and Ceremonies, which were Things of an indifferent Nature.

It is equally clear, that there was no necessity, in order to maintain the unity of the Catholic Church, that all Churches should agree in all the same rites and ceremonies; but every Church might enjoy her own usages and customs having liberty to prescribe for herself in all things of an indifferent nature, except where either an universal tradition or the decree of some general or national Council, as has

<sup>1</sup> Cod. Can. Afric. à cap. 135. ad§138. and Book ix. chap. i. sect. 11.

<sup>2</sup> Book ii. chap. v.



been noted before, intervened to make it otherwise. To this purpose is that famous saying of Irenæus,<sup>1</sup> upon occasion of the different customs of several Churches in observing the Lent-fast: “we still retain peace one with another: and the different ways of keeping the fast, only the more commends our agreement in the faith.” St. Jerom likewise, speaking of the different customs of Churches in relation to the Saturday fast, and the reception of the eucharist every day, lays down this general rule,<sup>2</sup> that all ecclesiastical traditions, which did no ways prejudice the faith, were to be observed in such manner as we had received them from our fore-fathers; and the custom of one Church was not to be subverted by the contrary custom of another; but every province might abound in their own sense, and esteem the rules of their ancestors as laws of the Apostles. After the same manner, St. Austin<sup>3</sup> says, “that in all such things, whereabout the Holy Scripture has given no positive determination, the custom of the people of God, or the rules of our fore-fathers, are to be taken for laws. For if we dispute about such matters, and condemn the custom of one Church by the custom of another, that will be an eternal occasion of strife and contention; which will always be diligent enough to find out plausible reasonings, when there are no certain arguments to shew the truth. Therefore great caution ought to be used, that we draw not a cloud over charity and eclipse its brightness in the tempest of contention.” He adds, a little after: “Such contention is commonly endless, engendering strifes, and terminating no disputes.

<sup>1</sup> Ap. Euseb. lib. v. cap. 24. Πάντες εἰρηνευομεν πρὸς ἀλλήλους, ἐν ἡ διαφωνία τῆς νηστείας τὴν ἁμόνοιαν τῆς πίστεως συνίστησι.

<sup>2</sup> Hieron. Ep. xxviii. ad Lucinium Bœticum. Ego illud te breviter admonendum puto, traditiones ecclesiasticas (præsertim quæ fidei non officiant,) ita observandas, ut à majoribus traditæ sunt: nec aliorum consuetudinem aliorum contrario more subverti—Sed unaquæque provincia abundet in suo sensu, et præcepta majorum leges apostolicas arbitretur.

<sup>3</sup> Aug. Ep. lxxxvi. ad Casulan. In his rebus, de quibus nihil certi statuit Scriptura divina, mos populi Dei vel instituta majorum pro lege tenenda sunt. De quibus si disputare voluerimus, et ex aliorum consuetudine alios improbare, orietur interminata luctatio, quæ labore sermocinationis eum certa documenta nulla veritatis insinuet; utique cavendum est, ne tempestate contentionis serenitatem charitatis obnubilat.

Let us therefore maintain one faith throughout the whole Church,<sup>1</sup> wherever it is spread, as intrinſical to the members of the body, although the unity of faith be kept with ſome different obſervations, which in no ways hinder or impair the truth of it. For all the beauty of the king's daughter is within, and thoſe obſervations which are differently celebrated, are underſtood only to be in her outward clothing. Whence ſhe is ſaid to be clothed in golden fringes, wrought about with divers colours. But let that clothing be ſo diſtinguiſhed by different obſervations, as that ſhe herſelf may not be deſtroyed by oppoſitions and contentions about them." This was the ancient way of preſerving peace in the Catholic Church, to let different Churches, which had no dependence in externals upon one another, enjoy their own liberty to follow their own cuſtoms without contradiction. For as Gregory<sup>2</sup> the Great ſaid to Leander, a Spaniſh biſhop, there is no harm done to the Church catholic by different cuſtoms, ſo long as the unity of the faith is preſerved. And therefore, though the Spaniſh Churches differed in ſome cuſtoms from the Roman Church, yet he did not pretend to oblige them to leave their own cuſtoms and uſages, to follow the Roman. He gave a like answer to Auſtin, the monk, archbiſhop of Canterbury, when he asked him, what form of divine ſervice he ſhould ſettle in Britain, the old Gallican, or the Roman? And how it came to paſs, that when there was but one faith there were different cuſtoms in different Churches; the Roman Church having one form of ſervice, and the Gallican Churches another? To this he replied,<sup>3</sup> " Whatever

<sup>1</sup> Aug. Ep. lxxxvi. ad Caſulan. Interminabilis eſt iſta contentio, generans lites, non finiens quaſtiones. Sit ergo una fides univerſæ, quæ ubique dilatatur, eccleſiæ, tanquam intus in membris, etiam ſi ipſa unitas fidei quibusdam diverſis obſervationibus celebratur, quibus nullo modo quod in fide verum eſt impeditur. Omnis enim pulchritudo filiæ regis intrinſecus; illæ autem obſervationes, quæ variè celebrantur, in ejus veſte intelliguntur. Unde ibi dicitur, In fimbriis aureis circumamictâ varietate. Sed ea quoque veſtis ita diverſis celebrationibus varietur, ut non adverſis contentionibus diſſipetur.

<sup>2</sup> Greg. Magn. Ep. xli. ad Leandrum. In unâ fide nihil officit ſanctæ eccleſiæ conſuetudo diverſa.

<sup>3</sup> Greg. reſpons. ad quaſt. Aug. ap. Bedam. lib. i. cap. 27. and Gratian. diſt. xii. cap. 10. Mihi placet, ut ſive in Romana, ſive in Galliarum, ſeu in quâ

you find either in the Roman or Gallican, or any other Church, which may be more pleasing to Almighty God, I think it best, that you should carefully select it, and settle it in the use of the English Church, newly converted to the faith. For we are not to love things for the sake of the place, but places for the sake of the good things we find in them. Therefore you may collect out of every Church whatever things are pious religious and right; and putting them together, instil them into the minds of the English, and accustom them to the observation of them." And there is no question but that Austin followed this direction in his new plantation of the English Church.

Neither was this liberty granted to different Churches in bare rituals, and things of an indifferent nature, but sometimes in more weighty points, such as the receiving, or not receiving those that were baptised by heretics and schismatics without another baptism. This was a question long debated between the African, and Roman, and other Churches; yet without breach of communion, especially on their part, who followed the moderate counsels of Cyprian, who still pleaded for the liberty and independency of different Churches in this matter, leaving all Churches to act according to their own judgment, and keeping peace and unity with those that differed from him, as has been more fully shewn in a former book,<sup>1</sup> where we discourse of the independency of bishops, especially in the African Churches.

The reader may find an account of some other questions in the same place, as candidly and moderately debated among them; as the question about elinic baptism, and the case of admitting adulterers to communion again, in which the practice of the African bishops was often different from one another; but they neither censured

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libet ecclesiâ aliquid invenisti, quod plus omnipotenti Deo placere possit sollicitè eligas; et in Anglorum ecclesiâ, quæ adhuc ad fidem nova est, institutione præcipuâ, quæ cæ multis ecclesiis colligere potuisti, infundas. Non enim pro locis res, sed pro bonis rebus loca amanda sunt. Ex singulis ergo quibusque ecclesiis, quæ pia, quæ religiosa, quæ recta sunt elige, hæc quasi in fasciculum collecta, apud Anglorum mentes in consuetudinom deponere.

<sup>1</sup> Book ii. chap. vi.

each other's practice, nor brake communion upon it. And sometimes the same moderation was observed in doctrinal points of lesser moment. For as our learned and judicious writers<sup>1</sup> have observed out of St. Austin,<sup>2</sup> besides the necessary articles of faith, there are other things about which the most learned and exact defenders of the Catholic rule do not agree, without dissolving the bond of faith. There are some questions, in which without any detriment to the faith,<sup>3</sup> that makes us Christians, we may safely be ignorant of the truth, or suspend our opinion, or conjecture what is false by human suspicion and infirmity. As in the question about paradise, what sort of place it is, and where it was that God placed the first man when he had formed him? Where now Enoch and Elias are, in Paradise or some other place? How many heavens there are, into the third of which St. Paul says he was taken? With innumerable questions of the like nature, pertaining either to the secret work of God, or the hidden parts of Scripture, concerning which he concludes, that a man may be ignorant of them without any prejudice to the Christian faith, or err about them without any imputation of heresy. This consideration made St. Austin profess in his modesty, that there were more things in Scripture,<sup>4</sup> which he knew not, than what he did know. And if men should fiercely dispute about such things, and condemn one another for their ignorance or error concerning them, there would be no end of schisms and divisions in the Church. Therefore in such questions every man was at liberty to abound in his own sense, only observing this rule of peace, not to impose his own opinions magisterially upon others, nor urge his own sentiments as ne-

<sup>1</sup> Barrow, *Of the Unity of the Church*, p. 299. Potter, *Answer to Charity Mistaken*, sect. iii. p. 88.

<sup>2</sup> Aug. cont. Julian. Pelag. *Alia sunt de quibus inter se aliquando doctissimi atque optimi regulæ catholicæ defensores, salvâ fidei compage, non consonant.*

<sup>3</sup> Aug. de Peccat. Orig. cont. Pelag. et Celest. lib. ii. cap. 23. *Sunt quæstiones in quibus, salvâ fide quâ Christiani sumus, aut ignoratur quod verum sit, et sententiâ definitivâ suspenditur; aut aliter quàm est; humanâ et infirmâ suspitione conjicitur. Veluti cùm quæritur, Qualis, aut ubi paradus sit? &c. Vid. Enchirid. cap. 59.*

<sup>4</sup> Aug. Ep. 119. ad Januar. cap. xx. *Etiam in ipsis sanctis Scripturis multo nesciam plura quàm sciam.*

cessary doctrines or articles of faith in such points, where either the Scripture was silent, or left every man the liberty of opining.

SECT. 16.—What Allowance was made for Men, who out of simple Ignorance broke Communion with one another.

Nay, in some cases a little allowance was made for men of honest minds, who broke communion with one another. For sometimes it happened, that good Catholics were divided among themselves out of ignorance, and broke communion with one another for mere words, not understanding each other's sentiments. In which case all wise and moderate men had a just compassion for each party, and laboured to compose and unite them, without severely condemning either. Nazianzen tells us, there was a time<sup>1</sup> when the ends of the earth were well nigh divided by a few syllables. It was in a controversy about the use of the words *Τρία πρόσωπα*, and *Τρεῖς ὑποστάσεις*, in the doctrine of the Trinity. Each party was orthodox, and meant the same thing under different words; but not understanding one another's sense, they mutually charged each other with heresy. They who were for calling the three divine persons three *Hypostases*, charged their adversaries as Sabellians; and they on the contrary returned the charge of Arianism upon them, as thinking they had taken three *Hypostases* in the Arian sense, for three essences or substances of a different nature. But the great and good Athanasius, in his admirable prudence and candour, seeing into the false foundation of these disputes, quickly put an end to them, by bringing them to a right understanding of each other's sense, and allowing them to use their own terms without any difference in opinion. And this, says our author, was a more beneficial act of charity to the Church, than all his other daily labours and discourses: it was more honourable than all his watchings and humicubations, and not inferior to his flights and exiles. And therefore he tells his readers, in ushering in the discourse, "That he could not

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<sup>1</sup> Naz. Orat. xxi. de laud. Athanas. tom. i. p. 393.

omit the relation without injuring them, especially at a time when contentions and divisions were in the Church; for this action of his would be an instruction to them, that were then alive, and of great advantage, if they would propound it to their own imitation, since men were prone to divide not only from the impious, but from the orthodox and pious, and that not only about little and contemptible opinions, which ought to make no difference, but even about words that tended to the same sense, as was evident in the case before them." Such was the candour and prudence of wise and good men in labouring to compose the unnecessary and verbal disputes of the orthodox, when they unfortunately happened to clash and quarrel without grounds one with another.

And they had some regard likewise to men of honest minds, who, through mere ignorance or infirmity, were engaged in greater errors. For they made a great distinction between Heresiarchs and their followers; between the guides and the people; and between such as were born and bred in the Church, and afterward apostatised into heresy, and those that received their errors from the tradition and seduction of their parents. St. Austin<sup>1</sup> speaking of this latter sort, says, "that they, who defend not a false and perverse opinion with any pertinacious animosity, especially if they did not by any audacious presumption of their own first invent it, but received it from the seduction of their erring parents, and were careful in their inquiries after truth, being ready to embrace it when they found it; that they were by no means to be reckoned among heretics." That is, they had not the formality of heresy, which is pride and obstinacy in error; and therefore a more favourable opinion might be conceived of them above others, who first founded heresies, or embraced them afterwards out of some vicious

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<sup>1</sup> Aug. Ep. 162. ad Episc. Donat. p. 277. Qui sententiam suam, quamvis falsam atque perversam, nullâ pertinaci animositate defendunt, præsertim quam non audaciâ præsumptionis suæ pepererunt, sed à seductis atque in errorem lapsis parentibus acceperunt, quærunt autem causâ sollicitudine veritatem, corrigi parati cum invenerint, nequaquam sunt inter hæreticos deputandi.

corruption of mind, having a greater regard to their own lusts, and pleasures of unrighteousness, than any sincere love for truth. Though such weak and injudicious persons could not be wholly excused from error, or schism, or sin, yet in comparison of others their ease was thought capable of some proper allowances: and therefore they were neither so severely punished in the Church here, nor reputed so great objects of God's displeasure hereafter. For as Salvian<sup>1</sup> words it, in the case of some who embraced the Arian heresy, "they erred indeed, but they erred with a good mind; not out of any hatred to God, but with affection to him, thinking thereby to honour and love the Lord. Although they had not the true faith, yet they imagined this their opinion to be perfect charity towards God. And how they shall be punished for this error of their false opinion in the day of judgment, no one knows but the Judge alone."

SECT. 17.—Of different Degrees of Unity; and that no one was esteemed to be in the perfect Unity of the Church, who was not in full Communion with her.

This occasioned a little distinction sometimes to be made between Heresiarchs, or the first authors of heresy, and those that were ignorantly drawn into error by their seducement and delusions, as we shall see more in speaking of the discipline and censures of the Church. In the mean time, I observe, that because the Church could not ordinarily judge of men's hearts, nor always know the means and motives that engaged them in error or schism, she was forced to proceed commonly by another rule, and judge of their unity with her by their external communion and professions. And because there were several sorts and degrees of unity, as we have seen before, so that a man might be in the communion of the Church in one respect, and out of it in another; therefore the Church went by this rule, to judge none to be in her

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<sup>1</sup> Salvian. de Gubernat. Dei. lib. v. p. 154. Errant ergo, sed bono animo errant; non odio, sed affectu Dei, honorare se Dominum, atque amare credentes. Quamvis non habeant rectam fidem, illi tamen hoc perfectam Dei aestimant charitatem. Qualiter pro hoc ipso falsæ opinionis errore in die judicii puniendi sunt, nullus potest scire nisi judex.

perfect unity, but such as were in full communion with her. Upon which account, though heretics and schismatics and excommunicate persons and profane men were in some sense of the Church, as having received baptism, which they always retained, and as making profession of some part of the Christian faith; yet because, in other respects they were broken off from her, they were not esteemed sound and perfect members of the body, but looked upon as withered and decayed branches, for want of such unity in other respects, as is necessarily required to denominate a man a real and complete Christian, which is a title allowed to none but such as are in full communion with the Church or Christ. This distinction between total and partial unity, and total and partial schism and separation, is of great use to make a man understand all those sayings of the Ancients, which speak of heretics and schismatics and excommunicate persons and profligate sinners, as being in some measure in and of the Church, at the same time that they were reputed really and truly separated from her. Thus Optatus tells the Donatists.<sup>1</sup> “that they were divided from the Church in part, not in every respect: for that was the nature of a schism, to be divided in part, not totally cut asunder. And that for very good reason, because both we and you have the same ecclesiastical conversation; though the minds of men be at variance, the sacraments do not vary. We have all the same faith, we are all signed with the same seal: we are no otherwise baptised than you are, nor otherwise ordained than you are. We all read the same divine Testament, we all pray to the same God. The Lord’s prayer is the same with us, as it is with you: but there being a rent made, as was said

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<sup>1</sup> Optat. lib. iii. p. 72. In parte vestis adhuc unum sumus, sed in diversa pendemus. Quod enim scissum est, ex parte divisum est, non ex toto concisum. Et meritò, quia nobis et vobis una est ecclesiastica conversatio: et si hominum litigant mentes, non litigant sacramenta. Denique possumus et nos dicere, Pares credimus, et uno sigillo signati sumus: nec aliter baptizati quam vos. Nec aliter ordinati quam vos. Testamentum divinum legimus pariter: unum Deum rogamus. Oratio dominica apud nos et apud vos una est, sed scissurâ (ut supra diximus) factâ, partibus hinc atque inde pendentibus, sartura necessaria.



before, by the parts hanging this way and that way, an union was necessary to restore the whole to its integrity." He repeats this again in other<sup>1</sup> places: "both you and we have the same ecclesiastical conversation, the same common lessons, the same faith, the same sacraments of faith, the same mysteries." And upon this score he frequently tells them they were their brethren still, whether they would or not, "Though the Donatists hate us," says he,<sup>2</sup> "and abhor us, and will not be called our brethren, yet we cannot depart from the fear of God: they are without doubt our brethren, though not good brethren. Therefore let no one wonder, that I call them brethren, who cannot be otherwise than our brethren, seeing both they and we have one and the same spiritual nativity, though our actions are different from one another." "Ye cannot but be our brethren," says he again<sup>3</sup> to them, "whom one mother the Church hath born in the same bowels of her sacraments; whom one God, as a father, hath received after one and the same manner, as adopted children. We all pray, our Father which art in Heaven: whence you may perceive, that we are not totally separated from one another, whilst we pray for you willingly, and you pray for us, though against your will. You may hence see, brother Parmenian, that the sacred bonds of brotherhood between us and you, cannot be totally broken asunder." St. Austin always discourses after the same manner concerning this union in part: in many things ye are

<sup>1</sup> Optat. lib. v. p. 84. Denique apud vos et apud nos una est ecclesiastica conversatio, communes lectiones, eadem fides, ipsa fidei sacramenta, eadem mysteria.

<sup>2</sup> Lib. i. p. 34. Quamvis nos odio habent, et execrentur, et nolunt se dici fratres nostros; tamen nos recedere à timore Dei non possumus.—Sunt igitur sine dubio fratres, quamvis non boni. Quare nemo miretur, eos me appellare fratres qui non possunt non esse fratres. Est quidem nobis et illis una spiritualis nativitas, sed diversi sunt actus, &c. So in the Conference of Carthage, die. iii. n. 233. the Catholics say, Propter sacramenta frater est, sive bonus sive malus.

<sup>3</sup> Optat. lib. iv. p. 77. Non enim non potestis esse fratres, quos iisdem sacramentorum visceribus una mater ecclesia genuit; quos eodem modo adoptivos filios Deus Pater excepit.—Videtur nos non in totum ab invicem esse separatos, dum et nos pro vobis oramus volentes; et vos pro nobis oratis, etsi nolentes. Vides, frater Parmeniane, sancta germanitatis vincula inter nos et vos in totum rumpi non posse.

one<sup>1</sup> with us, in baptism, in the creed, and the rest of God's sacraments." And hence<sup>2</sup> he also concludes, "that whether they would or no, they were their brethren, and could not cease to be so, so long as they continued to say, our Father, and did not renounce their creed and their baptism. For there was no medium between Christians and Pagans. If they retained faith, and baptism, and the common prayer of the Lord, which teaches all men to style God their Father; so far they were Christians: and as far as they were Christians, so far they were brethren, though turbulent and contentious, who would neither keep the unity of the Spirit in the bond of peace, nor continue to be united in the Catholic Church with the rest of their brethren."

By all this it is evident, 1. that there were different degrees of unity and schism, according to the proportion of which, a man was said to be more or less united to the Church, or divided from it. 2. That they, who retained faith, and baptism, and the common form of Christian worship, were in those respects one with the Church; though in other respects, wherein their schism consisted, they were divided from her. So they might be said to be brethren, and not brethren; sons of God, and not sons of God; of the house of God, and not of the house of God; according to the different acceptations of these terms, and the different proportion and degrees of that unity or schism, whereby they were united to the Church, or separated from her. 3. That to give a man the denomination of a true Catholic Christian, absolutely speaking, it was necessary that he should in all respects, and in every kind of unity be in perfect and full communion with the Church; that is, in faith, in baptism, in holiness of life, in charity, in worship and all holy offices, and in all the necessary parts of government and discipline: but to denominate a man a schismatic, it was sufficient to break the unity of the Church in any one

<sup>1</sup> Aug. Ep. 48. ad Vincent. p. 71. In multis estis nobiscum, in baptismo, in Simbolo, in cæteris dominicis sacramentis. In spiritu autem unitatis, et vinculo pacis, in ipsâ denique catholicâ ecclesiâ nobiscum non estis.

<sup>2</sup> Aug. in Psal. xxxii. Concion. ii. p. 91. Velint, nolint, fratres nostri sunt. &c.

respect; though the malignity of his schism was to be interpreted more or less, according to the degrees of the separation that he made from her. And by these rules it is easy for any one to understand, what the Ancients meant by unity and schism, and how the discipline of the Church was exercised and maintained by obliging men to live in perfect and full communion with her, which I come now more particularly to explain and consider.

## CHAP. II.

*Of the Discipline of the Church, and the various Kinds of it, together with the various Methods observed in the Administration of it.*

SECT. 1.—That the Discipline of the Church did not consist in cancelling or disannulling any Man's Baptism.

The discipline of the Church being intended, as was observed before, only to preserve the unity and purity of her own members in one communion, we are not to look for the exercise of it upon any but such as in some measure made profession of being joined in society with her; which were either baptised persons, or at least candidates of baptism: for she pretended not to exercise discipline upon any others which were without, but such only as were within the pale, in the largest sense, by some act of their own profession. And even upon these she never pretended to exercise her discipline so far, as to cancel or disannul their baptism, so as to oblige them to take a second baptism, if their first was good, in order to be admitted into the Church again, when for any crime they were cast out of it. For even heretics and apostates, who made the greatest breach of Christian unity, were never so far divided from the Church, but that still they retained some distant relation to her by baptism, whose character was indelible, even in the greatest

apostacy that can be imagined, even in the total abjuration of the Christian faith: the obligation of their baptism still lay upon them, and with what severity soever they were treated in their repentance, if ever they returned to the Church again, there is no instance of receiving them by a second baptism, which, if once lawfully given, was for ever after forbidden to be repeated upon any account whatsoever. I will not stand to prove this here, because I have had occasion once or twice<sup>1</sup> before to speak largely upon it; but only observe, that it was no part of the discipline of the Church to deny men the original right they had in baptism; and consequently that the most formal casting them out of communion was never intended to signify, that they were mere heathens and pagans, and that they could not be admitted again into the Church without a repetition of their baptism.

SECT. 2.—But in excluding Men from the common Benefits and Priveleges consequent to Baptism.

But the discipline of the Church consisted in a power to deprive men of all the benefits and privileges of baptism, by turning them out of the society and communion of the Church, in which these privileges were only to be enjoyed; such as joining in public prayer, and receiving the eucharist, and other acts of divine worship: and sometimes they were wholly forbidden to enter the church, so much as to hear the Scriptures read, or hear a sermon preached, till they shewed some signs of relenting; and every one shunned and avoided them in common conversation, partly to establish the Church's censures and proceedings against them, and partly to make them ashamed, and partly to secure themselves from the danger of contagion and infection.

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<sup>1</sup> Book xii. chap. v. and Scholastical History of Baptism, part ii. chap. vi.

SECT. 3.—This Power originally a mere spiritual Power, though in some Cases the secular Arm was called in to give its Assistance.

Thus far the Church went in her censures by her own natural right and power, but no further: for her power originally was a mere spiritual power; her sword only a spiritual sword, as Cyprian<sup>1</sup> terms it, to affect the soul, and not the body. Over the bodies of men she pretended no power; no nor yet over their estates, except such as were purely ecclesiastical, and of her own donation, to resume what was her own property and gift from such as were contumacious and rebellious against her censures. In which case she sometimes craved assistance from the secular power, even whilst it was heathen, and more frequently when it was become Christian. Thus when the Council of Antioch had deposed Paulus Samosatensis, and substituted Domnus in his room, but could not remove him by any power of their own from the house belonging to the church, which he still kept possession of, they had recourse to Aurelian, the heathen Emperor, who did them justice upon appeal, ordering the house to be delivered to those, to whom the bishops of Italy and Rome should write with approbation. “And so,” says Eusebius,<sup>2</sup> “Paul was cast out of the church with the highest disgrace by the help of the secular power.” This was more common after the Emperors were become Christians: for then they could with greater liberty and confidence appeal to them, and beg their assistance upon such occasions. And then canons were made to authorise such addresses, that the censures of the Church might have their effect and force upon contumacious and obstinate offenders. Such an order was made in the Council of Antioch,<sup>3</sup> Anno 341, in the reign of Constantius, “that if a presbyter, who set up a separate

<sup>1</sup> Cypr. Ep. lxxii. al. iv. ad Pompon. p. 9. Spirituall gladio superbi et contumaces necantur, dum de ecclesiâ ejiciuntur. <sup>2</sup> Euseb.

lib. vii. cap. 30. Μετὰ τῆς ἐσχάτης αἰσχύνης ὑπὸ τῆς κοσμικῆς ἀρχῆς ἐξελαύνεται τῆς ἐκκλησίας.

<sup>3</sup> Con. Antioch. can. v. Εἰ δὲ παραμῖνοι θορυβῶν ἐν ἀναστατῶν τὴν ἐκκλησίαν, διὰ τῆς ἐξωθεν ἐξουσίας ὡς τασίωδῃ αὐτὸν ἐπιτρέψισθαι.

meeting against his bishop, and was, after admonition, deposed for his crime, still continued obstinately to disturb and subvert the Church, he should be corrected by the external power, that is, the civil magistrate, as a seditious person." Such another canon was made in the third Council of Carthage,<sup>1</sup> in the case of one Cresconius, an African bishop, who having left his own bishopric, and intruded himself into another, where he stayed in spite of all ecclesiastical censures, orders were given to petition the secular magistrate by his authority to remove him. And this canon was inserted as a general and standing rule into the African Code.<sup>2</sup> Where we have also a like constitution<sup>3</sup> against such presbyters, as set up new bishoprics in the diocese of their own bishop without his consent: they were to be deprived and removed out of such places, as rebels, Ἀρχοντικῇ δυνάτει, *by the governing power of the secular magistrate*. And in another canon<sup>4</sup> mention is made of letters to be sent from the synod to the magistrates of Africa, to petition them to yield their assistance to their common mother, the Catholic Church, against the Donatists, for as much as the authority of bishops was contemned in every city. This petition is more particularly explained in another canon,<sup>5</sup> which grants a commission to certain bishops to go as legates in the name of the Church, to the Emperors, Arcadius and Honorius, and complain of the violences offered by the Donatists, who had invaded many of their Churches, and kept them by force; against which they desired the Emperors to grant them a suitable help by a military guard; it being no unusual thing, nor against the Scripture, to be protected, as St. Paul was, by a band of soldiers against the conspiracy of insolent and factious men. They requested also, that the Emperors would put in execution the law, which Theodosius their father, of pious memory, had enacted against heretics, whereby every one that ordained, or was ordained by them,

<sup>1</sup> Con. Carth. iii. can. 38. Dignemini dare fiduciam, quā, necessitate ipsā cogente, liberum ad præsidem regionis adversus illum accedere, secundum constitutionis cl. imperatorum—ut secularis magistratus auctoritate prohibeatur.

<sup>2</sup> Cod. Afric. can. xlix.

<sup>3</sup> Cod. Afric. can. liv.

<sup>4</sup> Ibid. can. lxxviii.

<sup>5</sup> Cod. Afric. can. xciii. al. 95.

was amerced in the sum of ten pounds of gold. The law, they refer to, is still extant in the Theodosian Code, running in these terms,<sup>1</sup> “ If proof is made against any, who are engaged in heretical errors, that they either have ordained clerks, or received the office of a clerk, a mulct of ten pounds in gold, is by our order to be imposed upon them: and the place, in which any of these unlawful things were attempted, if done by the connivance of the owner, shall be confiscated. But if the possessor was ignorant of the matter, then he that rented the farm, if he be a freeman, shall forfeit ten pounds of gold to the exchequer; or if he be descended of a servile condition, and cannot bear the penalty, then he shall be beaten with rods, and sent into banishment.” This was that famous penal law of Theodosius against all heretics in general, so often mentioned by St. Austin, and which he with the rest of the African Fathers desired Honorius to confirm, so as it might specify and affect the Donatists, more particularly such of them, as by open or secret violence made assaults upon the Catholic Church. They did not desire, that this penalty should be inflicted indifferently upon all the Donatists, but only such as the Circumcellions and others, who in their mad zeal and fury committed violent outrages against the Catholics: but Honorius extended the penalty to them all, and enforced the old law of Theodosius, his father, by a new law of his own, wherein the Donatists were particularly named as heretics,<sup>2</sup> who upon conviction, or confession, were to be fined in the sum of ten pounds of gold, according to the tenour of the former law. No one better understood either the reasons or the effects of this law than St. Austin, and therefore it cannot be better explained than, as Gothofred does it, in his words. Now he, writing to Count Boniface, an African magistrate, gives this account of it: “ before

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<sup>1</sup> Cod. Theod. lib. xvi. tit. v. de Hæreticis. leg. xxi. In hæreticis erroribus quoscunque constiterit vel ordinasse clericos, vel suscepisse officium clericorum, denis libris auri viritim multandos esse censemus, &c.

<sup>2</sup> Cod. Theod. lib. xvi. tit. v. leg. 39. Donatistæ superstitionis hæreticos, quocunque loci, vel fatentes, vel convictos, legis tenore servato, pœnam debitam absque dilatione persolvere decernimus.

those laws," says he,<sup>1</sup> " were sent into Afric, which compel hereties to come in to the Church, some of our brethren, among whom I was one, were of opinion, that although the madness of the Donatists raged every where, yet we should not petition the emperors to forbid any one simply to be of that heresy, by inflicting punishment on all that embraced it; but only desire them to make a law to restrain them from offering violence to any, that either preached or held the Catholic faith. Which we thought might in some measure be done after this manner: if the law of Theodosius of pious memory, which he had promulged against all heretics in general, that whoever was found to be a bishop or clerk, any where among them, should forfeit ten pounds in gold, were more expressly confirmed against the Donatists, who denied themselves to be hereties, in such a manner, as that the penalty should not be inflicted upon them all, but only upon such, in whose regions the Catholic Church suffered violence from their clergy, or the Circumcellions, or their people, so as after the protestation of the Catholics, who suffered from them, the magistrates should compel their bishops or ministers to pay the fine. For so we thought, that by this means they might be terrified from daring any such attempts, and the Catholic truth might be taught and held freely, so as no one should be compelled to it, but every one, that would, might embrace it without fear, and we should have no false or counterfeit Catholics. And though others of our brethren were of a different opinion, who by their age had greater experience, and could plead the example of many cities and places, where we saw the Catholic Church firmly and truly settled, which yet was there settled by such kind methods of divine Providence, whilst men were compelled by the laws of former emperors

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<sup>1</sup> Aug. Ep. l. ad Bonifac. p. 84. Antequàm iste leges, quibus ad convivium sanctum coguntur intrare, in Africam mitterentur, nonnullis fratribus in quibus et ego eram, quamvis Donatistarum rabies usquequaque sæviret, videbatur non esse petendum ab imperatoribus, ut ipsam hæresin juberent omninò non esse pœnam constituendo eis, qui in illâ esse voluissent, sed hoc potiùs constituerent, ut eorum furiosas violentias non paterentur qui veritatem catholicam vel prædicarent loquendo, vel legerent constituendo, &c.



to come in to the Catholic communion, yet notwithstanding this we prevailed, that our petition should be presented to the Emperors in the foresaid form. And thereupon a decree was drawn up in council, and our legates were dispatched to court. But the greater mercy of God, who better knew how necessary the terror of such laws, and a little medicinal trouble is, for the wicked or cold hearts of many men, and for that hardness of mind, which cannot be corrected by words, but may by a little severity of discipline, so ordered the matter, that our legates could not obtain the thing they had undertaken. For before they could get to court to present our petition, several grievous complaints had been made by the bishops of other places, who had suffered extremely from the Donatists, and were driven from their sees by them: especially the horrible and incredible murder of Maximian, the Catholic bishop of Vaga, made it impossible for our embassy to succeed. For now a law was already promulged against the barbarous Donatist heresy, the very sparing which seemed more cruel than the cruelty which themselves exercised, that not only its violence, but its very being should not be tolerated or suffered to go unpunished. Yet to observe Christian meekness, even toward the unworthy, the penalty proposed was not death, but only a pecuniary mulct, and banishment for the bishops and ministers." Then relating particularly the barbarous usage of Maximian, and their unparalleled cruelty towards him, he adds, "that the Emperor being well apprised of these facts, in his great piety and concern for religion, chose rather universally to correct that impious error by wholesome laws, and reduce those, who carried the badge of Christ against Christ, to Catholic unity by terror and punishment, than barely to take from them the liberty of exercising their cruelty, and leave them at liberty to err and perish." He observes further, "that as soon as ever these laws appeared in Afric, they wrought wonderful effects upon the minds of men: for immediately all such as waited only for a proper occasion, or were kept back merely by the dread of the cruelty of those frantic men, or were afraid to offend their relations, came over at once to the Catholic Church. Many

also, who were detained in schism merely by the custom they had been trained up to by their parents, but had never spent a thought about the grounds and reasons of their error, nor would consider or make any inquiry into the merits of the cause; when once they began to consider it, and found nothing in it worth suffering so great loss, they without any difficulty became Catholic Christians. For a concern for their own safety brought them to understanding, who before were grown negligent by security. Many also, who were less capable of understanding and judging by themselves, what was the difference between the error of the Donatists and the Catholic truth, were induced to follow the authority and persuasion of so many examples going before them. So the true mother received great multitudes of people into her bosom again rejoicing, and only an hardened company remained obstinate by their unhappy animosity in that pernicious way. And many of these also communicated with the Church by a sort of dissimulation: but they, who at first dissembled, afterwards by degrees accustoming themselves to the way of the Church, and hearing the preaching of truth, especially after the conference and disputation which was held between their bishops and us at Carthage, did at last for the most part correct their errors also."

This is the account which St. Austin gives both of the reasons and effects of this penal law, which he frequently<sup>1</sup> mentions in other places, carefully collected by Gothofred, but needless here to be recited. I only observe these few things upon the whole matter. 1. That though it was no part of the Church's discipline to use any manner of force to give effect to her censures; yet in case of obstinate opposition and contempt she did not think it unlawful to take the assistance of the secular power. 2. That in case of violence offered to the Church or any of her ministers or her members, there was still more reason to petition for defence against them. 3. That it was generally thought

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<sup>1</sup> Aug. Ep. 68. ad Januar. Donatist. Ep. 166. ad Donatistas. Ep. 173. ad Crispinum Donatist. Cont. Crescon. lib. iii. cap. 47. Cont. Liter. Petilian. lib. ii. cap. 83.

useful to inflict some moderate temporal punishments upon obstinate heretics, and schismatics, and other offenders, (with a liberty of indulging, and remitting the penalty, as prudence directed,) in order to bring them to consider and examine the grounds of truth and error, and humble them by repentance, and restore them to the communion of the Church from whence they were fallen.

**SECT. 4.**—This Assistance never required to proceed so far, as, for mere Error, to take away Life, or shed Blood.

But then it is also to be considered, that the Church never encouraged any magistrate to proceed further in her behalf against any one for any mere error, or ecclesiastical misdemeanour, than to punish the delinquent with a pecuniary mulct, or bodily punishment short of death, such as confiscation or banishment, unless it were in case of capital crimes, and of a civil nature, which fell directly under the cognizance of the civil magistrate, as treason or rebellion, which the imperial laws punished with death. There are indeed some laws in the Theodosian Code, which order heretics to be prosecuted with capital punishments. Theodosius,<sup>1</sup> made a decree against some of the Manichees, which went by the name of *encratites*, *saccophori*, and *hydroparastatæ*, that they should be punished with death, at the same time that the *solitarii*, another sect among them, should only suffer confiscation. And Honorius renewed the same law against them.<sup>2</sup> And in two other laws he ordered the Donatists, in Afric to be put to death,<sup>3</sup> if they held any public conventicles to the prejudice of the Catholic faith, revoking all tolerations that had been granted them before. But as these laws were very rare, so they

<sup>1</sup> Cod. Theod. lib. xvi. tit. 5. de Hæreticis, leg. ix. Summo supplicio et inexplicabili pœnâ jubemus affligi.

<sup>2</sup> Cod. Theod. lib. xvi. tit. 5. de Hæret. leg. 35.

<sup>3</sup> Ibid. leg. 51. Oraculo penitus remoto, quo ad ritus suos hæreticæ superstitiones obpererant, sciant omnes sanctæ legis inimici plectendos se pœnâ proscriptionis et sanguinis, si ultra convenire per publicum, execrandâ sceleris sui temeritate temptarint. An. 410. Vid. ibid. leg. 56.

may be supposed to be made upon some particular provocation of their enormities, such as the Manichees were guilty of; or their barbarous outrages committed against the Catholics, such as the Circumcellions among the Donatists every where stand charged with. Then again, it was as rare to find these laws at any time put in execution against them. For we scarce find an instance before Priscillian of any heretic suffering death barely for his opinion. Sozomen, speaking of this law of Theodosius, says,<sup>1</sup> it was made more for terror, than execution. And Chrysostom at the same time delivered his opinion freely, that the tares were not thus to be rooted out;<sup>2</sup> for if heretics were to be put to death, there would be nothing but eternal war in the world. Christ does not prohibit us to restrain heretics, to stop their mouths, to cut off their liberty, and their meetings, and their conspiracies, but only to kill and slay them. St. Austin seems not to have known any thing of this law of Theodosius; and for those of Honorius, they were not yet enacted against the Donatists, when he wrote against them. Therefore writing, frequently to the African magistrates, he tells them, the law gave them no power to put any Donatist to death. Thus in his letter, to Dulcitus, the tribune,<sup>3</sup> “ You,” says he, “ have not received the power of the sword against them by any laws, neither by any imperial injunctions, which you are obliged to execute, are you commanded to put them to death.” So he tells Petilian, the Donatist bishop, “ that God had so ordered the matter in his providence, having the hearts of kings in his hand, that though the emperor had made many laws to admonish and correct them,<sup>4</sup> yet there was no imperial law which commanded them to be put to death. The judges indeed had power to punish malefactors with death, as murderers,

<sup>1</sup> Sozom. lib. vii. c. 12.      <sup>2</sup> Chrys. Hom. xlvii. in Mat. p. 422. Οὐ γὰρ δεῖ ἀναιρεῖν αἰρετικὸν ἐπεὶ πόλεμος ἄσπονδος εἰς τὴν οἰκομένην ἐμελλεν εἰσαγεσθαι. &c.      <sup>3</sup> Aug. Ep. 61. ad Dulcitiā. Non tu in eos jus gladii ullis legibus accepisti, aut imperialibus constitutis, quorum tibi injuncta est executio, hoc praeceptum est, ut necentur.      <sup>4</sup> Aug. cont. literas Petilian. lib. ii. cap. 83. Multas ad vos commonendos et corripiendos leges ipse constituit: nulla tamen lex regia vos jussit occidi.

and the like; and so perhaps some of the Donatists might suffer; but that was not for their opinion barely. And even in that case, when it was the cause of the Church, the Catholic bishops commonly interceded for them, that the deaths of their martyrs might not be revenged with blood." "For no good men in the Catholic Church," says St. Austin,<sup>1</sup> "are pleased to have any one, although he be an heretic, prosecuted unto death." Therefore writing to one Donatus, a proconsul in Afric, he tells him,<sup>2</sup> "they desired that the terror of judges and laws might correct them, so as to preserve them from the punishment of eternal judgment, but not kill them; that discipline might not be neglected toward them, and yet that they might not undergo the punishment which they really deserved. Therefore punish their crimes in such manner, as that the authors may continue in being, to repent of them. We beseech you, when any cause of the Church comes before you, although you know the Church to be assaulted and afflicted by their injurious villanies, yet then forget that you have the power of killing, and do not forget our petition. Let it not seem vile and contemptible in your eyes, that we, who pray to God to correct them, intercede with you not to kill them. Let your prudence also consider this, that no one besides ecclesiastics is concerned to bring ecclesiastical causes before you: so that if you should resolve to put such criminals to death, who are accused of acting wickedly against the Church, you will deter us from bringing any more such actions before your tribunal: and that will make them more licentious, and daringly bold to assault us, and work our ruin, when they know we are under such a necessity, to chuse rather to be slain by them, than bring them to be slain before your tribunals." He pleads after the same

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<sup>1</sup> Cont. Crescon. lib. iii. cap. 50. Nullis tamen bonis in catholica hoc placet, si usque ad mortem in quenquam, licet hæreticum, seviatur.

<sup>2</sup> Aug. Ep. 127. ad Donat. Ex occasione terribilium judicium ac legum ne in æterni judicii pœnas incidant, corrigi eos cupimus, non necari; nec disciplinam circa eos negligi volumus, nec suppliciiis quibus digni sunt exerceri, &c.

manner in another Letter, to Marcellinus,<sup>1</sup> the tribune, in behalf of some Donatists, who confessed themselves guilty of murdering some of the Catholic clergy. "I beseech you," says he, "let their punishment be short of death, though their crimes be so great, both for our conscience sake, and to commend the lenity and meekness of the Catholic Church." A little after he intreats him to intercede in his name to the proconsul for them. "I hear it is in the power of the judge to mollify the rigour of the law in giving sentence, and to use greater mildness in punishing than the laws command. But if he will not at my request consent to this, let him however grant me this favour, to keep them in prison till I can send to the emperor, and obtain of his clemency,<sup>2</sup> that the passions or martyrdoms of the servants of God, which ought to be glorious in the Church, be not stained and defiled with the blood of their enemies." He urges the same argument in his next Letter to this Marcellinus with greater earnestness, conjuring him by all that is sacred, not to proceed to the utmost extremity against some Circumcellions and Donatist clergy, who were convicted of murdering two of his presbyters belonging to the Church of Hippo, after having first barbarously struck out an eye, and cut off the finger of one of them. "I am under the greatest concern imaginable," says he, "lest your highness should decree their punishment by the utmost severity of the law, to make them suffer the same things<sup>3</sup> that they have done. Therefore I beseech you in these letters by the faith which you have in Christ, by the mercy of the Lord Jesus, that you neither do this, nor suffer it to be done. For though we might excuse ourselves from their death, forasmuch as it was not by any accusation of ours,

<sup>1</sup> Aug. Ep. 158. ad Marcellin. Pœna sanè illorum, quamvis de tantis sceleribus confessorum, rogo te ut præter supplicium mortis sit et propter conscientiam nostram, et propter catholicam mansuetudinem commendandam.

<sup>2</sup> Ibid. Hoc de clementiâ imperatoris impetrare curabimus, ne passiones servorum Dei, quæ debent esse in ecclesiâ gloriosæ, inimicorum sanguine dehonestentur.

<sup>3</sup> Aug. Ep. 159. Sollicitudo mihi maxima incussa est, ne forte sublimitas tua censeat, eos tanta legum severitate plecendos, ut qualia fecerunt, talia patiantur.—Nolumus passiones servorum Dei quasi vice talionis paribus suppliciis vindicari.

but by the information of those who have the care of preserving the public peace, that they were brought in question; yet we would not have the passions of the servants of God be revenged with the like punishments, as it were by way of retaliation. Not that we are against depriving wicked men of the liberty of committing such villanous actions, but because we rather think it sufficient, without either killing them, or maiming them in any part of their body, to bring them by coercion of the laws, from these mad and turbulent practices, to live peaceably and soberly, or at least instead of these wicked works, to engage them in some useful employment." He yet again more pathetically urges the same matter to one Apringius, another African judge,<sup>1</sup> in these very affectionate and moving terms, pleading for mercy toward the same Circumcellions. "I am afraid lest they, who have committed this murder, should be sentenced to death by your power. That this may not be done, I that am a Christian, beseech you the judge, I that am a bishop exhort you that are a Christian. I know the Apostle says, Ye bear not the sword in vain, but are ministers of God to execute wrath upon them that do evil. But the cause of the State is one thing, and the cause of the Church another. The administration of that (the State) is to be carried on by terror, but the meekness of the Church is to be commended by her clemency." Then using several arguments, he adds a little after, "If nothing short of death could be imposed upon them, for our part we had rather they should be set at liberty, than that the passions of our brethren should be revenged by shedding the blood of their enemies. But now since there is room both to shew the gentleness of the Church, and also to restrain the audaciousness of the cruel, why should you not incline to the more provident side and milder sentence, which judges have liberty to do even in causes where the Church is not concerned? Therefore stand in awe with us of the judgment of God the Father, and demonstrate the clemency of the Church your mother. For what you do, the Church does

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<sup>1</sup> Aug. Ep. 160. ad Apringium.

for whose sake you do it, and whose you are that do it. Therefore contend and vie goodness with the evil. They by monstrous inhumanity and wickedness tear off the members from the living body: do you in mercy cause their members, which were exercised in such barbarous works, to remain whole and untouched in them, that they may henceforth serve to work at some useful labour. They spared not the servants of God preaching reformation to them, but do you spare them that have been apprehended in their crimes, spare them that have been presented to your examination, spare them that have been convicted before you. They with the sword of unrighteousness shed Christian blood: do you withhold even the lawful sword of judgment from being imbrued in their blood. They slew the minister of the Church, and thereby deprived him of the time of living: do you let the enemies of the Church live, and thereby grant them a time of repenting. Thus it becomes a Christian judge to act in the cause of the Church, at our request, at our admonition, at our intercession. Other men are wont to appeal from the mildness of the sentence, when their enemies are too favourably dealt with upon conviction: but we so love our enemies, that if we did not presume upon your Christian obedience, we should appeal from the severity of your sentence."

After this manner St. Austin always pleads for favour to be shewn to the Donatists, that they should not be prosecuted unto blood, in the cause of the Church, though it were for a capital crime, which in a civil case would infallibly have been punished with death without redemption. And certainly they, who were so tender of their enemies' lives, when they were guilty of such flagrant crimes of violent outrages against the Church, could never think it lawful to sentence them to death for mere error in opinion. And therefore, though Honorius made some such laws, after St. Austin had written all this; yet we never find the Church approved them, or desired they should be put in execution: but on the contrary always stood firm to her own character, which we have heard before in the words of St. Austin: that is, that no good men in the Catholic Church were pleased with having heretics prosecuted



unto death. Lesser punishments, they thought, might have their use, as means sometimes to bring them to consideration and repentance: but to take away their lives was to deprive them at once of all means and opportunity of repenting. Besides that it was invidious to the Church, and rather a confirmation to heresy: for such as were slain, were always reckoned martyrs by their party. Thus the Donatists honoured their Circumcellions, which were slain in the encounter with Macarius, whom the Emperor Constans sent into Afric in a peaceable manner to scatter his gifts among them, and try to reduce them to unity by his kindness: they were the aggressors, and forced him to require aid of the governors to defend himself against their assaults, and yet those, that were slain in such necessary defence, were by them reputed martyrs and the Catholics were nick-named Macarians, and these called the Macarian days, that is, in their language, days of persecution. And in answer to this, Optatus was forced to tell them, first, that the fact was false: no violence was used toward them; there was no terror in the first design; they neither felt rod nor imprisonment; but only exhortations to peace.<sup>1</sup> And secondly, if any violence was offered to them, they called it upon themselves by their own insolency, obliging the emperor's officer or almoner to defend himself against the rude insults of the Circumcellions. Meanwhile whatever happened, was neither done by the desire, nor the counsel, nor the knowledge, nor the concurrence of the Church. A like instance happened in the case of the Priscillianists. Priscillian and some of his accomplices, were by Maximus the Emperor, at the instigation of Ithacius, a fierce and sanguinary bishop, sentenced unto death. This gave occasion to the followers of Priscillian to triumph in the sufferings of their leader. For as Sulpicius Severus observes,<sup>2</sup> his

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<sup>1</sup> Optat. lib. iii. p. 62. Nullus erat primitus terror. Nemo viderat virgam; nemo custodiam: sola fuerant hortamenta. &c. Et tamen horum omnium nihil actum est cum voto nostro, nihil cum consilio, nihil cum conscientia, nihil cum opere.

<sup>2</sup> Sever. Hist. lib. ii. p. 120. Priscilliano occiso, non solum non repressa est Hæresis, quæ illo auctore proruperat, sed confirmata, latius propa-

death was so far from suppressing the heresy, that it gave confirmation to it, and made it spread further than otherwise it would have done. For his followers, who before honoured him as a saint, afterwards began to reverence him as a martyr. The thing was utterly displeasing to all good men, who were interested and attached to the Ithacian party, St. Martin, bishop of Tours, not only rebuked Ithacius for his over zealous prosecution,<sup>1</sup> but interceded with Maximus the Emperor to abstain from shedding their blood, telling him, it was enough to expel heretics from their Churches, after they were once condemned by the episcopal judgment: and he obtained a promise of Maximus, not to decree any thing against their lives. From which when he departed by the persuasion of others, and condemned them to death, St. Martin, would never after be induced to communicate with those sanguinary men, save once in a small matter, of which he also repented, and continued his aversion to them all his days, as the same historian informs us.<sup>2</sup> Now from all this it is plain, that whatever favour or assistance the ancient Church required of the civil magistrates, to back her discipline with, against heretics or other delinquents, she never desired them to unsheath the sword in her cause, or punish them with death; but always interposed in their behalf, that they might have the favour to live and repent, if ever any sanguinary laws, which were very rare, and no ways encouraged or approved by the Church, were made against them. The discipline of fire and faggot, and inquisitions, and a thousand other tortures, which under pretence of mercy has spilt so much Christian blood, are inventions of later ages, and more corrupt and degenerate times, when men had forgot the spirit of Christianity, and the character of our blessed Lord, who “came not to destroy men’s lives, but to save them.”

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*gata est. Namque setcalores ejus, qui eum prius ut sanctum honoraverant, postea ut martyrem colere cœperunt.*

<sup>1</sup> Sever. Hist. lib. ii. p. 119. Non desinebat inerepare Ithacium, ut ab accusatione desisteret: Maximum orare, ut sanguine infelicitium abstineret: satis superque sufficere, ut episcopali sententiâ hæretici judicati ecclesiis pellerentur, &c.

<sup>2</sup> Sever. dial. iii. n. 15.

SECT. 5.—The Discipline of the Church deprived no Man of his natural or civil Rights; much less the Magistrate of his Power, or Allegiance due to him.

It was no part of the ancient discipline to deprive men of their natural or civil rights. A master did not lose his natural authority over his family, nor a parent over his children, by losing the privileges of Christian communion. A judge did not lose his office or charge in the state, by being cast out of the Church. For many such enjoyed their power and jurisdiction under Constantius and other heretical princes, notwithstanding the Church's censure. Though now it is the common doctrine of the Romish Church, as Cardinal Tolet<sup>1</sup> delivers it for the instruction of priests, that an excommunicated person cannot exercise any act of jurisdiction without sin; nay, and if his excommunication be made public, all his sentences are null and of no effect. This rule is designed against sovereign powers, to weaken the hands of princes by displacing their officers, under pretence of excommunication. But the Church of Rome goes further and puts it in the power of the Pope to lay princes under the highest excommunication or anathema, and then by virtue of that to depose them from their thrones, and absolve subjects from their allegiance, and dispose of their kingdoms to whom they think fit. Of which practice there is not the least footstep in all the discipline of the primitive Church for many ages, nor scarce any unquestionable instance of such an attempt before the time of Pope Hildebrand, or Gregory VII. (from whom this doctrine is called the Hildebrandin doctrine,) as some of their own historians ingenuously confess. "I have read over and over again," says Otho Frisingensis,<sup>2</sup> a noble German bishop, "the

<sup>1</sup> Tolet. de Instruct. Sacerdot. lib. i. cap. iii. Excommunicatus non potest exercere actum jurisdictionis absque peccato: imò si publica est excommunicatio facta, sententiæ nullæ sunt. Vid. du Moulin's Buckler of Faith. p. 370. Et Decretal. Gregor. lib. ii. tit. xxvii. de sententia et Re Judic. cap. xxiv.

<sup>2</sup> Otho Frising. lib. vi. cap. 35. Lego et relego Romanorum regum et imperatorum gesta, et nusquam invenio quenquam eorum ante hunc à Romano pontifice excommunicatum, vel regno privatum,

records of the Roman kings and emperors, and I no where find that any of them before this was excommunicated, or deprived of his kingdom by the bishop of Rome; unless any one think fit to call that anathematizing, when Philip, the Emperor, was placed among the penitents for a little time by the Roman bishop; or when Theodosius for his cruel slaughter of the Thessalonians, was debarred from entering the Church by St. Ambrose." There is no question but that princes anciently were sometimes denied the communion, as St. Ambrose denied Theodosius: but as that was not properly putting them under the great excommunication, or anathema, so much less was it depriving them of their legal power and dominion. Constantius was an heretic, and Julian an apostate; Valens and Valentinian the younger were professed Arians; Anastasius and many others, abettors and propugners of several heresies; yet the Church never pretended to withdraw her allegiance from them, or depose them: neither was this for want of power, as Bellarmin and others commonly pretend, but for want of just authority and right: for the Church in those days knew nothing either of a direct or indirect power, that the Pope or any other bishop had over the temporal rights of princes; but professed obedience to them, whether they were heathens, or heretics; in the Church, or out of the Church; persecutors, or friends: as the reader, that pleases, may see more fully demonstrated in the elaborate work of our learned Bishop Buckridge, in defence of Barclay against Bellarmin,<sup>1</sup> concerning the pretended power of the Pope in temporals, and his usurpation of a right to dethrone princes. Where among many other unanswerable arguments, he confirms the forementioned observation of Otho Frisingensis, that Hildebrand was the first that put this wicked doctrine in practice against the Emperor Henry IV.

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nisi quis forte pro anathemate habendum ducat, quod Philippus ad breve tempus à Romano episcopo inter pœnitentes collocatus: et Theodosius à Beato Ambrosio propter cruentam cædem à liminibus ecclesiæ sequestratus sit.

<sup>1</sup> Joan. Rossensis, de Potestate Papæ in rebus Temporalibus, &c. Lond. 1684. lib. ii. cap. 10.

from the concurrent testimony of almost twenty writers of the Roman communion. I shall pursue this matter no further here, having said what is sufficient to confirm this remark about the discipline of the Church, that it deprived no man of his natural or civil rights, much less gave any one authority to dethrone princes, or absolve subjects from their allegiance, or dispose of their kingdoms under pretence of setting up the spiritual sword above the temporal.

SECT. 6.—But consisted 1st. in Admonition of the Offender.

But the discipline of the Church, being a mere spiritual power, was confined to these following acts. First, the admonition of the offender; which was solemnly repeated once or twice commonly, before they proceeded to greater severities, according to that of the Apostle: “A man that is an heretic, after the first and second admonition reject.” After this manner St. Ambrose<sup>1</sup> represents their proceedings: “A putrified member of the body is never cut off but with grief: we try a long time, whether it cannot be healed with medicines; if not, then a good physician cuts it off. Such is the affection of a good bishop; he is very desirous first to heal the infirm, to put a stop to growing ulcers, to burn and sear a little, and not cut off: at last he cuts off with grief what cannot be healed.” So Prosper says,<sup>2</sup> “They that being long endured, and often kindly admonished, will not be corrected, are cut off as putrified members with the sword of excommunication.”

And thus Synesius represents his own proceedings against Andronicus, the tyrannical governor of Ptolemais, who made use of his power only to oppress and vex the people. He first tried whether admonitions and remonstrances against

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<sup>1</sup> Ambros. de Offic. lib. ii. cap. 27. Cum dolore amputatur etiam quæ putruit pars corporis, et diu tractatur si potest sanari medicamentis: si non potest, tunc à medico bono abscinditur. Sic episcopi affectus boni est, ut oportet sanare infirmos, serpentia auferre ulcera, adurere aliqua, non abscindere: Postremò quod sanari non potest, cum dolore abscindere.

<sup>2</sup> Prosper. de Vit Contemplat. lib. ii. cap. 7. Qui diu portati et salubriter objurgati, corrigi noluerint, tanquam putres corporis partes debent ferro excommunicationis abscindi.

his cruelty<sup>1</sup> would work upon him: but when they proved ineffectual, and the man grew more outrageous and incorrigible, breaking out into that blasphemous expression, that in vain did any man hope for succour from the Church, and that no man should escape his hands, although he laid hold of the foot of Christ himself: after this, says Synesius,<sup>2</sup> “ he was no longer to be admonished, but cut off as an incurable member, for fear the sound parts should be corrupted by his society and contagion.” And so he proceeded to pronounce that formal excommunication against him, which we shall hear more of by and by.

SECT. 7.—2dly, In Suspension from the Communion called the Lesser Excommunication.

Some call this the Προξέσμία, *the warning*,<sup>3</sup> or time given them to repent, which was limited sometimes to the space of ten days:<sup>4</sup> after which if they continued obstinate and refractory, the Church proceeded to greater severities, to deny them communion by the lesser or greater excommunication. The lesser excommunication was commonly called, Ἀφορισμὸς, *separation or suspension*; and it consisted in excluding men from the participation of the eucharist, and prayers of the faithful; but did not expel them the Church, for still they might stay to hear the psalmody, and reading of the Scriptures, and the sermon, and the prayer of the catechumens and the penitents, and then depart with them, when that first service, called, the service of the catechumens, was ended. Theodoret expressly distinguishes this lesser excommunication from the greater, when speaking of some, who had lapsed into sin rather by infirmity than maliciousness, he says,<sup>5</sup> they should be debarred from partaking of the holy mysteries, but not debarred

<sup>1</sup> Synes. Ep. lvii.

<sup>2</sup> Synes. Ep. lviii. p. 199. Οὐκέτι

νεφετέος ὁ ἀνθρώπος, ἀλλ' ὡσπερ μέλος ἀνάτως ἔχον, ἀποκοπτεῖς. &c.

<sup>3</sup> Habert. Archieratic. p. 739. Epist. Joan. Antioch. ad Nestorium.

<sup>4</sup> Celestin. Ep. ad Nestor.

<sup>5</sup> Theod. Ep. lxxvii. ad Eulaliū. tom. iii. p. 947. Κωλύεσθωσαν μὲν τῆς μεταλήψεως, τῶν ἱερῶν μυστηρίων, μὴ κωλύεσθωσαν δὲ τῆς τῶν κατηχεμένων εὐχῆς, &c.

from the prayers or service of the catechumens. And thus we are to understand that canon of Gregory Thaumaturgus,<sup>1</sup> which orders such to be excommunicated from prayers, as detained the goods of their brethren, (which they had lost in the invasion of the barbarians) under pretence of having found them. Prayers there, means the prayers of the faithful at the altar, or the communion-service, from which they were suspended, and not the prayers of the catechumens, at which they might be present, notwithstanding their suspension from the other. So that this was a lower degree of punishment, excluding them in part only from the society of the faithful, that is, from the common prayers and the eucharist, but not totally expelling them the Church. And it was commonly inflicted for lesser crimes; or if for greater, upon such sinners only as shewed immediately a ready disposition to submit to the laws of repentance: there being something in their forwardness to entitle them to a more favourable sentence. The Council of Eliberis<sup>2</sup> orders this sort of abstention from the eucharist for three weeks to be inflicted on those, who, without any necessary avocation, neglected to come to Church for three Lord's days together. And in another canon suspends such women for a year,<sup>3</sup> as were guilty of ante-nuptial fornication; ordering them to be received again without public penance, provided they were married to the persons by whom they were defiled, living chastely with them for the future. Alaspiny here rightly observes, that this was only depriving them of the eucharist, for they were neither expelled the Church, nor obliged to go through any of the stages of public penance, but might pray with the catechumens, and with the faithful also; only they were not

<sup>1</sup> Greg. Thaumaturg. can. v. οὗτ' ἐεὶ ἐκκηρύξαι τῶν ἐνχῶν. Vid. Con. Herdens. can. iv. et. v.

<sup>2</sup> Con. Eliber. can. xxi. Si quis in civitate positus, tres dominicas ad ecclesiam non accesserit, tanto tempore abstineat, ut correptus esse videatur.

<sup>3</sup> Ibid. can. xiv. Virgines, quæ virginitatem suam non custodierint, si eosdem qui eas violaverint, duxerint et tenuerint; eo quod solas nuptias violaverint, post annum sine pœnitentiâ reconciliari debebunt. Vid. Alaspin. in Loc.

allowed to participate of the holy mysteries till their term was expired, and therein their punishment consisted. St. Basil's canons speak of the same punishment for trigamists, or persons that were married a third time.<sup>1</sup> They were to be under penance for five years; half the time to be hearers only, and half the time co-standers: that is, they might stay to hear the prayers of the faithful, but not partake of the communion with them. So that here were two degrees of this lesser excommunication; the one excluding them only from the eucharist, but allowing them to pray with the faithful; and the other excluding them from the prayers of the faithful, and only allowing them to pray with the catechumens; but neither of them expelling such delinquents totally from the communion of the Church.

SECT. 8.—3dly. In Expulsion from the Church, called the Greater Excommunication, total Separation, *Anathema*, and the like.

The greater excommunication was, when men were totally expelled the Church, and separated from all communion in holy offices with her. Whence in the ancient canons it is distinguished by the names of Παντελής Ἀφορισμός, *the total separation*, and *Anathema, the curse*: it being the greatest curse that could be laid upon man. It is frequently also signified by the several terms and phrases of, Ἀπείργεσθαι τῆς ἐκκλησίας, Ἀποκλείεσθαι and Ῥίπτεσθαι τῆς ἐκκλησίας, Ἐκτός εἶναι Ἐκκερύττεσθαι τῆς συνόδου, Ἀπείρξει τῆς ἀκροάσεως. &c. All which denote men's being wholly cast out of the Church, by the most formal excommunication, and debarred not only from the eucharist, but from the prayers, and hearing the Scriptures in any assembly of the Church. This form is elegantly expressed by Synesius with all the appendages and consequents of it, in his excommunication of Andronicus, mentioned before, in these words: “now that the man is no longer to be admonished, but cut off as an incurable member, the Church of Ptolemais makes this declaration,<sup>2</sup> or injunction to all her

<sup>1</sup> Basil. can. iv.

<sup>2</sup> Synes. Ep. lviii. p. 199.



sister Churches throughout the world: let no Church of God be open to Andronicus and his accomplices; to Thoas and his accomplices; but let every sacred temple and sanctuary be shut against them. The devil has no part in paradise; though he privily creep in, he is driven out again. I therefore admonish both private men and magistrates, neither to receive them under their roof, nor to their table; and priests more especially, that they neither converse with them living, nor attend their funerals when dead. And if any one despise this Church, as being only a small city, and receive those that are excommunicated by her, as if there was no necessity of observing the rules of a poor Church; let them know, that they divide the Church by schism, which Christ would have to be one. And whoever does so, whether he be Levite, presbyter, or bishop, shall be ranked in the same class with Andronicus: we will neither give them the right hand of fellowship, nor eat at the same table with them; and much less will we communicate in the sacred mysteries with them, who chuse to have part with Andronicus and Thoas." I have recited this whole form, not only because it is curiously drawn up by an excellent pen, but also because it opens the way into the further knowledge of the discipline of the Church. For here we may observe four things, as concomitants, or immediate consequents of this greater excommunication. 1. That casting out of the Church, is represented under the image of casting out of Paradise, and paralleled with it, in the form of excommunication. 2. That as soon as any one was struck out of the list of his own Church, notice was given thereof to the neighbouring Churches, and sometimes to the Churches over all the world, that all Churches might confirm and ratify this act of discipline, by refusing to admit such an one to their communion. Forasmuch as that 3. he that was legally excommunicated in one Church, was by the laws of Catholic unity, and rules of right discipline, to be held excommunicate in all Churches, till he had given just and reasonable satisfaction: and for any Church to receive such an one into her communion, was so great an offence, as to be thought to deserve the same punishment with the offending criminal. 4. That when men were thus excommuni-

cated, they were not only excluded from communion in sacred things, but shunned and avoided in civil conversation as dangerous and infected persons. All these things are evident from this single passage of Synesius; but because the knowledge of the manner of exercising ecclesiastical discipline, depends upon the truth of them, it will not be amiss a little more distinctly to explain and confirm them.

First then, I observe, that casting out of the Church, is here represented under the image of Paradise, and paralleled with it in the form of excommunication. And so it is said by St. Jerom,<sup>1</sup> “that sinners transgress the covenant of God in the Church, as Adam did in Paradise: and shew themselves followers of their first father, that they may be cast out of the Church, as he was out of Paradise.” In like manner St. Austin, speaking of Adam’s expulsion out of Paradise,<sup>2</sup> says, “it was a sort of excommunication: as now in our Paradise, that is, the Church, men by ecclesiastical discipline are removed from the visible sacraments of the altar.” And Epiphanius notes the same custom,<sup>3</sup> as more nicely observed by the sect of the Adamians: for if any one was taken in a crime, they would not suffer him to come into their assembly, but called him Adam, the eater of the forbidden fruit, and adjudged him to be expelled, as out of Paradise, that is, their Church. So that this was a common form or phrase both in the discipline of heretics and the Church.

SECT. 9.—This Sort of Excommunication was commonly notified to all other Churches.

Secondly, I observe, that as soon as any one was in this manner excommunicated by any Church, notice thereof was

<sup>1</sup> Hieron. Com. in Hoseam. cap. vi. Prævaricati sunt pactum Dei in ecclesiâ, sicut Adam prævaricatus est in paradiso: et imitatores se antiqui parentis ostendunt, ut quomodo ille de Paradiso, sic et isti ejiciantur de ecclesiâ.

<sup>2</sup> Aug. de Genesi ad Literam. lib. ii. cap. xl. tom. iii. p. 273. Alienandus erat, tanquam excommunicatus. Sicut etiam in hoc Paradiso, id est, ecclesiâ, solent à sacramentis altaris visibilibus homines disciplinâ ecclesiasticâ removeri.

<sup>3</sup> Epiphani. Hær. lii.

commonly given to other Churches, and sometimes by circular letters to all eminent Churches over all the world, that all Churches might confirm and ratify this act of discipline, by refusing to admit such an one to their communion. To this purpose we find a canon in the first Council of Toledo,<sup>1</sup> “ that if any powerful man oppress and spoil a clerk, or a poor man, or one of a religious life, and a bishop summon him before him, to have a trial, and he refuses to obey the summons; in that case he shall give notice by letter to all the bishops of the province, and to as many as possibly he can, that such an one be held excommunicate, till he obediently submits, and makes restitution.” This was usually most punctually observed in the case of heretics and their condemnation. For so the historians tell us,<sup>2</sup> when Alexander, bishop of Alexandria, had deposed and anathematised Arius, he sent his circular letters to all Churches, giving an account of his proceedings against him. And this was the constant practice in all Councils, to send about their synodical letters, to signify what heretics they condemned, that all Churches might be apprised of their errors, and refuse their communion to the authors of them. And thus every bishop was careful to inform his brethren and neighbouring Churches, whenever he had occasion to use this severe punishment against any offender. Thus St. Austin having deposed Victorinus, an aged subdeacon, and expelled him the Church, because he was found hypocritically in private to have propagated the abominable heresies of the Manichees, writes to Deuterius, one of his fellow bishops, and tells him,<sup>3</sup> he did not think it sufficient to have used this congruous ecclesiastical severity

<sup>1</sup> Con. Tolet. i. can. II. Si quis de potentibus clericum, aut quemlibet pauperem, aut religiosum expoliaverit, et mandaverit eum ad se venire episcopus ut audiatur, et is contempserit; invicem mox scripta pereurrant per omnes provincie episcopos, et quoscunque adire poterint, ut excommunicatus habeatur ipse, donec obediat et reddat aliena.

<sup>2</sup> Soerat. lib. i. cap. 6. Theod. lib. i. cap. 4.

<sup>3</sup> Aug. Ep. lxxiv. ad Deuterium. Ejus fictionem sub Clerici specie vehementer exhorruî, cumque coercitum pellenduna de civitate curavi: nec mihi hoc satis fuit, nisi et tuæ sanetitati cum meis literis intimarem, ut à clericorum gradu congruè ecclesiastica severitate dejectus, cavendus omnibus innotescat.

against him, unless he also gave intimation of what he had done against him, that every one being well apprised, might know how to be aware of him.

SECT. 10.—After which he that was excommunicated in one Church, was held excommunicate in all Churches.

Then, thirdly, whoever was thus excommunicated in one Church, was held excommunicate in all Churches. For such was the perfect harmony and agreement of the Catholic Church, that every Church was ready to ratify and confirm all acts of discipline exercised upon delinquents in any other Church: so that he, who was legally excommunicated in one Church, was by the laws of Catholic unity and rules of right discipline held excommunicate in all Churches; and no Church could or would receive him into communion, before he had given satisfaction to the Church whereof he was a member: and to do otherwise, was to incur the same penalty that was inflicted upon the offending party. I have given some evidence of this before,<sup>1</sup> in speaking of the unity of the Church: and here I shall a little further confirm it, to show the exactness of the ancient Church in the administration of discipline, both from her laws and practice. Her laws are altogether uniform upon this point, and run universally in this tenour, that no person excommunicated in one Church, should be received in another, except it were by the authority of a legal synod, to which there lay a just appeal, and which was allowed to judge in the case. There are two canons among those called Apostolical to this purpose. “If any presbyter or deacon is suspended from communion by his bishop,<sup>2</sup> he shall not be received by any other but the bishop that suspended him, except in case the bishop chance to die that suspended him.” And again,<sup>3</sup> “If any clergyman or layman, who is cast out of the Church, be received in another city without commendatory letters, both he that

<sup>1</sup> Chap. i. sect. 11.  
can. xiii.

<sup>2</sup> Canon. Apost. xxxii.

<sup>3</sup> Ibid.

received him, and he that is so received, shall be cast out of communion." The Council of Nice is supposed to refer to these ancient canons, when it says,<sup>1</sup> "the rule shall stand good according to the canon, which says, he that is cast out by one bishop, shall not be received by another: but synods shall be held twice a year to examine, whether any one person was excommunicated unjustly by the hasty passion, or contention, or any such irregular commotion of his bishop; and if it appear that he was excommunicated with reason, he shall be held excommunicate by all other bishops, till the synod thinks fit to shew him favour." The Council of Antioch not long after renewed this canon,<sup>2</sup> "If any one is excommunicated by his own bishop, he shall not be received by any other but the bishop that excommunicated him, unless upon appeal to the synod he give satisfaction, and receive another sentence from the synod." The learned reader may find many other canons to the same purpose in the Councils of Eliberis,<sup>3</sup> and Sardica,<sup>4</sup> and Milevis,<sup>5</sup> and the first of Arles,<sup>6</sup> and Turin,<sup>7</sup> and Saragossa,<sup>8</sup> which all run in the same tenour, and need not here be repeated. It was by this rule and principle that Cornelius refused to admit Felicissimus to communion at Rome,<sup>9</sup> because he had been excommunicated by Cyprian at Carthage. And for the same reason Marcion, as had been noted before, could find no reception among the Roman clergy, because he was excommunicated by his own father and had given no satisfaction to him, as Epiphanius relates the story.<sup>10</sup> St. Austin likewise writing to one Quintian,<sup>11</sup> who lay under the censure of his bishop, tells him, that if he came to him, not communicating with his own bishop, he could not be received to communion with him. Nay, he had such a regard for this rule of discipline, that if a Donatist, that was

<sup>1</sup> Con. Nic. can. v.<sup>2</sup> Con. Antioch. can. vi.<sup>3</sup> Con. Eliber. can. liii.<sup>4</sup> Con. Sardic. can. xiii.<sup>5</sup> Con. Milevit. can. xviii.<sup>6</sup> Con. Arelat. i. can. 16.<sup>7</sup> Con. Turin. can. iv. et vi.<sup>8</sup> Con. Cæsaraugust. can. v.<sup>9</sup> Vid. Cyp. Ep. lv. al. lix. ad Cornel. p. 126.<sup>10</sup> Epiphanius.

Hier. xlii.

<sup>11</sup> Aug. Ep. cxxxv. Si ad nos venires, venerabili

episcopo non communicans, nec apud nos posses communicare.

under censure among his own bishops, pretended to come over to the Catholic Church,<sup>1</sup> he would not receive him without first obliging him to do the same penance that he should have done, had he stayed among them. And he greatly complains of the Donatist bishops, as dissolving all the bands of discipline, whilst they encouraged the greatest criminals, who were under discipline for their ill lives in the Church, to come over to them, where they might escape doing penance, under pretence of receiving a new baptism: and then, as if they were renewed and sanctified, though they were really made worse under pretence of new grace, they could insult the discipline of the Church, from which they fled, to the highest degree of sacrilegious madness. He gives an instance in one, who being used to beat his mother, and threatening to kill her, was in danger of falling under the discipline of the Church for these his insolent and unnatural cruelties; to avoid this, he goes over to the Donatists, who without any more ado rebaptise him in his madness,<sup>2</sup> and put him on the white garment, or *albe* of baptism, whilst he was fuming and thirsting after his mother's blood. So this man, who was meditating murder against his own mother, was by this means advanced to an eminent and conspicuous place within the chancel, and set as a sanctified creature before the eyes of all, who could not look upon him but with sighing and mourning. The truth is, this was a very scandalous practice in the Donatists, done purely to strengthen their party: and nothing has done more mischief to the Church, or more

<sup>1</sup> Aug. Ep. cxlix. ad Euseb. Ego istum modum servo, ut quisquis apud eos propter disciplinam degradatus ad Catholicam transire voluerit, in humiliatione penitentiae recipiatur, quo et ipsi cum forsitan egerent, si apud eos manere voluisset. Ab eis verò considera, quæso re, quam execrabiliter fiat, ut quos malè viventes ecclesiasticâ disciplinâ corripimus, persuadeatur eis ut ad alterum lavaerum veniant—deinde quasi renovati et quasi sanctificati, disciplinæ, quam ferre non potuerunt, deteriores facti specie novæ gratiæ, sacrilegio novi furoris insultent.

<sup>2</sup> Aug. Ep. clxviii. ad eundem. Transit ad partem Donati, rebaptizatur furens, et in maternum sanguinem fremens albis vestibus candidatur. Constituitur intra cancellos eminent et conspicuus, et omnium gementium oculis matricidii meditator tanquam renovatus opponitur.

enervated the power of ecclesiastical discipline, than the receiving of scandalous sinners, who fly from justice and the censures of the Church, into other communions, and their protecting and even caressing them as saints, who ought to have been punished as the greatest criminals. Upon this account the Church went as far as possibly she could, in making severe laws to discourage this practice; inflicting the same penalty upon any one that received an excommunicate person into public or private communion, as the excommunicated person himself was liable to. Thus in the Council of Antioch one canon says,<sup>1</sup> "If any bishop, presbyter, or deacon communicate with an excommunicated person, he himself shall be excommunicated, as one that confounds the order of the Church." Another,<sup>2</sup> "If any bishop receives a presbyter or deacon, deposed for contumacy by his own bishop, he shall be censured by a synod, as one that dissolves the laws of the Church." And a third canon says,<sup>3</sup> "If any bishop deposed by a synod, or presbyter or deacon deposed by their own bishop, presume to officiate in any part of divine service; they shall not only be incapable of being restored, but all that communicate with them shall be cast out of the Church; especially if they do so, after they know that sentence was pronounced against them." In like manner the first Council of Orange,<sup>4</sup> "If any bishop presumes to communicate with one that is excommunicate, knowing him to be so, without his being reconciled to the bishop by whom he was excommunicated, he shall be treated as a guilty person." The second Council of Carthage says more expressly,<sup>5</sup> "That a bishop, presbyter, or deacon, who receives those into communion, who were deservedly cast out of the Church for their crimes, shall be held guilty of the same crimes with them." The

<sup>1</sup> Con. Antioch. can. ii.

<sup>2</sup> Ibid. can. iv.

<sup>3</sup> Ibid. can. v. see also can. i.

<sup>4</sup> Con. Arausican. can. xi. Placuit in reatum venire episcopum, qui admonitus de excommunicatione cujusquam, sine reconciliatione ejus qui eum excommunicavit, ei communicare præsumpserit.

<sup>5</sup> Con. Carth. ii. can. 7. Placuit ut qui meritò facinorum suorum ab ecclesiâ pulsi sunt, si ab aliquo episcopo, vel presbytero, vel clerico fuerint in communionem suscepti, etiam ipse pari cum eis crimine teneatur obnoxius.

fourth Council of Carthage declares universally,<sup>1</sup> “ whoever he be, clergyman or layman, that communicates with an excommunicate person, shall himself be excommunicated.” St. Basil’s words are very remarkable to an offender whom he threatened to excommunicate,<sup>2</sup> “ Thou shalt be an anathema to all the people, and whoever receives thee, shall be excommunicate in all Churches.” The like may be read in the Apostolical Canons,<sup>3</sup> to which the ancient Councils so often refer as the standing rule of discipline, “ If any clergyman or layman, who is cast out of the Church, be received in another city without commendatory letters, both he that receives him, and he that is so received, shall be cast out of communion.” Which answers an objection that might be raised in the case, viz. what if a bishop knew not by any formal intimation that such or such a person was excommunicate, and so through ignorance received him? To this it is here answered, that this did not excuse him, because he ought by the rule of Catholic commerce to receive no stranger to communion, that did not bring commendatory letters, or testimonials, from his own bishop, that he was in the communion of the Church. If any travelled without these, he was to be suspected as an excommunicated person, and accordingly treated as one under censure. But what, if a person was unjustly excommunicated by his own bishop? might not another bishop do him justice, by relaxing his unlawful bonds, and admit him to communion? I answer, no: for in this case the Church provided another more proper remedy, that every man should have liberty to appeal from the sentence of his own bishop to a provincial synod, which was by the canons of Nice,<sup>4</sup> and others appointed to be held twice a year for this very purpose, that if any one was

<sup>1</sup> Con. Carth. iv. can. 73. Qui communicaverit vel oraverit cum excommunicato, sive clericus, sive laicus, excommunicetur.

<sup>2</sup> Basil. can. lxxxix.

<sup>3</sup> Canon. Apost. can. xiii. Vid. Isidor.

Pelus. lib. iii. ep. 259.

<sup>4</sup> Vid. Con. Nic. can. v. Con.

Antioch. can. vi. Sardie. c. xvii. Carthag. ii. can. 8. et 10. Con. Milevit. can. xxii. Carthag. iii. can. 8. Vasense. c. v. Veneticum. c. ix. Aug. Ep. exxxvi. &c.



aggrieved by the censure of his own bishop, he might have his cause heard over again in a provincial synod; from which there lay no further appeal to any single bishop, no, not even to the bishop of Rome, who most pretended to it; but all such causes were to be heard and determined in the province where they arose, to obviate fraud and surreptitious communion, and put an end to all strife and contention, as has been shewn more fully in the foregoing chapter, sect. 14. out of the debate between the bishops of Rome and the African Churches. These were the rules then generally observed throughout the whole Catholic Church, with respect to the rejection of excommunicate persons from the communion of all Churches. And by these rules the unity of the Catholic Church was duly maintained, and discipline for the most part kept up in its true vigour and glory.

SECT. 11.—And avoided also in Civil Commerce and outward Conversation and allowed no Memorial after Death.

But fourthly, Synesius in the forementioned form of excommunication, not only speaks of denying men communion in sacred things, but also in civil commerce and external conversation: no one was to receive excommunicated persons into their houses, nor eat at the same table with them; they were not to converse with them familiarly, whilst living; nor perform the funeral obsequies for them, when dead, after the solemn rites and manners that were used toward other Christians. These directions were drawn up upon the model of those rules of the Apostles, which forbid Christians to give any countenance to notorious offenders, continuing impenitent, even in ordinary conversation. As that of St. Paul, 1 Cor. v. 11. “I have written unto you not to keep company, if any man that is called a brother, be a fornicator, or covetous, or an idolater, or a railer, or a drunkard, or an extortioner, with such an one no not to eat.” And again, Rom. xvi. 17. “Mark them which cause divisions and offences, contrary to the doctrine which ye have learned, and avoid them.” And 2 Thess. iii. 14. “If any man obey not our word by this epistle, note that

man, and have no company with him, that he may be ashamed." And that of St. John, "If there come any unto you, and bring not this doctrine, receive him not into your house, neither bid him, God speed. For he that biddeth him God speed, is partaker of his evil deeds." 2 John, x. 11. In conformity to these rules, and the reasons here assigned for the observation of them, the Ancients made strict laws to forbid all familiar intercourse with excommunicated persons in ordinary conversation, unless some absolute necessity, or some greater and more obliging moral consideration required them to do otherwise. The first Council of Toledo has four or five canons to this purpose.<sup>1</sup> It will be sufficient to recite the first of them, which is in these words: "If any layman is excommunicated, let no clerk or religious person come near him or his house. In like manner if a clergyman is excommunicated, let the clergy avoid him. And if any is found to converse or eat with him, let him also be excommunicated." The second Council of Arles,<sup>2</sup> orders a suspended bishop to be excluded not only from the conversation and table of the clergy, but of all the people likewise. And many other such canons occur in the Councils of Vannes,<sup>3</sup> and the first of Tours,<sup>4</sup> and the first of Orleans,<sup>5</sup> excluding excommunicate persons from all entertainments of the faithful. The Apostolical Canons<sup>6</sup> forbid any one to communicate in prayer so much as in a private house with excommunicate persons under the same penalty of excommunication. And if they happened to die in professed rebellion and contempt of penance, then they were treated as all other contemners and despisers of holy ordinances were, by being denied the

<sup>1</sup> Con. Tolet. i. can. 15. Si quis laicus abstinetur, ad hunc vel ad domum ejus, clericorum vel religiosorum nullus accedat. Similiter et clericus, si abstinetur, à clericis devitetur. Si quis cum illo colloqui aut convivari fuerit deprehensus, etiam ipse abstinetur. Vid. can. 7. 16. et. 18. Ibid.

<sup>2</sup> Con. Arelat. ii. can. 30. Suspensum episcopum non solum à clericorum, sed etiam à totius populi colloquio atque convivio placuit excludi.

<sup>3</sup> Con. Veneticum, can. iii. A convivio fidelium submovendos. Con. Herden. c. iv.

<sup>4</sup> Con. Turon. i. can. 8. A convivio fidelium extraneus habeatur.

<sup>5</sup> Con. Aurel. i. can. 3, 5. 13. Con.

<sup>6</sup> Canon Apost. can. xi.

honour and benefit of Christian burial. No solemnity of psalmody or prayers was used at their funeral: nor were they ever to be mentioned among the faithful out of the Diptychs, or holy books of the Church, according to custom in the prayers at the altar. This is evident, not only from what is said by Synesius, but from the whole tenour of ecclesiastical discipline; which excludes all that die in professed rebellion and contempt from the privilege of Christian burial, such as catechumens dying in wilful neglect of baptism, and those that laid violent hands upon themselves, and such like, as all dying in impenitency and a desperate condition.<sup>1</sup> And it is further evident from that very exception, which we have observed before<sup>2</sup> to be made in favour of such humble penitents, as modestly submitted to the discipline of the Church, and were labouring earnestly to obtain a re-admission, but were snatched away by sudden death, before they could obtain the formality of an absolution: in this case, as I shewed, the canons<sup>3</sup> allowed their oblations to be received, and their funeral obsequies to be celebrated after the usual solemnity and manner of the Church: which exception supposes, that all the rest, who died refractory and impenitent, were wholly denied these privileges, as a just consequence of their censures. Not to mention now the custom of erasing the names of excommunicate persons out of the Diptychs, or sacred registers of the Church, which was the immediate effect of excommunication, and excluded them from all the privileges of any future memorial<sup>4</sup> or commemoration, till they were restored again. I will not stand now to dispute, whether this custom took its original from the practice of the Jewish synagogue; or whether our Saviour alluded to that practice as some learned men think,<sup>5</sup> when he said to his disciples, Luke vi. 22. “Blessed are ye, when they shall separate, *or excommunicate*, you out of the synagogue, and cast out, *or expunge*, your names out of the holy books:” certain it

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<sup>1</sup> Vid. Con. Bracar. i. can. 34, et 35.

<sup>2</sup> Chap. i. sect. 7.

<sup>3</sup> Vid. Con. Vasense. ii. can. ii.

<sup>4</sup> Vid. Evagrius. lib. iii.

cap. 24.

<sup>5</sup> Dodwel. Dissert. v. in Cyprian. n. 18.

is, that as this erasing or expunging the names of excommunicate persons out of the Diptychs was used in the Christian Church, it always implied the denial of communion to them even after death: they could neither have a Christian burial, nor a Christian commemoration, among those that were departed in the true faith and unity of the Church; but were excluded, both living and dying, from all society both sacred and civil, as the immediate effect and consequence either of a voluntary and chosen, or a judicial and penal excommunication.

For to shew that these were not mere empty and ineffective laws, we may often observe them in a remarkable manner put in practice. Irenæus<sup>1</sup> tells us from those who had it from the mouth of Polycarp, that when he once occasionally accompanied St. John into a bath at Ephesus, and they there found Cerinthus, the heretic, St. John immediately cried out to Polycarp, Let us fly hence, lest the bath should fall, in which Cerinthus, the enemy of truth, is. Eusebius and Theodoret<sup>2</sup> both mention the same story out of Irenæus; and Epiphanius also<sup>3</sup> relates it at large, only with this difference, that it was Ebion, the heretic, to whom, by the guidance of the Spirit, he shewed this aversion, for a memorial and example to future ages. Whence Baronius conjectures,<sup>4</sup> both those heretics might be present, and that the saying had equal relation to them both. Irenæus in the same place adds this further concerning Polycarp, that happening once to meet Marcion, the heretic, and Marcion asking him whether he did not know him, he replied, Yes, I know thee to be the first-born of Satan. So cautious, says Irenæus, were the Apostles and their disciples, “*not to communicate so much as in word, μὴ μεχρὸν λόγῳ κοινωνεῖν, with the perverters of truth,*” according to that of St. Paul, “A man that is an heretic after the first and second admonition reject, knowing that such an one is subverted, and sinneth, being condemned of himself.” In

<sup>1</sup> Iren. lib. iii. cap. 4.  
Fabul. Hæretic. lib. ii. cap. 7.

<sup>2</sup> Euseb. lib. iv. cap. 14. Theod. de  
<sup>3</sup> Epiph. Hæres. xxx. Ebionit. n. 24.

<sup>4</sup> Baron. an. lxxiv. n. 9. Suicer. Thesaur. Eccles. Voce, Αἰρετικὸς. tom. i. p. 128

like manner St. Ambrose observes of a certain Christian judge, in the time of Julian, that having condemned one of his brethren for demolishing an altar, no one would vouchsafe to associate with him,<sup>1</sup> no one would speak to him or salute him. And St. Basil writing to Athanasius concerning a certain governor of Libya,<sup>2</sup> whom Athanasius had excommunicated for his immoralities, and according to custom had given notice of it to Basil, tells him, they would all avoid him, and have no communion with him in fire, or water, or house, that is, in the common ways of ordinary conversation. A great many other instances of the like kind might be given, but I shall only add that of Monicha, St. Austin's mother, toward her son, whilst he continued a Manichee. St. Austin himself tells us,<sup>3</sup> that she so detested the blasphemies of his error, and had such an aversion to him upon the account of them, that she would not admit him to eat with her at the same table in her own house. This was according to the discipline then practised in the Church, to deny sinners not only communion in sacred things, but also in the civil commerce of ordinary conversation.

SECT. 12.—The Grounds and Reasons of this Practice.

Now all this was done for very wise ends and reasons of Christian prudence and charity. 1. To make sinners ashamed, and by that shame to bring them to repentance. This is the reason given by the Apostle, "Note that man, and have no company with him, that he may be ashamed." 2. To terrify others by their example. Both these reasons are assigned by the canon of the Council of Tours, which orders relapsing sinners to be excluded both from the communion of the Church<sup>4</sup> and the entertainments of the faithful, that the shame and confusion arising from such treatment

<sup>1</sup> Ambros. Ep. xxix. ad Theodos. Nemo illum congressu, nemo illum unquam osculo dignum putavit.

<sup>2</sup> Basil. Ep. xlvii.

<sup>3</sup> Aug. Confess. lib. iii. cap. 11. Nolle habere secum eandem mensam in domo, aversans et detestans blasphemias erroris mei. Vid. Ser. 215. de Tempore.

<sup>4</sup> Con. Turon. i. can. 8. A communione ecclesie, vel à convivio fidelium extraneus habeatur, quo facilius et ipse compunctionem per hanc confusionem accipiat, et alii ejus terreantur exemplo.

might bring them to compunction, and terrify others by their example. 3. A third reason was the fear of partaking in other men's sins; if by their society they seemed to shew any countenance to them, it would be an hardening them in their iniquity, and involve such as contributed thereto, in the same guilt with the criminals themselves. "Therefore," says St. Cyprian,<sup>1</sup> "we ought to withdraw from sinners, and even fly from them, lest if a man join himself to those that walk disorderly, and go in the paths of error and wickedness, he himself also be held in the guilt of the same crimes." For this reason, writing to the people of Leon and Astorga, in Spain, where two bishops, Basilides and Martial, had been deposed for lapsing into idolatry, who afterwards made an attempt to draw in the people to accept them again for their bishops, after others had regularly by the discipline of the Church been ordained in their room, he tells them,<sup>2</sup> "they should not flatter themselves, as if they were free from partaking in sin, if they communicated with a sinful bishop, and gave their consent to the unlawful and unjust establishment of him in his bishopric, since the divine judgment had threatened and said by the Prophet Hosea, 'Their sacrifices shall be unto them as the bread of mourners: all that eat thereof, shall be polluted:' teaching and shewing us, that all men are bound over unto sin, who are defiled with the sacrifice of a profane and unjust priest." Which we find also to be declared in the Book of Numbers, when Korah, Dathan, and Abiram assumed to themselves the power of offering sacrifice in opposition to Aaron the priest. There the Lord commanded the people by Moses to separate themselves from them, lest if they were joined with those wicked men, they should be smitten in their wickedness. "Depart," says he, "from the tents of these hardened men, and touch nothing of theirs, lest ye

<sup>1</sup> Cypr. de Unit. Eccles. p. 119. Recedendum est à delinquentibus, vel imò fugiendum, ne dum quis malè ambulantis jungitur, et per itinera erroris et criminis graditur, pari crimine et ipse teneatur.

<sup>2</sup> Cypr. Ep. lxxviii. al. 67. ad Plebem Legionis et Asturicæ, p. 171. Nec sibi plebs blandiatur, quasi immunis esse à contagio delicti possit; cum sacerdote peccatore communicans, et ad injustum atque illicitum præpositi sui episcopatum consensum suum commodans, &c.

be consumed in all their sins." 4. A fourth reason was, to avoid contagion and infection. For conversing with profane men is endangering a man's own virtue: "Evil communications corrupt good manners." An infected member often destroys the whole body. Therefore as vile and notorious sinners were for this reason cut off from the body of the Church: so for the same reason all men were afterwards to avoid their society, for fear the poison of their infamous conversation should infect their morals, and diffuse itself into their minds by any artful conveyance of cunning craftiness, or the natural influence of bad example. "For wicked men speak with their feet, and teach with their fingers," as the Wise Man elegantly words it: their actions, as well as their discourses, are of a malignant influence, and are apt to leave ill tinctures and impressions upon the minds of others, so that a man cannot ordinarily converse with them without danger of infection. Therefore, says Cyprian,<sup>1</sup> "avoid such men, and drive away their pernicious communications both from your conversation and your ears, as the contagion of death. For thus it is written, 'Hedge about thine ears with thorns, and hearken not to an evil tongue.' And again, 'Evil communications corrupt good manners.' Our Lord teaches and admonishes us to withdraw from such, saying, 'They are blind leaders of the blind: and if the blind lead the blind, they shall both fall into the ditch.'" 5. But admitting some could converse with such without danger to themselves, they could not without manifest danger to others, who are weak and apt to be emboldened to follow the example of the strong to their apparent ruin and destruction. For these and the like reasons, whenever the Church cast any notorious offenders wholly out of her communion, she prohibited all others from conversing with them, both in kindness to the sinners and to the righteous, lest the one should be hardened in their impenitency, and the other corrupted by the spreading contagion and infection.

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<sup>1</sup> Cypr. de Unit. Eccles. p. 115. Vitae, quaeso vos, ejusmodi homines, et à latere atque auribus vestris pernicioosa colloquia, velut contagium mortis arcete, &c.

SECT. 13.—No Donations or Oblations allowed to be received from excommunicate Persons.

It is further observable, that as an indication of the Church's abhorrence of excommunicate persons, she allowed no gifts or oblations to be received from them; because that might have been interpreted retaining them still in some measure in her communion, and involving herself in the guilt of filthy lucre. Therefore she never admitted any one to make oblations, but such as were in full communion with her, and might lawfully partake of the sacrifice of the altar; as I have had occasion to shew more fully in another place.<sup>1</sup> Here I only note it again as a thing most remarkable, that she had such an aversion to any thing that appertained to them, that she would not so much as retain those gifts, which any such persons had freely offered, whilst they were in communion with her. This we learn from Tertullian, who, speaking of the expulsion of Valentinus and Marcion for their heresies at Rome, says, they were cast out once and again,<sup>2</sup> and particularly Marcion with his two hundred sestertia, which he had brought into the Church.

SECT. 14.—No one to marry with excommunicate Heretics, or receive their *Eulogiæ*, or read their Books; but burn them.

There are several other instances of their aversion to heresies in particular, when once the censures of the Church were passed upon them. The Council of Laodicea not only forbids all men to frequent their cemeteries and meetings,<sup>3</sup> held at the monuments of their pretended martyrs, or any where to pray with them; but also to receive any presents under the name of *Eulogiæ* from them;<sup>4</sup> because this was in some sort to communicate with them; these *Eulogiæ*, or sanctified loaves, being one way of testifying men's commu-

<sup>1</sup> Book xv. chap. ii.

<sup>2</sup> Tertul. de Præscript. adv. Hæretic. cap. xxx. Semel et iterum ejecti, Marcion quidem cum ducentis sestertiis suis, quæ ecclesiæ intulerat, &c.

<sup>3</sup> Vid. Con. Laodic. can. ix. xxxiii. et xxxiv.

<sup>4</sup> Ibid. can. xxxii. Ὅν ἐῖ ἀρετικῶν εὐλογίας λαμβάνειν, &c.



nion one with another. The same Council also forbids all members of the Church to enter into communion with heretics,<sup>1</sup> by giving their sons or daughters in marriage to them; neither are they allowed to take the sons or daughters of heretics in marriage to themselves, unless they promise to become Christians.<sup>2</sup> Where we may observe also, that they did not allow heretics, after they had broken the faith and communion of the Church, absolutely speaking, so much as the name of Christians. Other laws strictly prohibit men to read the books of heretics, as imagining that the poison of their errors was in a great measure dispersed and conveyed by them. Socrates<sup>3</sup> has recorded a letter of Constantine the Great, wherein he orders the Arians to be branded and stigmatised with the name of Porphyrians, and their books to be burnt, and makes it death for any one to conceal them and save them from the flames. And there are two laws now extant in the Theodosian Code, wherein the very same things are enjoined under very severe penalties. The first is a law made by Arcadius and Honorius against the Eunomians, a noted branch of the Arian heresy, wherein their books<sup>4</sup> are ordered to be sought after with a very diligent search, and to be burnt in the sight of the judges. And if any one was convicted of fraudulent hiding, and not discovering them, he should be punished with death, as a retainer and concealer of pernicious and magical books, containing the institutions of all manner of wickedness. The other law was made by Theodosius Junior against the Nestorians, where he refers to the former law of Constantine, and orders the followers of Nestorius to be called Simonians, for their imitating the portentous superstitions of Simon Magus; as Constantine had appointed the Arians to be called Porphyrians, from Porphyry the heathen. Then he orders their books, written against the Catholic faith and the Council of Ephesus, to be publicly burnt,<sup>4</sup> forbidding

<sup>1</sup> Vid. Con. Laodic. can. x. *Μή δεῖν τῆς τῆς ἐκκλησίας ἀδιαφόρως πρὸς γάμῃ ἢ κοινωνίαν συνάπτειν τὰ ἑαυτῶν παῖδια αἱρετικοῖς.*

can. xxxi. Vid. Con. Eliberit. can. xvi.

<sup>2</sup> Ibid.

<sup>3</sup> Socrat. lib. i. cap. 9.

<sup>4</sup> Cod. Theod. lib. xvi. tit. 5. de Hæretic. leg. xxxiv. Codices sanè eorum,

any one to have, read, or transcribe them, under pain of confiscation. This custom of burning heretical books, is confirmed by many other laws; of which more hereafter, when we come to speak of the punishment of heretics in particular. Here I observe, that the prohibition of reading or retaining them was so limited by the Church, as to allow bishops to read them, when time and necessity so required,<sup>1</sup> in order to confute them. For the fourth Council of Carthage,<sup>2</sup> which forbids them universally the reading of heathen authors, allows the reading of heretical books, with this limitation and restriction. And therefore the retaining them in this case, was not to be interpreted that fraudulent retaining and concealment, which the imperial laws condemned under the penalties of confiscation and death. Gothofred observes one thing further upon the usefulness and effect of these laws, which is fit to be remarked,<sup>3</sup> that the terror of them made heretics very cautious how they dispersed their books, and others as cautious how they retained or concealed them: insomuch that when St. Basil was about to confute the first book of Eunomius, he had a hard matter to compass it, as Photius reports,<sup>4</sup> the Eunomians were so industrious in concealing it. And when Eunomius had written his latter books in answer to Basil, he durst not publish them, but only among his confederates, in St. Basil's life time, for fear of Basil; and after his death,<sup>5</sup> durst only trust them in the hands of his friends, for fear of the penalties which the laws had laid upon them; though Philostorgius,<sup>6</sup> the Arian historian, makes bold after his manner, to give a different relation of it.

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*scelerum omnium doctrinam ac materiam continentes, summâ sagacitate mox queri, ac prodi, exercitâ auctoritate mandamus, sub aspectibus eorum iudicatum incendio mox cremandos. Ex quibus si quis forte aliquid quâlibet occasione, vel fraude occultâsse, nec prodidisse convincitur, sciat se, velut noxiorum codicum, et maleficii criminis conscriptorum, retentorem, capite esse plectendum.*

<sup>1</sup> Cod. Theod. lib. xvi. tit. v. leg. 66. et in Actis Con. Ephes. Par. iii. cap. 46.

<sup>2</sup> Con. Carthag. iv. can. 16. Ut

episcopus gentiliun libros non legat; hereticorum autem pro necessitate et tempore. See book vi. chap. ii. sect. 4. where this question is more fully handled.

<sup>3</sup> Gothofred. in Cod. Theod. lib. xvi. tit. v. leg. 34.

<sup>4</sup> Phot. Cod. 137.

<sup>5</sup> Id. Cod. 138.

<sup>6</sup> Philostorg. lib. viii. cap. 12.

## SECT. 15.—What meant by Delivering unto Satan.

There are two or three things more, relating to the manner, and form, and effects of excommunication, which have something of difficulty in them, and therefore it will be proper to give them a little explication here. The first difficulty arises from the Apostle's order, given to the Corinthians, how to proceed against the incestuous person, who had married his father's wife, 1 Cor. v. 5. where he enjoins them, in the name, and with the power of the Lord Jesus Christ, to "deliver such an one unto Satan, for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus." So again, 1 Tim. i. 20. speaking of Hymenæus and Philetus, he says, "Whom I have delivered unto Satan, that they may learn not to blaspheme." There are two famous expositions of these passages. Bishop Beveridge,<sup>1</sup> and Estius,<sup>2</sup> after Balzamon and Zonaras,<sup>3</sup> with many other modern interpreters, whom Estius mentions, think that "delivering unto Satan," is but another expression for excommunication, and the spiritual effects consequent to it, that is, the punishment of the soul, and not of the body. For when men are cast out of the society of the faithful, which is the Church of Christ, they are thereby deprived of all the benefits that are proper and peculiar to that society; as the common prayers of the Church, the public use of the word or doctrine, the participation of the sacrament, the pastoral care of those that preside over them, and the special grace of divine protection; and so remain exposed to the tyranny and incursions of Satan, whose kingdom is without the Church. And thus far they allow, that every excommunicated person was delivered unto Satan, but not for any corporal vexation or punishment to be inflicted on him. Others are of opinion, that besides this spiritual punishment naturally consequent to excommunication, there was in the Apostles' days another conse-

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<sup>1</sup> Beverig. Not. in Can. Apost. x.

<sup>2</sup> Estius in 1 Cor. v. 5.

<sup>3</sup> Balsam. et Zouar. in Basil. can. 7.

quent of it, which was corporal power and possession, or the infliction of bodily vexations and torments by the ministry of Satan on those who were delivered unto him. Dr. Hammond, and Grotius, and Lightfoot, are the great supporters of this opinion among the Moderns, and they have almost the general concurrence of the ancient interpreters on their side; which Estius does not much deny, though he chose to follow Peter Lombard and Aquinas, and the ordinary gloss against them. He owns St. Chrysostom and the Greeks were wholly of this opinion; and among the Latins, St. Ambrose and Pacian; and St. Austin also, though not very positivo, he thinks, in his assertion. But he is mistaken; for St. Austin was clearly of this opinion. He does not say indeed, it was death, which the Apostle inflicted upon the Corinthian, as St. Peter did upon Ananias and Sapphira; but he says expressly, it was some punishment,<sup>1</sup> inflicted on him by the ministry of Satan. Which he distinguishes from a common excommunication, by the name of *Flagellum Domini, the scourge of the Lord*; which he says, the Apostle used upon some special occasions, when there was no way to cure an epidemical disease, or correct a single sinner, buoyed up and favoured by the multitude,<sup>2</sup> but only by interceding with God to take the matter into his own hand, and use the severe mercy of his own divine discipline upon them, when the contagion of sin had invaded a multitude; in which case it were not only in vain to advise men to separate from sinners, but pernicious and sacrilegious; because such counsels in such a state of affairs would be thought impious and proud, and more

<sup>1</sup> Aug. de Sermone Dom. in Monte. lib. i. cap. 20. Etsi nolunt hic mortem intelligere, quod fortasse incertum est, quamlibet vindictam per Satanam factam ab Apostolo fateantur.

<sup>2</sup> Aug. Epist. Parmen. lib. iii. cap. 2. Quid aliud dicit hic, Non parcam: nisi quod superius ait, Et lugeam multos: ut luctus ejus impetraret flagellum à Domino, quo illi corriperentur, qui jam propter multitudinem non poterant ita corripri, ut ab eorum conjunctione se ceteri continerent, et eos erubescere facerent?— Et reverà si contagio peccandi multitudinem invaserit, divinæ disciplinæ severa misericordia necessaria est: nam consilia separationis et inania sunt et pernicioosa atque sacrilega; quia et impia et superba fiunt, et plus perturbant infirmos bonos, quam corrigant animosos malos.

tend to disturb good men that were weak, than correct the stubbornness and animosity of the evil. In this sense he there also in like manner interprets two other passages of the Apostle, 2 Cor. xii. 21. "Lest when I come again, my God will humble me among you, and I shall bewail many which have sinned already, and have not repented of the uncleanness, and lasciviousness, and fornication, which they have committed." And 2 Cor. xii. 1, 2. "This is the third time I am coming to you : in the mouth of two or three witnesses shall every word be established. I foretold you before, and foretell you as if I were present the second time, and being absent, I now write to them which heretofore have sinned, and to all other, that if I come again, I will not spare; since ye seek a proof of Christ speaking in me." Here, he says, the Apostle does not threaten them with that punishment, which should make others abstain from their society, but by his prayers and tears to turn them over,<sup>1</sup> to the divine scourge to correct them; and that this was the power of Christ speaking in him. Where nothing can be plainer, than that St. Austin distinguishes this as an extraordinary power from the ordinary power of excommunication; which the Apostle had in reserve for such difficult cases, where the ordinary power of excommunication, by reason of the multitude or confederacy of sinners, would not by its own bare virtue prove effectual. So that according to him, this power of delivering unto Satan, was something superior to that ordinary power of casting men out of the Church, and the society of the faithful. St. Ambrose was of the same mind with St. Austin: for explaining how the incestuous man was punished, he says,<sup>2</sup> "As the Lord gave the devil no power over the soul of holy Job, but only permitted him to afflict his body; so this man was delivered to Satan." And St. Jerome says,<sup>3</sup> "the Apostle

<sup>1</sup> Aug. Epist. Parmen. lib. iii. cap. 2. Per luctum suum potius eos divino flagello coercendos minans, quàm per illam correptionem, ut caeteri ab eorum conjunctione se continent.

<sup>2</sup> Ambros. de Pœnit. lib. i. cap. 12. Sicut Dominus in animam sancti Job potestatem non dedit, sed in carnem ejus permisit licentiam, ita et hic traditur Satane.

<sup>3</sup> Hieron. Com. in Gal. v. Præcepit eum tradi pœnitentiæ, in interitum et vexationem carnis, per jejunia et agrotationes, ut spiritus salvus fiat.

commanded him to be put under penance for the destruction and vexation of the flesh by fasting and sickness, that his spirit might be saved." And so Pacianus,<sup>1</sup> by the destruction of the flesh, understands tribulation and infirmities of the body. The Author of the Short Notes,<sup>2</sup> under the name of St. Jerom, says the same. So likewise Cassian,<sup>3</sup> to whom Estius himself adds Primasius, and Haimo. St. Chrysostom among the Greeks, gives the same sense of the Apostle's words. He says, "the Apostle delivered the Corinthian offender to Satan, as to a schoolmaster, for the destruction of the flesh. As it happened to holy Job, but not for the same cause: for there it was done to make his crown of glory more illustrious; but here the man only gains remission of his sins: that Satan might torture him with some cruel ulcer, or other disease." And he observes how the Apostle says elsewhere, that such diseases were sometimes inflicted on sinners immediately by the hand of God: when we suffer such things, we are judged of the Lord: but here he delivers him to Satan, the more sensibly to touch and affect him.<sup>4</sup> He gives the same exposition of the Apostle's words concerning Hymenæus and Philetus, "Whom I have delivered unto Satan, that they may learn not to blaspheme." "As executioners," says he, "though they be very wicked themselves, are made instruments<sup>5</sup> of chastising others: so here it is with the wicked devils. Job was thus delivered to Satan, not for his sins, but to obtain the greater glory." He adds, "that God often did this immediately by his own power, without the intervention of any human ministry. For many times the priests know not who are sinners, or who are unworthy partakers of the holy mysteries: therefore God takes the judgment into his own hands, and delivers them unto Satan. For when diseases, or misfortunes, or sorrows, or calamities, or any thing of the like kind befalls men, it is for this reason, as St. Paul also

<sup>1</sup> Pacian. Ep. iii. ad Sempronian. Bibl. Patr. tom. iii. p. 66. Ad solius carnis interitum, tentationes scilicet, carnis angustias, detrimenta membrorum.

<sup>2</sup> Hieron. Com. in 1 Cor. v. 5.

<sup>3</sup> Cassian.

Collat. vij. cap. 25, 26, 27, 28.

<sup>4</sup> Chrys. Hom. xv. in

1 Cor. p. 151.

<sup>5</sup> Rom. vi. in 1 Tim. p. 1517.

intimates, saying, "For this cause many are sick and weak among you, and many sleep." Theodoret follows Chrysostom in his exposition: for speaking of Hymenæus and Alexander, he says,<sup>1</sup> "the Apostle delivered them to Satan, as to a cruel executioner; for being separated from the body of the Church, and left destitute of divine grace, they were cruelly tormented by the adversary, falling into diseases, and sufferings, and other evils and calamities, which the devil is wont to inflict upon men." Now this being the general sense of the Ancients, both Greek and Latin, that this was an extraordinary apostolical power, distinct from the ordinary power of excommunication; we do not find that they ordinarily made use of this phrase, "Delivering unto Satan," in any of their forms of excommunication; as being sensible, that the Church, after the power of miracles was ceased, had no pretence to the power of inflicting bodily diseases, as the Apostles had, upon excommunicate persons by the ministry of Satan. Cassian indeed tells us,<sup>2</sup> that he knew several holy men, that were corporally delivered to Satan, and to great infirmities, for small offences. But that was by the immediate hand of God, and his chastisements, and not by the censures of the Church, which did not excommunicate holy men, nor any others, for small offences. The author of the Life of St. Ambrose,<sup>3</sup> says also, that he having to deal with a very flagitious sinner said, he ought to be delivered to Satan for the destruction of the flesh, that no one may dare to commit such things for the future. And he had no sooner spoken the word, but immediately, the very same moment, an unclean spirit seized the man, and began to tear him. But this, if true, was a singular instance of apostolical and miraculous power yet remaining in St. Ambrose, and there is scarce a parallel in-

<sup>1</sup> Theod. in 1 Tim. i. 20.

<sup>2</sup> Cassian. Collat. vii. cap. 25.

Corporaliter traditos Satanae, vel infirmitatibus magnis, etiam viros sanctos novimus, pro levissimis quibusque delictis, &c.

<sup>3</sup> Paulin. Vit. Ambros. Cùm deprehendisset auctorem tanti flagitii, ait, Oportet illum tradi Satanae in interitum carnis, ne talia aliquis in posterum audeat admittere. Quem eodem momento, cùm adhuc sermo esset in ore sacerdotis sancti, spiritus immundus correptum disceperere cœpit.

stance to be met with in all the history of the Church. The canons of old very rarely used this phrase. St. Basil mentions it once,<sup>1</sup> and Gratian cites an Epistle of Pope Pelagius,<sup>2</sup> where it is said, "By the example of apostolical authority, we have learned to deliver unto Satan erring spirits, which draw others into error, that they may learn not to blaspheme." But in these places it seems to mean no more than excommunication or expulsion out of the Church, which is the spiritual delivering up to Satan, without any regard to bodily torture. For all men are sensible, that since the Apostles' days there was no such power generally granted to the ministers of the Church. And for this reason, Peter de Moulin tells us,<sup>3</sup> the reformed Church of France in their national synod of Alez, at which he himself assisted as moderator, Anno 1620, made an order, that in excommunication, no one should use the form of "Delivering unto Satan," Neither should the censure of *Anathema Maranatha* be pronounced against any man; forasmuch as no one ought to use that form, but he that knows the secrets of reprobation, and can tell by the revelation of God's Spirit, whether the person excommunicated has sinned against the Holy Ghost, or the sin unto death, that is, with such impenitency as will be final, and continue unto death; for which, St. John says, no one ought to pray. The prohibition here of the use of the form *Anathema Maranatha*, leads us to another inquiry,—what the Ancients understood by it? and whether they used it at any time as a form of excommunication?

SECT. 16.—What meant by *Anathema Maranatha*, and whether any such forms of Excommunication were In Use in the Ancient Church.

*Anathema* is a word that occurs frequently in the ancient canons, and the condemnation of all heretics. The Council

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<sup>1</sup> Basil. can. vii.  
quest iii. cap. 13. Apostolica auctoritatis exemplo, errantium, et in errorem mittentium spiritus tradendos esse Satane, ut blasphemare dediscant.

<sup>2</sup> Pelag. ap. Grat. Caus. xxiv.  
<sup>3</sup> Molinæ Vates, seu De omnisialisque Prophetis. lib. ii. cap. xi. p. 111.



of Gangra closes every one of its canons with the words, “*Ἀνάθεμα ἔστω*, *Let him be anathema, or accursed,*” that is, separated from the communion of the Church, and its privileges, and from the favour of God, without repentance, that goes against the tenour of the thing there decreed. And this is the style of most other Councils, grounded upon that form of St. Paul, “If we, or an angel from heaven, preach any other gospel unto you, than that which we have preached unto you, let him be *Anathema* or *accursed.*” But the adding of *Maranatha* to *Anathema*, is not so common. There is little said of the word itself among the Ancients, and less of its use in any form of excommunication.<sup>1</sup> St. Chrysostom says,<sup>2</sup> it is a Hebrew word, signifying, *The Lord is come*: and he particularly applies it to the confusion of those who still abused the privileges of the Gospel, notwithstanding that the Lord was come among them. “This word,” says he, “speaks terror to those, who make their members the members of an harlot, who offend their brethren by eating things offered to idols, who name themselves by the names of men, who deny the resurrection. The Lord of all is come down among us; and yet ye continue the same men ye were before, and persevere in your sins.” St. Jerom says,<sup>3</sup> it was more a Syriac, than a Hebrew word, though it had something in it of both languages, signifying, *Our Lord is come*. But he applies it against the perverseness of the Jews, and others who denied the coming of Christ: making this the sense of the Apostle, “If any man love not the Lord Jesus Christ, let him be *Anathema, the Lord is come*; wherefore it is superfluous for any to contend with pertinacious hatred against him, of the truth of whose coming

<sup>1</sup> Gratian. Caus. xxiii. quæst. iv. cap. 30. mentions it as used in a form of excommunication by Pope Sylverius.

<sup>2</sup> Chrys. Hom. xlv. in I Cor. p. 718.

<sup>3</sup> Hieron. Ep. 137. ad Marcellam. *Maranatha magis Syrum est quàm Hebræum: tamen etsi ex confinio utrarumque linguarum aliquid et Hebræum sonat, et interpretatur, Dominus noster venit: ut sit sensus, si quis non amat Dominum Jesum, anathema sit; et illo completo ideneeps inferatur, Dominus noster venit: Quod superfluum sit adversùs cum odiis pertinacibus velle contendere. quem venisse jam constet.*

there is such apparent demonstration." The same sense is given by Hilary the deacon, and Pelagius, who wrote under the names of St. Ambrose<sup>1</sup> and St. Jerom.<sup>2</sup> And it is received by Estius and Dr. Lightfoot as the truest interpretation. So that according to this sense, *Maranatha* could not be any part of the form of excommunication but only a reason for pronouncing *Anathema* against those who expressed their hatred against Christ, by denying his coming; either in words, as the Jews did, who blasphemed Christ, and called Jesus *Anathema* or *accursed*; or else by wicked works, as those who lived profanely under the name of Christian.

Yet others of the Ancients interpret it of the future coming of Christ. As St. Austin says *Maranatha* is a Syriac word, signifying, *The Lord will come*.<sup>3</sup> And he particularly applies it against the Arians, who could not be said to love the Lord, because they denied his divine nature. Dr. Hammond and many other modern interpreters<sup>4</sup> take *Maranatha* in this sense, *The Lord will come to judgment*, as St. Jude says, "The Lord cometh with ten thousands of his saints, to execute judgment upon all the ungodly." And they suppose this answered to the third and highest degree of excommunication among the Jews, called *Shammatha*. For they say, the Jews had these three degrees of excommunication, *Niddui*, *Cherem*, and *Shammatha*. *Niddui* was the lowest degree of excommunication, being only a suspension of the sinner from the synagogue and society of his brethren for thirty days, if he repented: if not, the time was doubled to sixty days; and if he still continued obstinate, it was prolonged to ninety days. Then if he persisted impenitent still, he was punished with a more solemn excommunication, called, *Cherem*, which answers to *Anathema* or *cursing*, because the sinner was cast out

<sup>1</sup> Ambros. in 1 Cor. xvi.  
 tur, Dominus noster venit.

<sup>2</sup> Hieron. in 1 Cor. xvi. Interpretatio  
 Aug. Ep. 178. Sive Altercatio

cum Pascentio. Anathema Græco sermone dixit. Condemnatus: Maranatha definit, Donec Dominus redeat.—Non ergo rectè dicitur Dominum amare, qui Domini et Dei unius andet substantiam separare, &c.

<sup>4</sup> Vid. Pool. Synopsis Criticor. in 1 Cor. xvi. 22. et Otho Lexicon Rabbinic. p. 180.

with solemn execrations out of the law of Moses. The third species, called *Shammatha*, was the most severe, when a sinner, after all human means had in vain been tried upon him, was consigned over totally and finally to the divine judgment as a desperate and irrecoverable sinner. The word *Shammatha* is upon this account said to signify either, *There is death* : or, *There shall be desolation* : or, *The Lord cometh* : which last origination of the word answers to *Maranatha*. Now from this analogy and similitude of the name, these learned men suppose this form of excommunication was taken into the Christian Church under the name of *Maranatha*. But there is this grand objection against the thing, that Chrysostom and St. Jerom, and the rest that have been mentioned, did not so understand it. Besides, that no such word as *Maranatha* ever occurs in any ancient form of excommunication. But still the question may be put further, whether they had any such excommunication, be the name or form what it would, as was total, final, and irrevocable ; so as utterly to exclude sinners from the communion of the Church without hopes of recovery ; and so as to make the Church wholly cease to pray for them, or rather pray that God would take them out of the world, and thereby deliver his Church from the malice of their attempts, and power of their seduction ? This question consists of several parts, and therefore as it is proposed, so it must be answered with some distinction. For first, there is nothing more certain, than that the Church did sometimes pronounce a total, final, and irreversible sentence of excommunication against some more heinous criminals, keeping them under penance all their lives, and denying them her external peace and communion at the hour of death for example and terror ; yet not precluding them the mercy of God, nor denying them the benefit of her prayers, but encouraging them to hope for favour upon their true repentance at God's final and unerring judgment. In this sense, I say, it is most certain the Church did many times make her sentence of excommunication irreversible, as will be shewn more fully hereafter.<sup>1</sup>

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<sup>1</sup> Book xvii.

SECT. 17.—Whether Excommunication was ever pronounced with Execration or devoting the Sinner to temporal Destruction.

But secondly, it is not so apparent, that the Church was used to join execration to her censures, and devote men to temporal destruction, by utterly refusing to pray for them, or rather praying against them, that God would take them out of the world, and deliver his Church by that means from their malicious power, and machinations of seducement.<sup>1</sup> Grotius thinks this was very rarely done, but yet that there are some examples of it. For when Julian added to his apostacy devilish designs of rooting out the Christian religion, the Church used this weapon of extreme necessity, and God heard her prayers. He reckons this was done in imitation of the Jewish *Shammatha*. For among the Jews, he says a little before, if any fell into enormous crimes, and drew many after them, they did not use the common *Anathema* against them, but that more dreadful and tremendous one, which they called *Shammatha*, and the Apostle after them, in the same sense, *Maranatha*. For *Maranatha* signifies *The Lord cometh*. And by that word prayer is made unto God,<sup>2</sup> that he would speedily take away the malefactor and seducer out of the world. An example of which sort of *Anathema*, he thinks, is given by the Apostle, Gal. v. 12. when he says, “I would that they were even cut off that trouble you.” The learned Dr. Hicks in this matter joins entirely with Grotius, seeing no other way to account for the many prayers made by the ancient Christians for Julian’s destruction. Some indeed fasted and prayed for his repentance and conversion, as supposing he might be recovered from his error. Thus he tells us out of Sozomen,<sup>3</sup> how Didymus of Alexandria prayed for him. But others absolutely prayed for his de-

<sup>1</sup> Grot. in Luc. c. xxii. Hujus sanè rarior est usus, non tamen nullus Nam in Julianum, cùm defectioni adderet machinationes evertendi Christianismi, usa est ecclesia isto extremæ necessitatis telo, et à Deo est exaudita.

<sup>2</sup> Ibid. Eâ voce oratur Deus ut quamprimum talem maleficum et seductorem tollat ex hominum numero. Hujus anathematis exemplum est. Gal. v. 12.

<sup>3</sup> Hicks Answer to Julian. chap. vi, p. 150. ex Sozom. lib. vi. cap. 2.

struction, as thinking him utterly incapable of repentance, and that he had sinned the sin unto death, for which it was in vain to pray. Then he goes on to shew the nature of his apostacy, his devotedness to the devil, and his spite to Christ and the Christians: from whence he concludes,<sup>1</sup> it was reasonable for the Christians to look upon him as irrecoverable out of the snare of the devil, and upon that supposition to pray for his destruction. He adds several other arguments to shew the reasonableness of their presumption that Julian had a diabolical malice against Christ,<sup>2</sup> and that he was one of those irrecoverable apostates, who had trodden under foot the son of God, and counted the blood of the covenant, wherewith he was sanctified an unholy thing, and who had done despite to the spirit of grace. He had hardened his heart against divine miracles, like Pharaoh, and therefore it is no wonder, if some of them called for the plagues of Egypt upon him.<sup>3</sup> He reproached the living God, like Senacherib, and that made some of them, like Hezekiah,<sup>4</sup> to beseech God to bow down his ear and hear; and to open his eyes, and see, how Julian reproached the Son of God; and thereupon to say, "O Lord our God, we beseech thee to save us out of his hand, that all the kingdoms of the earth may know, that thou art the Lord God, and that Jesus, whom Julian doth so reproach, is thy Son and Christ." Gregory says,<sup>5</sup> he designed worse things against the Christians, than Diocletian, Maximian, or Maximinus ever did; that he was Jeroboam, Pharaoh, Ahab, and Nebuchadnezzar all in one; Jeroboam in apostacy, Pharaoh in hardness of heart, Ahab in cruelty, and Nebuchadnezzar in sacrilege; and therefore it is not to be wondered, that the Christians, who had such good reason to despair of the conversion of such a complicate tyrant prayed for his destruction, because there was no other apparent way of delivering the Church. And if it should please God for our sins to plague the Church with such a spiteful enemy

<sup>1</sup> Ibid. p. 143.  
Invectiv. ii. p. 110.

<sup>2</sup> Ibid. p. 151.

<sup>3</sup> Naz.

<sup>4</sup> Naz. Invectiv. ii. p. 123.

<sup>5</sup> Naz. Inveev. i. p. 93, 110 and 111.

of Christ, and suffer a popish Julian indeed to reign over us, "I here declare," says he, "that I should believe him incapable of repentance, and upon that supposition should be tempted to pray for his destruction as the only means of delivering the Church." Thus far that learned man in his account of the practice of the primitive Christians, and their reasons, in praying for the destruction of Julian the Apostate.

To this may be added, what St. Jerom says, upon the death of Julian, that the Church of Christ with exultation sung her thanks to God in the words of the Prophet, according to the Septuagint, "Thou hast even to our astonishment divided the heads of the powerful." Which is also noted by Theodoret, who says, the people of Antioch as soon as they heard of Julian's death, kept public feasts and holidays for joy, and not only in their churches, but in their theatres proclaimed the victory of the cross, exposing the heathen prophecies to ridicule,<sup>2</sup> particularly those of one Maximus a magician, whom he had consulted: "O foolish Maximus where are now thy prophecies? God and his Christ have overcome." So again he tells us of one Julianus Saba,<sup>3</sup> who had it revealed to him in his prayers that Julian was slain: upon which he immediately changed his tears into joy, and put on a cheerful countenance, expressing the inward satisfaction of his mind. Which the by-standers observing, desired to know the reason of his sudden change, and he told them, that the wild boar, who laid waste the vineyard of the Lord, had now suffered punishment for all the injuries he had done against the Lord; that he now lay dead, and they needed no longer to be afraid of his designs against them. Upon which they all leaped for joy and sung praises to God for the victory. Now it is probable, that they who thought it their duty thus to give God thanks for his fall, were no less solicitous beforehand to pray for his destruction. Their thanksgivings were a declaration what sort of prayers they had made, and they could not but

<sup>1</sup> Hieron. in Habac. iii. 14. Ecclesia Christi cum exultatione cantavit divisisti in stupore capita potentium.

<sup>2</sup> Theod. lib. iii. cap. 27.

<sup>3</sup> Ibid. cap. xxiv.

rejoice when they were heard and answered. It is some confirmation of all this, that Socrates says, they were used sometimes to cast men out of the Church with execration, as he notes of one Hermogenes, a Novatian bishop,<sup>1</sup> who for some blasphemous books that he had written, was solemnly excommunicated, *μετὰ κατάρας*, with cursing, which in all probability denoted something more than the common anathema that accompanied every excommunication.

It is also noted by Socrates, lib. i. cap. 37. that Alexander, bishop of Constantinople, prayed thus against Arius: "If the doctrine of Arius be true, let me die before the day appointed for our disputation: but if the faith, which I hold be true, and the doctrine of Arius false, let Arius by the time determined suffer the punishment, which his impiety deserves." Which was accordingly fulfilled: for Arius the next day voided his entrails with his excrements, and so perished by a most ignominious death. The same is related by Athanasius, in his epistle to Serapion, tom. i. p. 671. who says, he prayed to God in these words: "*Ἄρον Ἄρειον, Take Arius out of the world.*" All which shews, that in some special cases they made no scruple to devote very malicious and incorrigible apostates to extermination and destruction.

Yet on the other hand St. Chrysostom was utterly against this practice. For he has a whole homily upon this point, that men ought not to anathematize either the living or the dead; they may anathematize their opinions or actions, but not their persons. Where, as Grotius rightly observes,<sup>2</sup> he takes *Anathema* in the strictest sense, for praying to God for the destruction of the sinner. Against this he argues from these several topics. 1. "Because Christ died for all men, for his enemies, for tyrants, for magicians, for those that hated and crucified him."<sup>3</sup> 2. "Because the Church in imitation of Christ daily prays for all men." 3. "Because the Christian religion rather obliges us to lay down our own lives for our neighbours,

<sup>1</sup> Socrat. lib. vii. cap. xii.

<sup>2</sup> Grot. in Luc. vi. 22.

<sup>3</sup> Chrys. Hom. lxxvi. de Anathemate. tom. i. p. 909.

than take away theirs." 4. "It is usurping upon the prerogative of Christ. For what is such an *Anathema* but saying, let him be given to the devil, let him have no place of salvation, let him be separated from Christ? Who gave thee this authority and power? Why dost thou assume the dignity of the Son of God, who shall sit in judgment, and set the sheep on his right hand, and the goats on his left?" 5. "The Apostles had no such practice in excommunication. They cast heretics out of the Church in such manner, as one would pluck out a right eye, or cut off a limb, with indications of compassion and sorrow. They carefully rebuked and expelled their heresies, but did not thus anathematize their persons." 6. It is an absurd practice, whether it be used toward the living, or the dead. If toward the living, thou art cruel in so cutting off one, who is still in a capacity of turning and changing his life from evil to good: if toward the dead, thou art more cruel; because now to his own master he stands or falls, and is not under any human power." From all this he concludes, "That we ought only to anathematize the impious and heretical opinions of men, but to spare their persons, and pray for their salvation. There are some, who make a question, whether this is one of Chrysostom's genuine discourses; but without any good reason; because the matter and style, as Du Pin observes, argue it to be his, and there are other arguments to prove it genuine.<sup>1</sup> Sixtus Senensis and Habertus think,<sup>2</sup> he speaks only against private men's using the anathema against heretics: but it is plain, he argues against the public as well as private use of it, in the sense wherein he takes it, that doctrines, and not men, are to be anathematized: we are to pray for the persons of heretics, when we condemn their opinions; and desire their conversion and salvation, not their destruction. The only thing that can truly be inferred from hence is, that St. Chrysostom had different sentiments about this matter from some others. They thought there were some cases,

<sup>1</sup> Sixt. Senens. Bibliothec. lib. vi. Annotat. 267  
Archierat. p. 748.

<sup>2</sup> Habert.



in which it was lawful to pray for the destruction of very malicious and incorrigible sinners, such as Julian, when they were past all hopes, and there was no other visible way to save the Church from their hellish designs, but by their destruction: he thought there was no such case; but that every man was capable of pardon so long as he lived in this world, even though he had committed what others called the unpardonable sin against the Holy Ghost, and the sin unto death, of which he had a different notion from what some others had; and therefore that we were to pray for every man's conversion, and not his destruction. This, as far as I can judge, was the different sense which the Ancients had upon this most difficult matter: and if they varied upon the point in so nice a case, it is not much to be wondered at since the Moderns are not agreed upon it, but some Churches as I shewed before out of Du Moulin, forbid all such sort of excommunications, as unfit to be used without a particular revelation. I have stated the matter fairly on both sides, and leave the determination to the liberty and discretion of every judicious reader.

### CHAP. III.

*Of the Objects of Ecclesiastical Censures, or the Persons on whom they might be inflicted: with a General Account of the Crimes, for which they were inflicted.*

SECT. I.—All Members of the Church, falling into great and scandalous Crimes, made liable to ecclesiastical Censures, without exception.

HAVING thus far explained the nature of ecclesiastical censures, and the several kinds of them, we are next to consider the objects or persons, on whom they might be inflicted, and the crimes, for which they were inflicted on them. As to the persons or objects of ecclesiastical censure, they were all such delinquents, as fell into great and scandalous crimes after baptism, whether men or women, priests or people, rich or poor, princes or subjects: for the ecclesiastical discipline made no distinction, save when the

multitude of sinners combining together, made it impossible to put Church-censures in execution, or made it hazardous for fear of doing more harm than good by the strict execution of them. Infidels and unbelievers were not considered in this matter, as being no members of the Church: according to that rule of the Apostle, 1 Cor. v. 12. "What have I to do to judge them also that are without? Do not ye judge them that are within? But them, that are without, God judgeth. Therefore put away from among yourselves that wicked person." Catechumens were in a middle state between Heathens and Christians, only candidates of baptism, and not yet admitted to full communion by the laver of regeneration and adoption of children: and therefore neither were they the proper objects of Church-discipline, save only as they were capable of being thrust down into a lower class of their own order, if they committed any crime deserving such a degradation, of which I have given some account already,<sup>1</sup> in speaking of the institution of the catechumens. Here we take discipline, as respecting only those, that were called the *Τέλαιοι*, *perfect* communicants, or persons in full communion with the Church.

SECT. 2.—Women as well as Men.

In censuring these the Church made no distinction of sex or quality. For women were subjected to discipline, as well as men. Valesius says,<sup>2</sup> they were very rarely put to do public penance; and Bona<sup>3</sup> says, never at all for the three first ages, but they wept and fasted and did other works of repentance in private. And some take that canon<sup>4</sup> of St. Basil in this sense, where he says, if a woman was convicted of adultery, or confessed it herself, by the ancient rules she was not to be made a public example "*δημοσιεύειν* *ὅτι ἐκέλευσαν οἱ πατέρες.*" But Cyprian and Tertullian and the ancient Canons make no such distinction: neither is

<sup>1</sup> Book x. chap. ii. sect. 17.  
cap. xix.

<sup>2</sup> Vales. in Soerat. lib. v.

<sup>3</sup> Bona. Rer. Liturg. lib. i. cap. xvii. n. 5.

<sup>4</sup> Basil. can. xxxiv.

it probable, that when multitudes both of men and women fell openly into idolatry in times of persecution, that the one did public and the other private penance only. For Cyprian never speaks of any but the public *Rehomologesis* or *confession*, and public imposition of hands to reconcile penitents again after lapsing;<sup>1</sup> and yet there it had been proper to have made the distinction between men and women, if he had known of any such distinction in the practice of the Church. But whether their penance was public or private, the case is still the same as to the exercise of discipline upon them. For they were certainly excluded from communion, and that sometimes for many years, and in some cases even to the hour of death, as appears from many canons of the Council of Eliberis,<sup>2</sup> Ancyra,<sup>3</sup> and others. And this is a sufficient indication of their being liable to ecclesiastical censure, as well as men. Nay there are some undeniable instances of women doing public penance, as Bona owns, in the time of St. Jerom: for he speaking of Fabiola, a rich Roman lady, who had divorced herself from her first husband for adultery, and married a second, says, that after the death of the second husband, when she came to consider the unlawfulness of the fact, she put on sackcloth, and made public confession of her error in the Lateran Church,<sup>4</sup> in the sight of all the people of Rome; standing in the order of penitents in Lent, and in a penitent garb, with her hair dissolved, and her cheeks wan with tears, submitting her neck to imposition of hands; the bishop and presbyters and all the people weeping with her. This seems to have been a voluntary act of penance, as there were many such in those days, when men chose to expiate even

<sup>1</sup> Cypr. de Lapsis. p. 128. Ep. xvi. al. x. p. 37. Vid. Baluz. ad Hom. i. Cæsar. Arel. Bibl. Pat. tom. xxvii. Ed. Lugd. p. 310.

<sup>2</sup> Con. Elib. can. 5, 8, 10, 12, 13, 14, 63, 65.

<sup>3</sup> Con. Ancyran. can. xxi. <sup>4</sup> Hieron. Ep. 30. Epitaph. Fabiolæ. Quis crederet, ut post mortem secundi viri in senet ipsam reversa—Saccum, indueret, ut errorem publicè fateretur, et totâ urbe spectante Romanâ ante diem Paschæ in Basilicâ Lateranâ staret in ordine penitentium, episcopo, presbyteris et omni populo collachrymantibus, sparso crine, ora lurida, qualidas manus, sordida colla submitteret?

private crimes by public penance; but if it had not been customary at all for women to do public penance, St. Jerom would have noted the singularity of it in that respect, rather than any other. But he seems to place the singularity of it in this, that she condescended of her own accord to do public penance in a case, where no laws of the Church could have obliged her to it. For whilst her husband lived, no constraint could be laid upon her: it being a rule not to admit married persons to public penance without consent of both parties:<sup>1</sup> and when her husband was dead, her crime perhaps was one of that nature, which did not directly bring her under the power of ecclesiastical censure, but by her own consent. For, as we shall see more by and by, there were many crimes of that nature, which, though allowed to be sins of no mean size, yet could not bring men against their wills to a course of public penance by any laws of the Church.

SECT. 3. —The Rich as well as the Poor. No Commutation of Penance allowed, nor Friendship nor Favour.

But where the crimes were flagrant, and such as the Church could take cognizance of, there she usually proceeded without respect of persons. No regard was had to the rich more than the poor, but all criminals were considered alike, in the business of repentance, as equally obliged to comply with the stated rules of discipline, in order to gain admission into the Church after an expulsion. There was but one door of re-entry, which is so often called *Justa* and *Legitima Penitentia*, the just and legal penance, by Cyprian<sup>2</sup> and other writers: and no commutation was thought an equivalent, where this was wanting. Which is evident from this, that they would not accept any gifts or oblations from excommunicate persons, or heretics, or schismatics, or any that were not in full communion with the Church,<sup>3</sup> lest this should look like communicating with

<sup>1</sup> Con. Arelat. ii. can. 22. Penitentiam conjugatis non nisi ex consensu dandam.

<sup>2</sup> Cyp. Ep. x. al. xvi. ad Cler. p. 37. Ep. liv. al. lvii. ad Cornel. p. 116. Ep. lvii. al. iv. p. 9. De Lapsis. p. 129. Con. Eliber. can. xiv et can. iii.

<sup>3</sup> See before, Chap. ii. sect. xiii. and Book xv. chap. ii.

them before their time, and receiving their money in lieu of repentance. Cyprian indeed once intimates, that there were some,<sup>1</sup> who for filthy lucre were inclined to accept persons; and who, to make a market of unlawful gain, would gratify the rich and those, who could give large gifts, to get them an easier way of admittance than by the severe and tedious way of a just and full penance: but he very sharply inveighs against these, and all their sinister arts of dissolving discipline, and ruining men's souls, under pretence of granting them a fallacious and deceitful peace, which was their real destruction.

SECT. 4.—What Privilege some claimed upon the Intercession of the Martyrs in Prison for them. And how this was answered by Cyprian.

One of these insidious arts, which they managed with some colour and dexterity, was to get the martyrs and confessors in prison to intercede with bishops for such, and write letters in their favour. For we must know, that anciently the martyrs were allowed this privilege, when any penitent had well nigh performed his legal penance, and was near upon being received again, to write letters to the bishop, that such an one might be admitted to communion, though his full term of penance was not quite expired: And so far their petition was commonly accepted. But these crafty men, for a little underhand gain, had got a trick to desire the martyrs to intercede for such as had done little or no penance: nay, they abused their privilege so far, as peremptorily to require the admission of such, without any previous examination of their merits: and sometimes they required the bishop, not only to admit such a penitent, but all that belonged to him; which was a very uncertain and blind sort of petition, and created great envy to the bishop, when perhaps twenty,<sup>2</sup> or thirty, or a greater num-

<sup>1</sup> Cypr. Ep. xi. al. xv. ad Martyr. p. 35. Qui personas accipientes, in beneficiis vestris aut gratificantur, aut illicitæ negotiationis nundinas aucupantur.

<sup>2</sup> Cypr. Ep. xi. al. xv. ad Martyr. p. 35. Audio quibusdam sic libellos fieri, ut dicatur: Communicet ille cum suis. Quod nunquam omninò à martyribus factum est, ut incerta et cæca petitio invidiam nobis postmodum cumulet. Latè enim patet quando dicitur: Ille cum suis; et possunt nobis

ber of nameless persons were included in one libel, and the bishop was forced to do a very ungrateful office, and deny them altogether. Cyprian complains much of these abuses, both in his letter to the martyrs, and in others written upon the same subject to his clergy and people.<sup>1</sup> But chiefly he complains of those libels, which were sent to him by Lucian the martyr, one of which runs in this form:<sup>2</sup> "All the confessors to Cyprian the bishop, greeting: know that we have granted peace to all those, of whom you have had an account how they have behaved themselves since the commission of their crimes: and we would that these presents should be notified by you to the rest of the bishops. We wish you to maintain peace with the holy martyrs." This Lucian had written many such letters before in the name of Paulus, the confessor, whilst he was in prison, and others after his death, saying, he had his command so to do. All which Cyprian complains of, in a Letter to the Clergy of Rome,<sup>3</sup> as a thing dissolving all the bands of faith, and the fear of God, and the commandments of the Lord, and the holiness and vigour of the Gospel; and as creating great envy to the bishops, whilst they were forced to deny to lapsers, what they boasted to have obtained of the martyrs and confessors. This occasioned, he says, great seditions and tumults: for in many cities throughout the province of Carthage the people rose up in multitudes against their bishops, and by their clamours compelled them to grant them instantly that peace, which, they all said, the martyrs and confessors had given them: they who had not courage enough and strength of faith to resist them, were by this means terrified and subdued into a compliance with them. And he had much ado himself to withstand them at Car-

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viceni, et triceni, et amplius offerri, qui propinqui et affines, et liberti ac domestici esse asseverentur ejus, qui accipit libellum.

<sup>1</sup> Cypr. Ep. x. al. xvi. ad Cler. Ep. xii. al. xvii. ad Plebem. Ep. xviii. al. xxvi. ad Cler.

<sup>2</sup> Lucian. Ep. ad Cypr. xvii. al. xxiii. Scias nos universis, de quibus apud te ratio constiterit, quid post commissum egerint, dedisse pacem: et hanc formam per te et aliis episcopis innotescere volumus. Optamus te cum sanctis martyribus pacem habere. Vid. Lucian. Ep. xx. al. xxii. ad Celerin. p. 47.

<sup>3</sup> Cypr. Ep. xxiii. al. xxvii. ad Cler. Rom. p. 52.

thage: for some turbulent men, who were hardly governable before, and thought it much to be kept back from communion till he returned out of exile, when they had gotten these letters of the martyrs, were all in a flame upon the strength of them, and began to rage immoderately, and in an extorting manner demand the peace, which they said, the martyrs had granted them.

By this representation of Cyprian, and his remonstrance upon it, it is easy to discern what mischief the abusing this privilege of the martyrs did to the true exercise of discipline; whilst some out of lucre, others out of terror, complied with the lapsers' unreasonable demands, and let the rich and the great escape punishment, and intrude themselves into the communion of the Church again without any sufficient evidences of repentance: but they, who, like Cyprian, had integrity and firmness enough to oppose these impious practices, kept up the discipline of the Church in its true vigor, and would hearken to no pretences or conditions of this kind, which only tended to impose upon them with false shews of a deceitful peace, and profane the mystery of the holy sacrament, by giving it to the impenitent and the ungodly.

SECT. 5.—Magistrates and Princes subject to Ecclesiastical Censures, as well as any others.

Neither was it only men in a private condition they thus treated, but also those of the highest rank and dignity. For the civil magistrates and princes were subject to ecclesiastical censures, as well as any others. In the times of persecution, the very taking of some civil offices made Christians liable to excommunication. Particularly if they took upon them the office of the *Duumviri*, or the provincial office of the *Flamines* or *Sacerdotes Provinciæ*: because, as Gothofred shews out of many laws of the Theodosian Code,<sup>1</sup> these offices obliged them to exhibit the usual games or shews to the people: which in time of heathenism could not be done without involving them in

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<sup>1</sup> Gothofred, Paratitio. ad Cod. Theod. lib. xv. tit. 5. de Spectaculis.

some measure in the guilt of idolatry, to which those games were consecrated. For which reason any Christian undertaking such an office, was reputed an encourager and partaker of idolatry, though he did not actually sacrifice to idols in his office. Upon which account the Council of Eliberis,<sup>1</sup> which was held in time of persecution, Anno 305, or thereabouts, orders, “that if any Christian took upon him the office of a flamen, though he did not sacrifice, but only exhibit the idolatrous shews to the people, he should be kept under strict penance all his life, and only be admitted to communion at his death; and that in consideration, that he had abstained from offering the abominable sacrifices:” for if he had offered sacrifice, then, by the preceding canon<sup>2</sup> he was denied communion to the very last. Nay, though they had neither sacrificed, nor exhibited the shews out of their expense to the people, but only worn the crown in their office, by two other canons of the same Council,<sup>3</sup> they were to be denied the communion for a year or two. So that the being in a public office, was so far from exempting a magistrate from the censures of the Church, that in many cases it was the very reason why they were executed with greater severity upon him, whilst no man could go through such an office without the guilt and stain of idolatry in some measure sticking to him. And when these offices were freed from idolatry; yet if a magistrate still committed other crimes worthy of ecclesiastical punishment, the censures of the Church, notwithstanding his office, would lay hold of him, and the name or character of a magistrate would give him no protection. This appears plainly from the proceedings of Synesius against Andronicus,<sup>4</sup> the governing magistrate of Ptolemais, whom he formally ex-

<sup>1</sup> Con. Eliber. can. iii. Flamines, qui non immolaverint, sed munus tantum dederint, eo quod se à funestis abstinerunt sacrificiis, placuit in fine eis præstari communionem, rectâ tamen legitimâ pœnitentiâ.

<sup>2</sup> Ibid. can. ii. Flamines, qui post fidem lavacri sacrificaverunt, placuit nec in fine eos accipere communionem.

<sup>3</sup> Con. Eliber. can. iv. Sacerdotes, qui tantum coronam portant, nec sacrificant, nec de suis sumptibus aliquid ad idola præstant, placuit post biennium accipere communionem. It. can. lvi. Magistratum verò, qui agit dumviratum, uno anno prohibendum placuit, ut se ab ecclesiâ cohibeat.

<sup>4</sup> Synes. Ep. lviii.



communicated with all his accomplices: and from what has been observed before,<sup>1</sup> of the judge that was censured in the time of Julian, mentioned by St. Ambrose;<sup>2</sup> and Athanasius excommunicating the governor of Libya for his immoralities, mentioned by St. Basil,<sup>3</sup> which need not here be repeated. To these I add that general rule of the first Council of Arles, made with relation to all governors of provinces, that when they went to the government of any province,<sup>4</sup> they should take communicatory letters from their own bishop along with them, and be subject to the care of the bishop of the places wherever they went; so as if they committed any thing contrary to the public discipline, they were to be excluded from the communion of the Church. This was no rule to deprive magistrates of their office, though they were heretics or schismatics, as Baronius<sup>5</sup> would have it understood: for as Albaspiny in his notes upon the place more truly observes against him, there is not a word about this in the canon: neither is it likely, that a provincial Council should make a decree about that, which is no way in their power, but in the power of the prince only. They might order, and that with good reason, he says,<sup>6</sup> “that no heretic or schismatic, although he was the governor of a province, should be admitted to communicate with the Church: but that therefore he should be removed from his government, because he was an heretic, was at the will and discretion of the prince, and not of the Church: it belongs to the prince and not the Church, to take away the power of subordinate magistrates from them.” The plain drift therefore of this canon is not to deprive inferior magistrates of any civil power or jurisdiction, which the supreme magistrate committed to them; which the Church had no authority to do: but only to deny them her own communion,

<sup>1</sup> See chap. ii. sect. 11.

<sup>2</sup> Ambros. Ep. xxix. ad Theodos.

<sup>3</sup> Basil. Ep. xlvii.

<sup>4</sup> Con. Arelat. i. can. 7. De Præsîdibus placuit, ut cum promoti fuerint, literas accipiant ecclesiasticas communicatorias: ita tamen ut in quibuscunque locis gesserint, ab episcopo ejusdem loci cura de illis agatur; ut cum ceperint contra disciplinam publicam agere, tunc demum à communione excludantur. Similiter et de his fiat qui rem publicam agere volunt.

<sup>5</sup> Baron. an. 314. n. 57.

<sup>6</sup> Albaspin. in can. vii. Con. Arelat.

if unworthy of it; which was a thing then uncontested, and indisputably within the limits of her power.

Neither need we wonder at this, since the Church laid claim to an higher power, even of excluding princes, or the supreme magistrates, from her communion, when guilty of notorious violations of the laws of Christian society; of which there are certain evidences both in the doctrine and practice of the ancient bishops of the Church. The story, which is related by Eusebius concerning the Emperor Philip, though disputed by many as to the truth of the fact, yet is a sufficient evidence of the opinion of Eusebius, who relates it.<sup>1</sup> Now he tells us, “there was a tradition that he was a Christian, and that on the vigil of the passover he desired to communicate in prayers with the rest of the people: but that the bishop, who then presided, would not suffer him to enter, before he had confessed his crimes, and joined himself to those, who had sinned, and stood in the place or order of the penitents. For otherwise he could not be received by him, for the many crimes which he had committed. Upon which the Emperor willingly obeyed, demonstrating his sincere and religious disposition towards the fear of God by the tenor of his actions.” Some question the truth of the story,<sup>2</sup> and think, that it is a mistake of Philip the Emperor, for one Philip, the *Præfectus Augustalis* of Egypt, who was a Christian: others defend it as a true relation,<sup>3</sup> only they think it was a transaction in private, which is the reason we have no account of it in heathen story. But whether the fact was true or false, the reflection made upon it by Eusebius is of great moment in the present question. For he, supposing him to have been a Christian, says, “without such a compliance the bishop would never have admitted him.” Which remark is sufficient to shew the nature of the Church’s discipline in general, whatever becomes of the truth of this particular story.

Filesacus<sup>4</sup> and Valesius<sup>5</sup> confound this story with the

<sup>1</sup> Euseb. Hist. lib. vi. cap. 31.

<sup>2</sup> Cave, Prim. Christ. part. i. cap. iii. p. 48.

<sup>3</sup> Pagi, Critic.

in Baron. an. 247. n. 6. ex Huët. Origeniam. lib. i. cap. iii. n. 12.

<sup>4</sup> Filesac. Not. in Vincent. Lirin. cap. xxiii. n. 125.

<sup>5</sup> Vales. Not. in Euseb. lib. vi. cap. 31.

relation which St. Chrysostom gives of Babylas, denying entrance into the Church to one of the Roman Emperors, upon the account of a barbarous murder committed by him upon a son of some confederate prince, who was entrusted as an hostage with him. Chrysostom names neither the Emperor nor confederate prince, and the stories differ in the whole relation, but especially in this material circumstance, that Philip is said to comply with the bishop's admonition and stand in the order of penitents; but he, whom Chrysostom speaks of, was so far from submitting to the admonition of Babylas, that he remained incorrigible, and grew enraged, and cast him into prison, and loaded him with chains, which the martyr ordered to be buried with him, when the tyrant put him to death. So that this could not be Philip, but Decius, the persecuting heathen, under whom Babylas suffered. However Chrysostom makes some curious remarks upon the behaviour of Babylas, both in reference to his courage and prudence, which abundantly shew the spirit of discipline then prevailing in the Church. 1. For, first, he remarks, that Babylas acted with the freedom and boldness of Elias and St. John Baptist,<sup>1</sup> driving out of the Church not a tetrarch of a few cities, nor a king of one nation; but him, who governed the greatest part of the world: a murderer, who had many nations, many cities, and a prodigious army at his command; one, that was in all respects terrible, as well upon the account of his immense dominions, as the fierceness and cruelty of his temper: him he expelled as a vile and worthless slave, with as much intrepidity, constancy, and bravery of mind, as a shepherd would drive away from his flock a scabbed and infected sheep, to prevent the contagion of the distemper from spreading to the rest of the flock. Here he breaks out into a rapture, admiring his undaunted mind, his lofty soul, his heavenly terror of spirit, and angelical constancy, superior to all this visible world, and only fixed upon God the Supreme King; acting as if he stood before the great judge, and heard him say, cast out the wicked and infected sheep from the holy flock.

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<sup>1</sup> Chrys. de Babyla. sive cont. Gentiles. tom. i. p. 740.

2. Hence he observes, how fearless and undaunted Babylas must be with respect to other men, who gave such a specimen of his power over the Emperor. He could never act or speak out of favour or hatred; but with a mind equally fortified against fear and flattery, and all other things of the like nature, which are apt to beset men, he stood firm, and did not in the least corrupt right judgment. 3. He remarks further, how he tempered his courage with Christian prudence, observing a decent mean in his behaviour. A man of his undaunted spirit might have gone much further. He might have railed at the Emperor, and reviled him; he might have pulled the crown from his head, and have beaten him on the face: but his soul was seasoned with spiritual salt, which taught him to observe a decorum in all his management, and do nothing rashly or foolishly, but by the rules of right reason, which was a thing the philosophers in their reproofs of kings seldom observed. 4. Hence he remarks, of how great advantage this example was to all men, both believers and unbelievers. The unbelievers were astonished at the action, and admired it: for they seeing the intrepidity of the servants of Christ, could not but deride the abject servility of those, who ruled in the heathen temples, when they observed them always more disposed to worship their kings, than their gods or idols. Whereas Babylas punished the injurious king, as far as it was lawful for a priest to do;<sup>1</sup> he pulled down the high spirit of the prince; he vindicated the divine laws, when they were violated; he punished the king for his murder with a punishment, that to all men of a sound mind is the most terrible of any other. He did not, like Diogenes, bid him stand out of his sunshine; but when he thrust himself impudently within the sacred boundaries of the Church, and confounded all good order, he drove him from his master's house, as he would have done a dog, or an offending slave. And so the holy man took down the confidence of unbelievers, who were then the greatest part of the Roman Empire. And for those, who had already embraced the faith of Christ, he by

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<sup>1</sup> Chrys. de Babyla. sive cont. Gentiles. tom. i. p. 747.

this act made them more circumspect and religious; not only private men, but soldiers, captains, and generals; shewing them, that among Christians the prince and chief of all, are but names, and that he, that wears the crown, when he is to be punished and rebuked, is no more considered than one of the lowest order.<sup>1</sup> 5. Hence he concludes, lastly, that this rare example of virtue, was matter of instruction both to priests and princes, to teach princes to submit to the rules of discipline, and priests to take courage in the exercise of it: forasmuch as that the care of the world, and what is done in it, is as properly committed to them, as to him that wears the purple; and that they ought rather to part with their lives, than part with or diminish that power and authority, which God from above has committed to them. Any one may perceive by this discourse of St. Chrysostom, what opinion he had of the power and extent of ecclesiastical discipline, even over sovereign princes: not to pull off their crowns, and dethrone them; not to ravish away their temporal power, under the pretence of the spiritual power being superior; nor yet to speak evil of dignities, or treat them unmannerly, and revile them; but only to debar them from the communion of the Church, when by notorious wickedness they rendered themselves altogether unworthy, and really incapable of it. Which is agreeable to that general direction he gives in another place to the clergy, not to admit any one of notorious improbity, cruelty, or impurity to the Lord's table: "although it be a commander," says he,<sup>2</sup> "or a governor, or even he that wears the diadem, that comes unworthily, prohibit him: thou hast greater power than he. He adds a little after, if thou art afraid to do this, bring him unto me. I will not suffer any such thing to be done: I will sooner give my own life, than the body of the Lord unworthily: I will shed my own blood, before I will give that most holy blood to an unworthy man."

<sup>1</sup> Chrys. de Babyl. sive cont. Gentiles. tom. i. p. 749.

<sup>2</sup> Chrys. Hom. lxxxii. sive lxxxiii. in Mat. 705. *Κἄν στρατηγός τις ᾖ, κἄν ὑπαρχός, κἄν αὐτός ὁ τὸ διάδημα περικείμενος, ἀναξίως δὲ προσεῖν κώλυσον, μείζονα ἰκέινῃ τὴν ἑξουσίαν ἔχεις.*

But there is none more famous than St. Ambrose for his remarkable freedom in this matter with the greatest of princes, whether in admonishing them, or in denying them the communion upon the commission of some great offences. Paulinus, the writer of his Life says, he separated Maximus from the communion,<sup>1</sup> admonishing him to repent for shedding the blood of Gratian his lord, if ever he hoped to find mercy at the hands of God. So when Valentinian was solicited by Symmachus, the heathen governor of Rome, to restore the gentile rites, and suffer the altar of victory to be repaired in the capitol; St. Ambrose wrote to him, and told him, among many other arguments,<sup>2</sup> “that, if he thus gratified the Heathen in restoring idolatry, the bishops could not bear or dissemble it with a patient mind. He might, if he pleased, come to church, but he would either find no priest there, or else only one to resist him, and deny him communion.” “And what will you answer,” says he, “to the priest, when he tells you, the Church desires not your oblations, or gifts, because you have adorned the temples of the Gentiles with your gifts? the altar of Christ refuses your gifts, because you have erected an altar to the idol gods.”

But the most remarkable instance of his freedom was shewn in his treatment of Theodosius the Great, after he had inhumanly put to death seven thousand men at Thessalonica, without distinguishing the innocent from the guilty. When he had committed this fact, not being very sensible of his crime, he came to Milan, and according to custom was going to church; but St. Ambrose met him at the gate, and accosted him in this manner, as Theodoret<sup>3</sup> relates the story: “You seem not to understand, sir, the

<sup>1</sup> Paulin. Vit. Ambros. *Ipsum Maximum à communionis consortio segregavit, admonens ut effusi sanguinis domini sui—ageret pœnitentiam, si sibi apud Deum velet esse consultum.*

<sup>2</sup> Ambros. Ep. xxx. ad Valentin. Junior. *Certè episcopi hoc æquo animo pati et dissimulare non possunt. Licet tibi ad ecclesiam convenire: sed illic non invenies sacerdotem, aut invenies resistentem. Quid respondebis sacerdoti dicenti tibi; Munera tu non quærit ecclesia, quia templa Gentilium muneribus adornasti. Ara Christi dona tua respuit, quoniam aram simulacris fecisti.*

<sup>3</sup> Theod.

lib. v. cap. 18. Vid. Aug. Hom. 49. ex. 50. tom. x. p. 202.

greatness of the murder you have committed. Your anger not being yet allayed, hinders your reason from considering what you have done. And perhaps the greatness of your Empire will not suffer you to acknowledge your offence, and power opposes itself to reason. But you must know, that our nature is mortal and frail: our original is dust, whence we were taken, and into which we must return again. It is not fit, you should deceive yourself with the splendour of your purple, and forget the weakness of the body that is covered with it. Your subjects, sir, are of the same nature with yourself, and you are a servant as well as they: for we have one common Lord, and King, the Maker of this universe. Therefore with what eyes will you look upon the house of our common Lord? with what feet will you tread his holy pavement? will you stretch forth those hands still dropping with the blood of that unjust murder, and therewith take the holy body of the Lord? and then put the cup of that precious blood to your mouth, who have shed so much blood by the hasty decree of an angry mind? Depart, I beseech you, and do not aggravate and augment your former iniquity by the addition of a new crime. Refuse not those bonds, which the Lord of all confirms from heaven above. It is but a small thing that is laid upon you, but it will recover you to perfect health and salvation. The Emperor who had been educated in the holy doctrine, and knew what were the different offices of priests and kings, was so moved with these words, that he returned to his palace with groans and tears. Eight months passed between this and the festival of our Saviour's nativity, and all that time the Emperor sat lamenting in his own palace, and shedding rivers of tears. Which Ruffin, the master of the palace, who for his familiarity with the Emperor could take a great freedom with him, observing, came to him, and desired to know the reason of his tears. To whom the Emperor replied, you make a jest of the thing, Ruffin: for you are not touched with the sense of my misfortunes; but I mourn and lament in consideration of my calamity, that whilst the temple of God is open to the very slaves and beggars, and they can go in freely, and supplicate their Lord, it is inaccessible to

me; and besides all this, heaven is shut against me: for I remember the words of our Lord, which plainly say, Whomsoever ye shall bind on earth, he shall be bound in heaven. Then Ruffin said, I will go therefore to the bishop, if you please, and intreat him to loose your bonds. The Emperor replied, he will not be persuaded. For I know the justice of the sentence which St. Ambrose has given, and he will not out of any reverence to the imperial power, transgress the divine law. But Ruffin insisted, and with many words promising to appease Ambrose towards him; he bid him go quickly, and he himself followed a little after, relying upon the promises of Ruffin. But St. Ambrose no sooner saw Ruffin, but he said to him, Ruffin, thou art a very shameless man. For thou wast the evil counsellor of so great a slaughter, and now thou hardenest thy forehead, and hast cast away shame, neither blushing, nor trembling for so great a ravagement made of the image of God. Ruffin still went on with his supplication, and told him the Emperor himself was coming. At which Ambrose, kindled with a divine fervour, said, I tell thee before-hand, Ruffin, I will not admit him within the divine gates: but and if he will turn his empire into tyranny, and slay me also, I shall with great pleasure take my death. Ruffin hearing this, sent one immediately to the Emperor, to certify him of the bishop's resolution, and to desire him to stay in the palace: but the Emperor being on his way in the middle of the forum, when he received the message, said, I will go and bear his just reproofs. When he came to the holy boundaries he would not enter into the Church, but going to the bishop, as he sat in the saluting house, he begged of him to absolve him from his bonds. But Ambrose told him, this his coming was tyrannical; and that he now began to rage against God, and trample upon the divine laws. The Emperor said, by no means: I do not offer myself against the prescript of the laws, I do not desire to enter the Church in an unlawful manner; but I entreat you to absolve me from my bonds, and to remember the clemency of our common Lord, and not shut the gate against me, which the Lord hath opened to all those, that turn to him with repentance. What repentance, then said the bishop, have you



shewn since the commission of so great a wickedness; with what medicine have you cured your grievous wounds? The Emperor replied, it belongs to your office to prepare the medicine, and cure those wounds, and my part is to use what you prescribe. Then said Ambrose, forasmuch as you have suffered anger and fury, and not reason, to sit in judgment and give sentence in matters before: now make a law, which may render all judgment given in anger null and void: when any sentence of death or confiscation is pronounced, let there be thirty days time between that and the execution, to wait for the judgment of reason. When this term is expired, let the scribes again present the sentence you have given before you, and then reason without anger will be able to examine the sentence by her own judgment, and discern whether it be just or unjust. If it be unjust, cancel and reverse it: if just, corroborate and confirm it, and this number of days will be no prejudice to any righteous sentence. The Emperor approved of the proposal, and immediately ordered such a law to be written, and confirmed it with his own hand. Then St. Ambrose absolved him from his bonds, and the Emperor took courage to enter into the Church: but he would neither stand nor kneel, while he made supplication to the Lord, but fell upon his face to the earth, using those words of David, "My soul cleaveth to the ground, quicken thou me according to thy word;" and tearing his hair, and beating his forehead, and watering the pavement with drops of tears, with these indications of sorrow he prayed for pardon. And so when the time of the oblation came, he was admitted again to make his offering at the holy table."

I have related this matter at full length in Theodoret's words, because, as he there observes, it is such an illustrious instance of the virtue both of the bishop and the Emperor, showing the freedom and flaming fervour of the one, and a great condescension, obedience, and purity of faith, in the other. Theodoret adds, "That when the Emperor was returned to Constantinople, he was pleased to say, he had now learned the difference between an emperor and a bishop; he had now at last found a guide to show him what was truth: for Ambrose alone was worthy the name

of a bishop. So useful an impression, says our author, does a reproof or admonition make, when given by a man of shining virtue."

After this it is needless to relate any later instances of this kind of discipline exercised upon princes: but it may be proper to remind the reader here again of that necessary distinction between the greater and lesser excommunication, the former of which separates a criminal from all manner of society with the faithful, the other only from communion and society in holy things in the Church; and to observe with many learned men, that these excommunications of princes now mentioned, never went further than to a prudent admonition, and suspension of them from the sacrament and the holy offices of the Church. St. Ambrose, says Bishop Buckeridge,<sup>1</sup> in answer to Bellarmin, did plainly prohibit Theodosius from entering the church, and partaking of the sacraments; but he neither delivered him to Satan, nor reduced him into the number of publicans or pagans, nor separated him from all society and communion with the faithful. If Bellarmin spake properly of the greater excommunication, the proof of a doubtful matter lies upon him; if only of the lesser excommunication, or suspension, which forbids men entrance into the Church, and communion in the sacraments, we do not deny but that Theodosius was so excommunicated by St. Ambrose. For St. Ambrose told him,<sup>2</sup> he durst not offer the sacrifice, if he was present. He thought he saw him in a vision come to the Church, and then he durst not celebrate because of his presence. He could not accept his oblation, till he had power to offer, and till his offering would be acceptable to God. He suspended him therefore from the

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<sup>1</sup> Joan Roffens, de Potest. Papæ Temporalis. lib. ii. cap. xxxix. p. 637. In his aper è prohibet Ambrosius Theodosium ab ingressu ecclesiæ et communione sacramentorum, sed nec Satanæ tradit nec in numerum publicanorum et ethnicorum redigit, nec cœtu et communione fidelium separat. &c. See Dr. Barrow of the Pope's Supremacy. p. 12.

<sup>2</sup> Ambros. Ep. xxviii. ad Theodos. Offerre non audeo sacrificium, si volueris assistere. — Venisse visus es ad ecclesiam, sed mihi sacrificium offerre non licuit. — Tunc offeres, cùm sacrificandi acceperis facultatem, quando hostia tua accepta sit Deo.

sacrament, but did not lay upon him the *Anathema*, or greater excommunication. Bishop Taylor takes excommunication in this sense, when he says,<sup>1</sup> “If we consult the doctrine and practices of the Fathers in the primitive and ancient Churches, we shall find that they never durst think of excommunicating kings. The first supreme prince, that ever was excommunicated by a bishop, was Henry the emperor by Pope Hildebrand. He adds, that there is one portion of excommunication, which is denying to administer the holy communion to princes of a scandalous and evil life; and concerning this there is no question but the bishop not only may, but in some cases must do it. Christ says, Give not that which is holy unto dogs, and cast not pearls before swine. Whatsoever is in the ecclesiastical hand by divine right, is as applicable to him that sits upon the throne, as to him that sits upon the dunghill.” But then he says one thing, which, as I conceive, contradicts this: viz.<sup>2</sup> “That this refusing must be only by admonition and caution, by fears and denunciations evangelical, by telling him his unfitness to communicate, and his danger if he do; but if after this separation by way of sentence and proper ministry, the prince will be communicated, the bishop has nothing else to do, but to pray and weep and willingly to minister.” This not only contradicts what he just says before, that a bishop is obliged in duty to deny to administer the communion to princes of a scandalous and evil life, but is directly contrary to the doctrine and practice of St. Chrysostom and St. Ambrose, who profess they would rather die than give the communion to a prince that was utterly incapable and unworthy of it.

SECT. 6.—In what Cases the greater Excommunication was forborn for  
 the Good of the Church.

Yet as to what concerns the greater excommunication, it is certain that in some cases it was forborn, not only with

<sup>1</sup> Taylor. Duct. Dubitant. lib. iii. cap. iv. p. 604  
 lor. Ibid. p. 605. See also his Worthy Communicant chap. v. sect. vi. p. 487.

<sup>2</sup> Tay-

relation to princes, but the people also. For prudence directed them to do every thing for the good of the Church, and to use this severe weapon only to edification, and not to destruction. And therefore when it was apparent, or but highly probable, that the intemperate and indiscreet use of it might do more harm than good to the Church, there both reason and charity directed them to waive the use of it, for fear of rooting up the wheat with the tares before the proper time of judgment. As to princes, Dr. Barrow in a few words, which contain a great deal of ancient history, has further observed,<sup>1</sup> “ That though there were many sovereign princes in the primitive Church, who were heretics and enemies to true religion, yet no ancient pope seems to have been of opinion that they might excommunicate them. For if they might, why did not Pope Julius or Pope Liberius excommunicate Constantius, the great favourer of the Arians? How did Julian himself escape the censure of Liberius? Why did not Damasus thunder against Valens, that fierce persecutor of the Catholics? Why did not Damasus censure the Empress Justina, the patroness of Arianism? Why did not Siricius censure Theodosius for that bloody fact, for which St. Ambrose denied him the communion? How was it that Pope Leo, that stout and high pope, had not the heart to correct Theodosius Junior in his way, who was the supporter of his adversary Dioscorus, and the obstinate protector of the second Ephesine Council, which that pope so much detested? Why did not that pope rather compel that Emperor by censures, than supplicate him by tears? How did so many popes connive at Theodoric and other princes professing Arianism at their door? Why did not Simplicius or Felix thus punish the Emperor Zeno, the supplanter of the Council of Chalcedon, for which they had so much zeal? Why did neither Felix, nor Gelasius, nor Symmachus, nor Hormisdas excommunicate the Emperor Anastasius, yea did not so much, Pope Gelasius says, as touch his name, for countenancing the oriental bishops in their schism and

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<sup>1</sup> Barrow of the Pope's Supremacy. p. 12.

refractory non-compliance with the papal authority? Those popes did indeed clash with their emperor, but they expressly deny, that they did condemn him with others whom he did favour. We, says Pope Symmachus, did not excommunicate you, O Emperor,<sup>1</sup> but Acacius. If you mingle yourself, you are not excommunicated by us, but by yourself. And says Gelasius,<sup>2</sup> if the emperor is pleased to join himself with those that are condemned, that cannot be imputed to us. Wherefore Baronius doth ill,<sup>3</sup> in affirming Pope Symmachus to have anathematized Anastasius; whereas that pope plainly denied it even in those words, which are cited to prove it, being rightly read: for they are corruptly written in Baronius and Binius; *Ego*<sup>4</sup> which hath no sense, or one contradictory to his former assertion, being put for *Nego*, which is good sense, and agreeable to what he and the other popes do affirm in relation to that matter;—that they did not pretend to anathematize the emperor with other heretics whom they so condemned.”

Indeed there were three reasons why the Ancients forbore to anathematize sovereign princes. One was that, which has just now been mentioned, because they thought they had no power to excommunicate them in such manner, but only to deny them the participation of the eucharist. Another reason was, that heretical princes did in effect excommunicate themselves by deserting the Church, and joining with heretics, and therefore the Church had no reason to pronounce *Anathema* against them. A third reason was, that the doing so might have done more harm than good to the Church, by irritating and exasperating the minds of heretical princes to persecute the Church with greater ma-

<sup>1</sup> Symmach. Ep. vii. Nos te non excommunicavimus, sed Acacium.—Si te misces, non à nobis, sed à teipso excommunicatus es.

<sup>2</sup> Gelas.

Ep. iv. Si isti placet se miscere damnatis, nobis non potest imputari.

<sup>3</sup> Baron. an. 503. n. xvii.

<sup>4</sup> Symmach. Ep. vii. Dicis quod, mecum conspirante senatu, excommunicaverim te. Ista quidem ego, sed rationabiliter factum à decessoribus meis sine dubio subsequor. So Baronius and Binius read it, “Ista quidem *ego* ;” but the true reading is, ‘Ista quidem *nego*, I deny that I excommunicated you.’ And yet Labeè retains that corrupt reading without any remark upon it. Con. tom. iv. p. 1298.

lice, and thereby many weak members of the Church might have been scandalized and offended. Therefore Bishop Buckeridge says,<sup>1</sup> “ In such cases where princes are fierce and cruel, and impatient of reproof and indignity, it were perhaps better to abstain from the severity of the lesser excommunication as well as the greater, rather than for a bishop to provoke an armed fury to turn itself both upon him and the Church: it were better to keep the sword in the sheath, than to unsheath it to the detriment and destruction of the Church and religion. Therefore admitting that of right kings and emperors might be excommunicated, yet the expediency of the thing is a very different question, and remains yet not perfectly resolved, whether it be for the advantage of the Church, to use such severity against her patrons, her defenders, and her advocates, that is, emperors and kings.”

And this consideration of expediency made St. Austin and others determine, not only in the case of kings, but the people also, that when the whole multitude were involved in the same crime, either by actual commission, or abetting, or applauding the practice of it, that then the severity of excommunication, especially in the highest degree, could not be used toward them with any sort of prudence, for fear it should have either no effect, or a very bad one. When a single criminal is separated by discipline from the society of the Church, the being avoided by the rest is a proper way to bring him to shame: but when the whole society, or a considerable part of it is involved in a common crime, there is no possibility of putting such a multitude of criminals out of countenance, because they will encourage and bear up one another: and therefore in that case to exercise severity of discipline upon them, is only to make it despised by them, and throw the Church into schisms and convulsions, by the opposition of the turbulent and factious, and to scandalize the weak and injudicious, who will be led away by the powerful side, and perish by rooting out the

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<sup>1</sup> Joan. Roffens de Potestate Papæ in Temporalibus, lib. ii. cap. xxxix. p. 931.

tares before the time. St. Austin argues this matter frequently with the Donatists, who were for having a Church, without spot and wrinkle upon earth, and for rooting out the tares wherever they found them, whatever consequences might attend it. Though, he observes, they did not keep to their own rule; for they tolerated one Optatus Gildonianus, a most infamous man, noted for his villanies over all Afric, and did not excommunicate him, for fear he should have carried off a multitude with him, and have broken their communion by new schisms and subdivisions among themselves. St. Austin<sup>1</sup> does not blame them for this, but only objects it to them as an argument *ad hominem*, to shew them, that they ought not to blame the Church for doing that in necessity, which they themselves were forced to do upon the like occasion. As to the practice of the Church he freely owns, she was forced many times to tolerate the tares among the wheat, when they were grown numerous and it was dangerous to eradicate them by the rough means of severe discipline, for fear of overturning the Church, and destroying its unity and peace by dangerous schisms, and scandalizing more weak souls that way than they could hope to gain by the other. It was so in Cyprian's time, he says, and it was so in his own. He often repeats and urges upon this occasion that famous passage of Cyprian in his *Book De Lapsis*, where speaking of the reasons of God's visiting the Church with that terrible persecution, he plainly intimates, that such numbers both of the clergy and laity had corrupted their morals, that good men could do nothing but mourn, and keep themselves as well as they could from partaking in their sins: but that could not then be done by the exercise of discipline, by reason of the numbers of all orders that were to be subjects of it; many of those who were to exercise it, being themselves the most obnoxious;

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<sup>1</sup> Aug. Ep. 164. ad Emeritam Donatistam. Non ergo reprehendimus, si eo tempore, ne multos secum excommunicatus traheret, et communionem vestram schismatis furore præcideret, eum excommunicare noluistis. Vid. Aug. Ep. 170. ad Severinum. Ep. 171 ad Donatistas. Cont. Epist. Parmenian. lib. ii. cap. 2. Optatum Gildonianum decennalem totius Africæ gemitum, tanquam sacerdotem atque collegam honorantes in communionè tenebant, &c.

and it was not to be expected, that they should be very forward to put in execution. So that the disease being grown too obstinate and strong to be cured this way, there remained no other remedy but the severity of a divine judgment, to rectify by an extraordinary scourge, what human power could not do in the ordinary way at such a juncture, “The Lord,” says Cyprian,<sup>1</sup> “was therefore minded himself to prove his family, and because a long peace had corrupted the discipline that was given us from heaven, the divine judgment stepped in to raise up that faith, which was fallen and almost laid asleep. All men’s minds were set upon augmenting their estates; and forgetting what the first Christians did in the times of the Apostles, and what they ought always to do, they by an insatiable ardour of covetousness only studied to increase their fortunes. There was no true religion or devotion in the priests, no sincere faith in the ministers, no mercy in their works, no discipline in their morals. Effeminacy and fraud were reigning vices both in men and women. They made no scruple to marry with infidels, and prostitute the members of Christ to the heathen. They were equally given both to profane swearing, and perjury, to contemn their governors with swelling pride, to curse themselves with venomous tongues, and with inveterate hatred and animosities to quarrel with one another. Many bishops, who ought to have been both monitors and examples to the rest, forsook their divine calling, to take upon them the management of secular affairs; and leaving their sees, and deserting their people, they rambled about other provinces, seeking for such business as would bring them in gain and advantage. In the mean time they suffered the poor of the Church to starve, whilst they themselves minded nothing but heaping up riches, and getting of estates by fraud and violence, by usury and extortion. What did we not deserve to suffer for such sins as these? Our crimes required, that for the

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<sup>1</sup> Cypr. de Lapsis. p. 123. Dominus probari familiam suam voluit, et quia traditum nobis divinitus disciplinam pax longa corruperat, jacentem fidem, et penè dixerim dormientem censura cœlestis erexit, &c.



correction of our manners, and the trial of our faith, God should bring us to severer remedies."

Cyprian here plainly intimates, that in such a corrupt state of affairs the discipline of the Church could not be maintained, or be rightly put in execution. He was forced to endure these colleagues of his, who were covetous, rapacious, extortioners, usurers, deserters, fraudulent and cruel. It was impossible to exercise Church-censures with any good effect, when there were such multitudes both of priests and people ready to oppose them, and distract the Church into a thousand schisms, rather than suffer themselves to be curbed or reformed that way: and therefore when no other practicable method was left the divine censure was necessary, as the last and only remedy.

And this is what St. Austin so often tells the Donatists, that the Church followed the example of Cyprian in this matter.<sup>1</sup> "When we are not permitted to excommunicate offenders for the sake of the peace and tranquillity of the Church, we do not therefore neglect the Church, but only tolerate what we would not, to obtain what we would have, using the caution of our Lord's command, lest, whilst we gather out the tares before the time, we should with them root up the wheat also: following also the example and precept of St. Cyprian, who endured with a view and regard to peace, many of his colleagues, who were usurers, defrauders, rapacious, and yet he was not infected with their contagion." So he says again, "The evil is sometimes to be endured for the sake of the good; as the Prophets tolerated those against whom they spake so many hard things, and did not forsake the communion of the sacraments used by that people because of them; as our Lord himself tolerated wicked Judas to the last, and per-

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<sup>1</sup> Aug. Lib. ad Donatistas post Collationem. cap 20. Ubi hoc facere gratia pacis et tranquillitatis ecclesiæ non permittimur, non tamen ideò ecclesiam negligimus, sed toleramus quæ nolumus, ut perveniamus quò volumus, utentes cautelâ præcepti Dominici, ne cum voluerimus arte tempus colligere Zizania, simul eradicemus et triticum: utentes etiam et exemplo et præcepto Beati Cypriani, qui collegas suos fœneratores, fraudatores, raptores, pacis contemplatione pertulit tales, nec eorum contagione factus est talis.

mitted him to communicate in the same holy supper with innocent disciples ; as the Apostles tolerated those, who preached Christ out of envy, which is the Devil's sin ; and as Cyprian tolerated the covetousness of his fellow-bishops, which he himself, according to the Apostle, styles idolatry." St. Austin frequently urges this example of Cyprian in other places.<sup>1</sup> And he argues further for the necessity of the practice from the reason and nature of the thing itself and from the precepts of the Gospel. In his Book against Parmenian he shews at large when excommunication or anathematizing is to be used, and when not. " It may be used, when there is no danger of rooting up the wheat together with the tares:<sup>2</sup> that is, when a man's crime is so notorious to all, and appears so execrable to all, that he has no defenders, or not so many or so powerful as to make a schism, then the severity of discipline ought not to sleep, for then it will be effectual to correct his wickedness, when all charitably and unanimously join to confirm the sentence. And then it is, that there is no danger hereby of prejudicing peace and unity, or of doing harm to the wheat, when the whole multitude or congregation of the Church is free from the crime that is anathematized. For then they will be ready to assist the bishop in his correction, and not the criminal in his resistance. Then they will abstain from his society for his good, and no one will so much as eat with him, not out of enmity, but for brotherly coercion. Then he also will be smitten with fear, and cured by shame, when he sees himself anathematized by the whole Church, and can find no company to encourage him to rejoice in his crime, or help him to insult the virtuous. And therefore, he says, the Apostle requires, that such an one's punishment or censure should be inflicted of many. For a censure is of no advantage, except when such an one is corrected, as

<sup>1</sup> Aug. ep. xlviii. ad Vincent. p. 66. Non propter malos boni deserendi, sed propter bonos mali tolerandi sunt, &c. Sicut toleravit Cyprianus collegarum avaritiam, quam secundum Apostolum appellat idololatricam. See to the same purpose Aug. de Baptismo, lib. iv. cap. 9. Cont. Epist. Parmen. lib. iii. cap. 2.

<sup>2</sup> Aug. cont. Epist. Parmen. lib. iii. cap. ii. p. 25.

has not a multitude on his side to uphold him.<sup>1</sup> But when the same disease has seized a multitude, good men in that case can do nothing further but grieve and mourn. And therefore the same Apostle, when he found a multitude among the Corinthians, who were defiled with uncleanness and lasciviousness and fornication, writing to them in his second epistle, he does not command them, “with such not to eat,” as he had done before: for they were many, and he could not now say, “If any brother be a notorious fornicator, or an idolater, or covetous, or the like, with such an one no not to eat.” But he says, “Lest when I come again, my God will humble me among you, and I shall bewail many who have sinned, and have not repented of the uncleanness and lasciviousness, and fornication which they have committed:” threatening them by his bewailing, that they should be punished by the divine scourge, rather than that punishment which consisted in men’s withdrawing from their society. His mourning would obtain of the Lord a scourge to correct them, who could not now by reason of their multitude be corrected in such manner, as that others should abstain from their society and make them ashamed, as it may be done in the case of a single brother, who is noted for a crime, from which all the rest are free. And indeed when the contagion of sin has invaded a whole multitude, it is then necessary for God to visit them out of merey with the severity of his own divine censure: for in that case exhortations to avoid the company of sinners are not only vain, but pernicious and sacrilegious, because impious and proud, tending more to disturb good men that are weak, than to correct the stubbornness and animosity of the evil.” And therefore he observes,<sup>2</sup> “that St. Paul treated the single incestuous Co-

<sup>1</sup> Neque enim potest esse salubris à multis correptio, nisi cùm ille corripitur, qui non habet sociam multitudinem. Cùm verò idem morbus plurimos occupaverit, nihil aliud bonis restat quàm dolor et gemitus.

<sup>2</sup> Aug. lib. ad Donatistas post Collationem. cap. xxi. Non eis præcepit corporalem separationem: multi quippe erant, non sicut ille unus, qui uxorem patris sui habuit, quem liberiore correptione et excommunicatione iudicat dignum. Longè aliter iste, aliter vitiosa curanda et sananda est multitudo, ne

rinthian, and the multitude that denied the resurrection in a different way: he did not command the Corinthians to make a corporal separation from them, for they were many, not like that one, who had married his father's wife, whom he judged worthy of a freer censure and excommunication. There was one way to be taken with a single person, another to cure and heal a multitude, lest if the people were divided from one another by parties, the wheat also should be rooted up by the mischief of schism. And therefore the Apostle does not enjoin those, who believed the resurrection, to separate corporally from those, who did not believe it in the same people, though he never ceases to separate them spiritually, by frequent admonitions to beware of joining in their impious opinions." He says further,<sup>1</sup> "When such evil men are tolerated in the Church, good men, who are displeased with them, and know not how to mend them, neither dare to root out the tares before the time of the harvest, for fear they should root up the wheat also, do not communicate with their wicked deeds, but with the altar of Christ: so that they are not only not polluted by them but deserve divine praise, because rather than the name of Christ should be blasphemed by horrible schisms, they tolerate for the good of unity, what they otherwise hate for the love of equity." This he shews to be a thing praiseworthy from various examples both of the Old and New Testament, and the practice of our Saviour and his Apostles, which are too numerous and long to be here inserted. He says more briefly in another Epistle,<sup>2</sup> "that the wicked do

forte si plebs à plebe separetur, per schismatis nefas etiam triticum eradicetur. Eos ergo qui jam credebant resurrectionem mortuorum, ab his qui eam in eodem populo non credebant, non corporaliter Apostolus separat, sed tamen spiritaliter separare non cessat.

<sup>1</sup> Aug. Ep. 162. ad Episc. Donatistas. p. 280. Quibus displicent mali, et eos emendare non possunt, neque ante tempus messis audent zizania eradicare, ne simul eradicent et triticum, non factis eorum, sed altari Christi communicant: ita ut non solum non ab eis maculentur, sed etiam divinis verbis laudari prædicarique mereantur, quoniam ne nomen Christi per horribilia schismata blasphemetur, pro bono unitatis tolerant, quod pro bono æquitatis oderunt.

<sup>2</sup> Aug. Ep. 164. ad Emeritum. Cognitos malos bonis non obesse in ec-

not hurt the good in the Church, though they be notoriously evil, if either there be no power to cast them out of communion, or some considerations of preserving peace hinder the doing of it." And again,<sup>1</sup> " Although there be some whom we cannot correct, and necessity compels us for the sake of others to allow them to communicate in the divine sacraments, yet we do not communicate with them in their sins, which is never done but by favouring and consenting to them. For we only tolerate them in the Church as tares among the wheat, and as chaff mingled with the corn in this floor of unity, and as bad fish among the good enclosed in the nets of the word and sacraments, till the time of harvest or winnowing or drawing to shore comes; lest with them we should root up the wheat: or by separating the corn in the floor before the time, rather expose it to the fowls of the air to devour it, than purge it to be laid up in the garner; or should break the nets by schisms, and, by over-abundant caution to cast out the bad fish, should open a way of pernicious liberty for the rest to return into the sea again. For this reason our Lord made use of these and the like parables to confirm the forbearance of his servants lest if the good should think themselves to blame for mingling with the evil, they should either destroy the weak by human and hasty dissensions, or themselves become weak and perish. He pursues the same argument at large in his epistle to Macrobius,<sup>2</sup> and his Books against Gaudentius,<sup>3</sup> and many other places: but what I have already produced, abundantly shews his sense of this matter, and not only his sense, but the concurrent opinion and practice of the whole African Church both in the time of Cyprian, and the Collation of Carthage, to which he refers. So that upon the

clesiâ, si eos à communione prohibendi aut potestas desit, aut aliqua ratio conservandæ pacis impediât.

<sup>1</sup> Ep. 166. Quos corrigere non valemus, etiamsi necessitas cogit pro salute cæterorum ut Dei sacramenta nobiscum communicent, peccatis tamen eorum non communicamus, quod non fit nisi consentiendo et favendo, &c.

<sup>2</sup> Aug. Ep. 255. <sup>3</sup> Cont. Gaudent. lib. iii. cap. 3, 5, 9, &c. It. Ep. lxxix. ad Restitutum. et Brevic. Collationis. Die iii. cap. 8. Vid. Collat. Carth. die iii. n. 258. et 265. et Aug. de Fide et Oper. cap. 4. et 5.

whole matter their opinion appears plainly to be this, that when a multitude of sinners in the Church made it dangerous to exercise discipline upon them, it was more expedient to endure the bad among the good, rather than by trying to purge them out by the severity of censures, to endanger breaking of the nets, and involve the Church in terrible schisms, to the scandal of the weak, and no benefit to the Church, whilst together with the tares they rooted up the wheat also. And this practice in difficult times, is generally allowed to be expedient by modern writers, among whom the learned reader may consult Richerius,<sup>1</sup> Estius and Lyra, Grotius<sup>2</sup> and Bishop Taylor,<sup>3</sup> and Dr. Whitby,<sup>4</sup> and Rivet: For I know of none but Peter Martyr,<sup>6</sup> who maintains the contrary opinion against St. Austin. But I return to the Ancients and their practice.

SECT. 7.—The Innocent never involved among the Guilty in ecclesiastical Censures. The Original and Novelty of Popish Interdicts.

Where, among other prudent cautions observed in this matter, we may remark their wisdom and piety in managing this spiritual sword, so as it might affect offenders only, and not involve the innocent and guiltless in the same condemnation. That, which has been so common and so tyrannical a practice with the popes of later ages, to lay whole Churches and nations under interdict, and forbid them the use of all sacraments, for the faults of a single criminal, was so much unknown to the Ancients, that St. Austin was amazed, when he heard of a young rash African bishop, who in his warm zeal, for the single offence of one Classicianus, and that not evidently proved, had anathematized both him and his whole family together. Complaint

<sup>1</sup> Richer. de potest. Eccles. in Reb. Temporal. lib. iii. c. iv. n. 7. p. 294. Estius in 2 Cor. x. 6. Lyra Gloss. in Mat. xiii.

<sup>2</sup> Grot. in 2 Cor. x. 6. Neque enim duris remediis locus est, ubi tota ecclesia in morbo cubat. <sup>3</sup> Taylor Duct. lib. iii. cap. iv. p. 610.

<sup>4</sup> Whitby Protest. Reconcil. par. ii. p. 257.

<sup>5</sup> Rivet. Synops. Pur. Theol. Disp. xlviij. n. 30.

<sup>6</sup> Pet. Mart. Loc. Com. lib. v. cap. v. n. 12. p. 784.

of the thing being made to St. Austin, he thus writes to the bishop, to expostulate with him upon the fact in these terms.<sup>1</sup> " Being in great concern of mind, and my heart fluctuating as in a tempest within me, I could not but write to your charity, to desire you to inform me, if you have any certain grounds of reason or authority of Scripture for your practice, how a son can rightly be anathematized for his father's sin, or a wife for her husband's, or a servant for his master's; or why a child that is yet unborn, if he happens to be born in the family, while it lies under *Anathema*, may not have the benefit of the laver of regeneration in the article of death? For this is not a corporal punishment, with which we read some despisers of God were slain with their whole families, though the families were not partakers in their crimes. Then indeed mortal bodies, which must otherwise shortly have died, were slain, to strike a terror into the living. But spiritual punishment, of which it is said, ' Whatsoever thou shalt bind on earth, shall be bound in heaven, this also binds souls, of whom it is written, the soul of the father is mine, and the soul of the son is mine: the soul that sinneth, it shall die.' For my part I can give no just reason for such *Anathemas*, and therefore I have never dared to use them, even when I have been most highly provoked by the clamorous crime of some, committed insolently against the Church. If God has revealed it unto you, I despise not your youth, but shall be ready to learn, how we can give a just reason either to God or man, for inflicting spiritual punishments upon innocent souls for the sin of another, from whom they derived no original sin, as they do from Adam, in whom all have sinned. But if you can give no good reason for it, why do you that, out of an unadvised and precipitate commotion of mind, in defence of which, if any man ask you a reason, you have nothing to answer." From this decent reproof given to the head-strong

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<sup>1</sup> Aug. Ep. lxxv. ad Auxilium. Non medioeriter aestuans cogitationibus magni cordis tempestate fluctantibus, apud charitatem tuam tacere non potui: ut si habes de hæc re sententiam, certis rationibus vel scripturarum testimoniis exploratam, nos quoque docere digneris: quomodo rectè anathematizetur pro patris peccato filius, &c.

passion of this young bishop, and his intemperate zeal in anathematizing a whole family for the crime of the master only, we may conclude there was no such allowed practice in the Church in St. Austin's time, as excommunicating the innocent with the guilty, though the innocent might have some near relation to, or unavoidable dependence on the offending parties: much less was it customary then to lay whole bodies, Churches or nations, under interdict, and forbid them the use of the sacraments, merely to curb or restrain the contumacy of others, of which they were wholly innocent, and no ways partakers. Which was a monstrous and novel abuse of discipline, peculiar to the tyrannical times of the Papacy, and utterly unknown to former ages.<sup>1</sup> Baronius indeed brings a single instance of it out of the Annals of France, where it is said, that Pope Agapetus, Anno 535, threatened King Clotarius to put his kingdom under interdict, unless he made satisfaction for a barbarous and sacrilegious murder committed by him in the church upon one Gualter de Yvetot, who carried the Pope's letters of recommendation to him. But as this story is only told by modern writers such as Du Haillan, whom Baronius quotes, and Gaguinus, Gillius and Tillius, added by Spondanus, and has not the authority of any ancient writers; and has something also in the narration itself, which destroys its credit with judicious men; Spondanus owns,<sup>2</sup> there are many learned men who reject it as a fable, prevailing only by the credulity of the French nation for many ages. And therefore it is not worthy to be mentioned as a piece of ancient history in the case before us.

Some date the original of interdicts from the time of Alexander III. about the year 1160. And indeed about this time they began to be very frequent. Habertus says,<sup>3</sup> Morinus carries them a little higher to the time of Pope Hildebrand or Gregory VII. who is most likely to be the father of them,<sup>4</sup> for they are sometimes mentioned in his epistles.

<sup>1</sup> Baron. An. 535. in Appendice. tom. vii. p. 9.

<sup>2</sup> Spondan. Epitom. Baroa. an. 535. n. 18.

<sup>3</sup> Habert.

Archicrat. p. 746.

<sup>4</sup> Greg. vii. lib. i. ep. 81. lib. ii. ep. 5.



Habertus himself pretends to make them as ancient as St. Basil. But the place<sup>1</sup> out of Basil's Epistles, says no more, but that when a whole Church make themselves partakers of another man's sins they may be censured all together. Which is very far from the indiscriminating censure of an interdict, which condemns a whole nation, and that commonly for no crime, but rather their duty, for adhering conscientiously to their natural allegiance due to their lawful sovereigns, when the Pope is pleased to excommunicate and depose them under pretence of the plenitude of ecclesiastical power, as any one, that would write the history of interdicts, might easily demonstrate. Whatever St. Basil meant, it is certain he had not this in his thoughts: neither was it the usual practice of the Church to anathematize whole bodies of men, though guilty, unless it was for terror's sake, as has been shewn in the foregoing section.

SECT. 8.—The Danger of excommunicating innocent Persons.

As to innocent persons, all care imaginable was taken that the censures of the Church should not be abused by any indiscreet application of them to the condemnation of the guiltless. In which case an unjust sentence was thought to recoil upon the head of him that executed it. Thus Firmilian told Pope Stephen,<sup>2</sup> “that in cutting off others, who did not deserve it, he cut off himself. Be not deceived, for he is the true schismatic, who makes himself an apostate from the communion of the ecclesiastical unity. For while you think you can excommunicate all others, you only excommunicate yourself from them.” In like manner Polycrates, bishop of Ephesus, answered Pope Victor, when he threatened to excommunicate him and all the Asiatic Churches for not observing Easter in the same manner as they did at Rome: he was not afraid of his menaces, he

<sup>1</sup> Basil. ep. 244.

<sup>2</sup> Firmil. Ep. lxxv. ap. Cypr. p. 228. Excidisti teipsum. Noli te fallere. Siquidem ille est verè schismaticus, qui se à communione ecclesiasticæ unitatis apostatam fecerit. Dum enim putas omnes à te abstineri posse, solùm te ab omnibus abstinuisti.

told him,<sup>1</sup> for he had learned of those that were greater than he, to obey God rather than man. And Eusebius adds, “That when Victor persisted still in this headstrong resolution, Irenæus and several other bishops wrote *very sharply* to him, — *πληκτικώτερον*, — reproving him for his unwarrantable abuse of the Church’s censures. It is a noted saying in the Index to the works of Pope Gregory I.<sup>2</sup> upon this account, “If any one excommunicate another unjustly, he does not condemn him, but himself.” Though the Romanists, commonly magnify another saying of his, transcribed into the Canon-Law,<sup>3</sup> “That the sentence of the shepherd is to be dreaded, whether it be just or unjust.” Which can certainly never be true, but in a very doubtful case. It is much more to the purpose, what Gratian in the same question alleges from St. Austin,<sup>4</sup> “That a man had need be very careful whom he binds on earth: for unjust bonds will be loosed by the justice of heaven: and not only so, but turn to the condemnation of him that imposes them: for though rash judgment often hurts not him, who is rashly judged:<sup>5</sup> yet the rashness of him, that judges rashly, will turn to his own disadvantage. In the mean time it is no detriment to a man,<sup>6</sup> to have his name struck out of the Diptychs of the Church by human ignorance, if an evil conscience do not blot him out of the book of life.” Thus far St. Austin in several places, alleged by Gratian, to which may be added what he cites out of the foresaid place

<sup>1</sup> Polycrat. Ep. ad Victor. ap. Euseb. lib. v. c. 24. *Ὁὐ πρόφομαι ἐπὶ τοῖς καταπλησσομένοις*, &c. Vide Aug. de Verâ Religione. cap. vi.

<sup>2</sup> Greg. lib. ii. ep. 26. Si quis illicitè quœquam excommunicat, semet- ipsum, non illum condemnat.

<sup>3</sup> Greg. Hom. xxvi. in Evang. ap. Grat. decret. caus. xi. Quæst. iii. c. 1. Sententia Pastoris, sive justa, sive injusta fuerit, timenda est.

<sup>4</sup> Aug. Ser. xvi. de verbis Domini ap. Grat. ibid. c. xlvi. Ut justè alliges, vide. Nam injusta vincula dirumpit justitia.

<sup>5</sup> Aug. de Serm. Dom. in Monte. lib. ii. cap. xxix. ap. Grat. ibid. cap. xlix. Temerarium judicium plerumque nihil nocet ei, de quo temerè judicatur. Ei autem, qui temerè judicat, ipsa temeritas necesse est, ut noceat.

<sup>6</sup> Aug. Ep. 137. Quid obest homini, quod ex illâ tabulâ non vult eum recitari humana ignorantia, si de libro vivorum non eum delet iniqua conscientia? Ap. Gratian. ibid. cap. 50.

of Gregory,<sup>1</sup> “ That he deprives himself of the power of binding and loosing, who exercises it according to his arbitrary will, and not according to the deserts of those that are under his government.” He means, that an excommunication, unjustly pronounced, is of no force against one that deserves it not; neither is the absolution of an impenitent sinner any better; because they are both done *clave errante*, by a misapplication of the keys, in which case as the Gloss upon the Law words it,<sup>2</sup> “ the party so bound is not bound before God: for it often happens, that by this means a man is excommunicated out of the Church militant, who notwithstanding is in the Church triumphant.” And such excommunications, says Cardinal Tolet,<sup>3</sup> bind neither before God nor the Church.

SECT. 9.—No one to be excommunicated without being first heard, and allowed to speak for himself.

Now to prevent this inconvenience, the ancient Church prescribed several useful rules to be observed in the matter of excommunication. For besides that ordinarily no one was to be censured without a previous admonition, as has been noted before,<sup>4</sup> it was likewise ordered, that no man should be condemned in his absence, without being allowed liberty to answer for himself, unless he contumaciously refused to appear. “ Let ecclesiastical judges beware,” says the Council of Carthage,<sup>5</sup> “ that they never pronounce sentence against any one, that is absent, when his cause is under debate: otherwise the sentence shall be void, and they shall give an account of their action to the synod.” Upon this ground St. Austin refutes the censure,<sup>6</sup> which the

<sup>1</sup> Greg. Hom. xxvi. in Evang. ap. Grat. c. 60. Ipse ligandi atque solvendi potestate se privat, qui hanc pro suis voluntatibus, et non pro subditorum moribus exerceat. Vid. Gelasium. ibid. ap. Grat. c. 46.

<sup>2</sup> Gloss. in extravagant. Joan. xxii. Tit. xiv. cap. v. p. 160.

<sup>3</sup> Tolet. Instruct. Sacerdot. lib. i. cap. 10.

<sup>4</sup> Chap. ii. sect. 6.

<sup>5</sup> Con. Carth. iv. can. 36. Caveant iudices ecclesiastici, ne absente eo, cujus causa ventilatur, sententiam proferant, quia irrita erit, et causam in synodo pro facto dabunt. Vid. plura ap. Gratian. caus. iii. quest. 9.

<sup>6</sup> Aug. Ep. clxii. p. 279. Si nec vituperari, nec corripri, nisi interro-

Donatists pretended to pass upon Cecilian, bishop of Carthage, because he was absent, and never examined by them before they proceeded to condemn him.

SECT. 10.—Nor without legal Conviction, either by his own Confession: or credible Evidence of Witnesses, against whom there was no Exception; or such Notoriety of the Fact as made a Man liable to Excommunication *ipso facto*, without any formal Denunciation.

Another rule observed in this case was, that no one should be excommunicated, unless he stood legally convicted of his crime. Which might be three ways; 1. by his own confession. 2. By the credible evidence of such witnesses, as could not justly be excepted against, or suspected of bearing false testimony. 3. By such notoriety of the fact, as made a man liable to excommunication *ipso facto*, without any further process or formal denunciation: as in the case, of those that fell by offering sacrifice in time of persecution: here was no need in this case either of their own confession, or conviction by witnesses: for their crime was notorious to all the world, and it needed no formal process or examination of witnesses to condemn them: neither was there any need of a formal sentence of excommunication to be pronounced against them: for they stood excommunicated *ipso facto*, as learned men style it;<sup>1</sup> the fact itself being evident and notorious to all, was sufficient to declare them excommunicate, as having forfeited all right to the privileges of Christian communion. In other cases, where the matter was not so clear, they required either the confession of the party himself, or the legal evidence of unexceptionable witnesses. Thus St. Austin<sup>2</sup>

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gatum Spiritus Sanctus voluit, quanto sceleratius non vituperati aut correpti, sed omnino damnati sunt, qui de suis criminibus nihil absentes interrogari potuerunt? It. Serm. xxii. de Verbis Apost. Damnatus est Cæcilianus, absens primo, deinde à traditoribus. &c.

<sup>1</sup> Vid. Cave Prim. Christ. part. iii. cap. v. p. 366.

<sup>2</sup> Aug. Hom. 1. de Pœnitent. tom. x. p. 207. Nos à communione prohibere quenquam non possumus nisi aut sponte confessum, aut in aliquo sive seculari sive ecclesiastico iudicio nominatum atque convictum. Quis enim sibi utrumque audeat assumere, ut eniquam ipse sit et accusator et iudex?

declares: " we cannot exclude any one from communion except he either voluntarily confess his crime himself, or be noted and convicted in some secular or ecclesiastical judgment. For who dare to assume to himself, to be both accuser and judge?" " We are not to exclude any man," says Pope Innocent,<sup>1</sup> " upon bare suspicions." " Where the crime is not evident," says Origen,<sup>2</sup> " we cast no man out of the Church, lest while we root out the tares, we root up the wheat also." And the same reason is given by St. Austin in the place now cited. Justinian<sup>3</sup> confirmed this rule of the Church by a civil sanction, not only forbidding all bishops and presbyters to segregate any man from the communion before his crime was evidently proved against him, but ordering such an one immediately to be restored to communion, and the minister, who suspended him, to be suspended himself by his superior, "*ut quod injustè fecit, justè sustineat, that he may justly suffer the same punishment, which he unjustly inflicted on the other.*" As therefore they were not to excommunicate a whole multitude, though their crimes were notorious; so neither were they to excommunicate a single criminal, unless his crime could be made evident to the multitude, that they might detest and abhor it: then the severity of discipline was not to sleep,<sup>4</sup> according to St. Austin's rule:<sup>5</sup> if the criminal was accused and also convicted by evident proofs and testimony before the judge, then the judge might proceed against him lawfully, to punish, correct, excommunicate, or degrade him. But otherwise, without such legal conviction, no bishop could suspend a clerk from communion,

<sup>1</sup> Innoc. Ep. iii. cap. 4. Non facile quisquam ex suspicionibus abstinetur. Probatione cessante, vindictæ ratio conquiescit. <sup>2</sup> Orig. Hom. xxi. in Josue. tom. i. p. 328.

<sup>3</sup> Justin. Novel. cxxiii. c. 11. Omnibus autem episcopis et presbyteris interdiximus, segregare aliquem à sacrâ communionem, antequam causa monstratur propter quam sanctæ regulæ hoc fieri jubent, &c.

<sup>4</sup> Aug. cont. Epist. Parmen. lib. iii. cap. 2. Quando cujusque crimen notum est omnibus, et omnibus execrabile apparet—non dormiat severitas disciplinæ.

<sup>5</sup> Aug. Ser. xxiv. de Verbis Apost. ap. Gratian. Caus. xxiii. quæst. iv. cap. 11. Si judicandi potestatem accepisti, ecclesiasticâ regulâ, si apud te accusatur, si veris documentis testibusque convincitur, coerce, corripue, excommunicâ, degrada.

unless he contumaciously refused to appear to have his cause examined before him. And this, St. Austin says,<sup>1</sup> was determined in council for greater security against arbitrary proceedings. And it is observable in this case, that the canons never allowed<sup>2</sup> the testimony of one single witness as sufficient evidence to convict a criminal; grounding upon that rule in the divine law, “In the mouth of two or three witnesses shall every word be established.” Nay, though it were a bishop or presbyter that accused any man, barely upon his own knowledge, his testimony was not sufficient ground to proceed against him to excommunication. For as we have heard St. Austin say but just now, no man could be both accuser and judge. And therefore it was provided by the Council of Vaison,<sup>3</sup> “that though a bishop knew a man to be a criminal, yet if he alone was privy to his crime, and could make no other proof of it, he should not so much as publish it, but deal privately with the man by admonition to bring him to repentance. But if, notwithstanding his admonition, he would persist pertinacious, and offer himself publicly to communicate, the bishop should not have power to excommunicate or cast him wholly out of the Church, but only enjoin him to recede for a time out of respect to the bishop’s person, whilst he continued in the communion of all those, who knew nothing of his offences.” And even this was a greater deference paid to the single testimony of a bishop, than was allowed in the African Churches. For there, by a rule of the seventh Council of Carthage, made in St. Austin’s time,<sup>4</sup> “if a man

<sup>1</sup> Aug. Ep. cxxxvii. In episcoporum concilio constitutum est, nullum clericum, qui nondum convictus est, suspendi à communione debere, nisi ad causam suam examinandum se non præsentaverit.

<sup>2</sup> Vid. Can. Apost. lxxv. Con. Herdense. ap. Crab. ex Ivone. lib. v.

<sup>3</sup> Con. Vasens. i. can. 8. Si tantum episcopus alieni sceleris se conscium novit, quamdiu probare non potest, nihil proferat, sed cum ipso ad compunctionem ejus secretis correptionibus elaboret. Quod si correptus pertinacior fuerit, et se communioni publicè ingesserit, etiam si episcopus in redarguendo illo, quem reum judicat, probatione deficiat, indemnatus licet ab his qui nihil sciunt, secedere ad tempus pro personâ majoris auctoritatis jubeatur, illo, quamdiu probari nihil potest, in communionem omnium, præterquam ejus qui eum reum judicat, permanente.

<sup>4</sup> Con. Carth. vii. can. v. Placuit, ut si quando episcopus dicit, aliquem

confessed his crime to a bishop, and afterwards denied it, the bishop was not to think he had any injury done him, if his single evidence was not taken by his fellow-bishops to the man's condemnation: and if in such a case the bishop presumed to excommunicate him, upon a scruple of conscience, that he could not communicate with such an one, the bishop himself was not to communicate with other bishops, that he might learn to be more cautious in saying that against any man, which he could not prove by any other evidence but his own testimony." So tender were these holy bishops of condemning any man without sufficient and legal evidence to convict him. St. Austin, who was present in this Council, tells a remarkable story<sup>1</sup> of a case of this nature, that happened between Boniface, one of his presbyters, and a man that was accused by him. Having no sufficient evidence, but only their single testimony on either side, he would not determine the matter between them, but ordered them both to go to the sepulchre of Felix, the martyr, in hopes that the cause might be decided by some apparent miracle and divine judgment, where human judgment could not determine it, as he says he had known it done, in a case of theft at Milan. He adds, that both the ecclesiastical and civil law forbid the condemning any man upon the evidence of a single witness, as insufficient to convict him. The ecclesiastical law we have already heard; and for the civil law, it is probable he refers to a decree of Constantine, now extant in the Theodosian Code,<sup>2</sup> which precisely enjoins all judges not to determine any cause upon the evidence of a single witness, though it were even a senator

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sibi soli proprium crimen fuisse confessum, atque ille neget: non putet ad injuriam suam episcopus pertinere, quod ipsi soli non creditur: et si scrupulo propriæ conscientie se dicit neganti nolle communicare, quandiu excommunicato non communicaverit suus episcopus, eidem episcopo ab aliis non communicetur episcopis, ut magis caveat episcopus, ne dicat in quenquam quod aliis documentis convincere non potest. Vid. Cod. Afric. can. 133, et 134. et Aug. Rom. xvi. de Verbis Dom.

<sup>1</sup> Aug. Ep. cxxxvii.

<sup>2</sup> Cod. Theod. lib. xi. tit. 39. de Fide Testium. leg. iii. Manifestè sancimus, ut unius omnino testis responsio non audiatur, etiam si præclaræ curiæ honore præfulgeat.

that was the deponent. Which Gothofred compares to a noted saying among the old Romans, related by Plutarch, that it was not right to give credit to one witness, though it were Cato himself that gave testimony. Whence Gothofred also with great reason concludes,<sup>1</sup> that the law which goes under the name of Constantine, at the end of the Theodosian Code, allowing the single testimony of a bishop to be good evidence, is a spurious law, though it be inserted into the Capitular<sup>2</sup> of Charles the Great, and Gratian's Decree, because it contradicts all other laws both ecclesiastical and civil upon this subject.

It is worth observing further, that to secure the innocence of virtuous men from being unjustly traduced and censured, there were many laws forbidding the testimony of heretics, or other suspected and infamous persons to be accepted in judgment, of which because I have had occasion to discourse elsewhere,<sup>3</sup> I say no more in this place. But from all, that has now been said, it sufficiently appears, that though the Ancients were very strict and severe in their discipline, yet they were equally cautious, that the severity of it should not affect the innocent, and every man was presumed to be innocent till a just and legal proof could be made against him: nor was this an harm to the Church, it being better that some vicious men should escape, than that virtuous men should be exposed to the greatest of all punishments upon bare suspicion, or the arbitrary pleasure of any one man; for which reason also, as I have often noted, the Church still allowed an appeal from the unjust sentence of any bishop to the re-examination of a provincial Council.

SECT. 11.—Excommunication not ordinarily inflicted upon Minors or Children under Age.

Another sort of persons, whom the censures of the Church seldom or never touched, were minors, or children under age: there being more proper punishments thought fit for

<sup>1</sup> Gothofred. in Cod. Theod. lib. xi. tit. xxxix. leg. 3. et lib. xvi. tit. xii. leg. i. p. 306.

<sup>2</sup> Capitular. lib. vi. cap. 281.

Grat. caus. xi. quæst. i. cap. 36.

<sup>3</sup> Book V. chap. i. sect. 5.



them, such as fatherly rebukes and corporal correction: and to inflict the highest censures upon such, was rather thought a lessening of authority, and bringing contempt upon the discipline of the Church. Therefore Soerates observes of Arsenius, the Egyptian abbot, that he was never used to excommunicate any junior monks, but only those that had made a greater proficiency: for a young man,<sup>1</sup> when he is excommunicated, only becomes a despiser. Palladius observes the same of the discipline of the great church of Mount Nitria,<sup>2</sup> that they had three whips hanged up in the church, one for chastising the offending monks, another for robbers, and a third for strangers, that came accidentally, and behaved themselves disorderly among them. So in the rule of Isidore of Sevil, one article is,<sup>3</sup> “that they who were in their minority, should not be punished with excommunication, but according to the quality of their negligence or offence be corrected with congruous stripes.” The late author of the *Historia Flagellantium*,<sup>4</sup> cites the Rule of Macarius,<sup>5</sup> and that of St. Benedict,<sup>6</sup> and Aurelian,<sup>7</sup> and Gregory the Great to the same purpose.<sup>8</sup> And Cyprian, in the Life of Cæsarius Arelatensis, says, that bishop observed this method both with slaves and freemen, that when they were to be scourged for their faults, they should suffer forty stripes save one, according as the law appointed. The Council of Agde<sup>9</sup> orders the same punishment not only for junior monks, but also for the inferior clergy. And the Council of Mascon<sup>10</sup> particularly insists upon the number of forty stripes save one. The Council of Vannes<sup>11</sup> repeats the canon of Agde. And the Council of Epone speaks<sup>12</sup> of stripes, as the peculiar punishment of the minor

<sup>1</sup> Soerat. lib. iv. cap. 23. Νέος ἀφορισθεὶς καταφρονητῆς γίνεται.

<sup>2</sup> Pallad. Hist. Lausiaca. cap. vi.

<sup>3</sup> Isidor. Regula. cap. xvii.

In minori ætate constituti non sunt coercendi sententiâ excommunicationis, sed pro qualitate negligentie congruis emendandi sunt plagis.

<sup>4</sup> Hist. Flagellant. cap. v. et vi.

<sup>5</sup> Macar. Regula. cap. xv.

<sup>6</sup> Benedict. Reg. cap. lxx.

<sup>7</sup> Aurelian. Reg. ibid.

<sup>8</sup> Greg. lib. ix. Ep. 66.

<sup>9</sup> Con. Agathen. can. xxxviii. Si

verborum increpatio non emendaverit, etiam verberibus statuimus coerceri. It. can. xli.

<sup>10</sup> Con. Matiscon i. can. 5. Si junior fuerit, uno

minus de quadraginta ictus accipiat.

<sup>11</sup> Con. Veneticum. can. vi.

<sup>12</sup> Con. Epannens. can. xv. Minores Clerici vapulabant.

clergy, for the same crimes, that were punished with excommunication, for a whole year in the superior clergy. Nor is this to be wondered at in these Councils, since St. Austin<sup>1</sup> assures us, this kind of punishment by stripes was commonly used, not only by schoolmasters and parents, but by bishops in their consistories also. And the plain reason of all this seems to be, not so much the distinction of crimes, as the distinction of age and quality in the persons.

SECT. 12.—How Persons were sometimes excommunicated after Death.

Another inquiry may be made concerning persons deceased; whether ever any excommunication was inflicted on men after death, if they died in the peace and communion of the Church? It has already been observed,<sup>2</sup> that when men died impenitent under the bonds of excommunication unrelaxed, a necessary consequence of that was the denying them Christian burial, and all future memorial in the prayers and oblations of the Church, by striking their names out of the Diptychs or holy books, which kept the memorial of such as died in the peace and communion of the Church. But the question here is not about those, that died so excommunicate, but those, that died in the visible communion and external peace of the Church, and under no ecclesiastical censure, whether upon any new discovery of their errors or crimes after death, they were liable to be excommunicated, and after what manner that censure was passed upon them. Now the resolution of this question in part will easily be given, from a famous case in Cyprian concerning one Geminus Victor, who, contrary to the rule of a council, had made Geminus Faustinus a guardian or trustee, by his last will and testament; for which transgression, Cyprian, after his death, wrote to the Church of Furni, where he had lived, to put the sentence of the Council in execution against him; telling them,<sup>3</sup> that since Victor had presumed, against the rule made in

<sup>1</sup> Aug. Ep. clix. ad Marellin. Qui a odus coercionis et a magistris artium liberalium, et ab ipsis parentibus, et saepe etiam in judiciis solet ab episcopis adhiberi. Vid. Aug. Serm. cexv. de Tempore. Si ad vos pertinent, etiam flagellis caedite, &c.      <sup>2</sup> Chap. ii. sect. 11.

<sup>3</sup> Cyp. Ep. lxxvi. al. 1. ad Cler. Furnitan. p. 3. Ideo Victor, cum contra formam nuper in concilio a sacerdotibus datam, Geminium Faustinum presbyterum ausus sit tutorem constituere, non est quod pro dormitione ejus apud vos fiat oblatio aut deprecatio aliqua nomine ejus in ecclesiâ frequentetur.

Council, to appoint Geminus Faustinus, one of the presbyters of the Church, his trustee, for this offence no oblation ought be made for his death, nor any prayer to be offered in his name in the Church, according to the custom of praying then for all that were departed in the faith. This was a plain excommunication of him after death, by erasing his name out of the Diptychs of the Church. Such another decree we find in the African Code against any bishop that should make heretics or heathens his heirs, whether they were of his own kindred or not? "Let such an one be anathematized after death, and let not his name be written or recited among the priests of God." With this agrees what St. Austin says more than once concerning Cecilian, bishop of Carthage,<sup>2</sup> that if the things, which the Donatists objected against him, were true, and they could evidently prove them, the Catholics were ready to anathematize him after death. And there want not in fact several instances of this practice. For thus Origen, as Socrates says,<sup>3</sup> was excommunicated two hundred years after his death by Theophilus, bishop of Alexandria. And Theodorus of Mopsuestia was so anathematized by the fifth general Council,<sup>4</sup> as appears from Evagrius, and the Letters of Justinian, and the Acts of the Council. In like manner the sixth general Council<sup>5</sup> anathematized Pope Honorius as a Monothelite, after death, together with Cyrus, bishop of Alexandria, and Theodorus, bishop of Pharan, and Sergius, Pyrrhus, Petrus, and Paulus, bishops of Constantinople, all whose names were erased out of the sacred Diptychs after death by the order of that Council. It is a grand dispute indeed among the gentlemen of the Church of Rome, whether the name of their Pope Honorius ought to stand in that black list? (Baronius<sup>6</sup> affirming, that the Acts of the Council, where his name is inserted, are corrupted; and Combefis, on the other hand,<sup>7</sup>

<sup>1</sup> Cod. Afric. can. lxxxlii. Μετὰ θάνατον ἀνάθεμα τοῖς τῶν λεχθεῖν, &c.

<sup>2</sup> Aug. Ep. l. ad Bonifac. Comitem. p. 80. Si vera essent, quæ ab eis objecta sunt Cæcilianiano, et nobis possent aliquando monstrari, ipsum jam mortuum anathematizaremus. It. Ep. clii. Quæ est Epistola Synodica Concilii Cirtensis ad Donatistas. Si fortè malus esset inventus, ipsum anathematizaremus.

<sup>3</sup> Socrat. lib. vii. cap. 45.

<sup>4</sup> Evagr. lib. iv. cap. 38.

Justin. Epist. in Act. i. Con. 5. General.

<sup>5</sup> Con. Constant.

iv. Gen. Act. 13.

<sup>6</sup> Baron. An. 680. n. 31.

<sup>7</sup> Combefis Hist. Monothelitar. Par. 1648.

writing a whole volume against Baronius to prove them genuine :) but however that matter be, there is no dispute about all the rest; but that they were certainly anathematized by that Council after death. Sometimes men were unjustly excommunicated either living or dead: and then the way to restore them to the communion of the Church, was to insert their names into the Diptychs, whence they had been expunged before. Thus Theodoret says,<sup>1</sup> Atticus restored the name of Chrysostom, after it had for many years been left out. And John, bishop of Constantinople, in a synod, Anno 518, restored the names of Pope Leo, and Euphemius, and Macedonius, and the Council of Chalcedon, which by the fraud of Anastasius, the Emperor, who was an Eutychian heretic, had all been cast out of the Diptychs of the Church.<sup>2</sup> This was the method both of condemning, and restoring men to the communion of the Church after death. To deny them Christian burial, or not to receive their oblations, or to erase their names out of the Diptychs, was the same thing as to declare them anathematized, and cast out of the communion of the faithful, with whom the Church maintained communion after death. And so far we have considered the persons that might or might not be the subjects of ecclesiastical censures, whether living or dead.

SECT. 13.—The Censures of the Church not to be inflicted for small Offences.

The next inquiry is concerning the crimes, for which these censures might be inflicted. And here the canons are wont to make a very exact and nice distinction in general between the greater and lesser sins, the former only being such as were regarded in the business of excommunication. For this being the severest of all punishments was not be inflicted for every trifle. “Therefore bishops,” says the Council of Agde,<sup>3</sup> “must have a

<sup>1</sup> Theod. lib. v. cap. 34.   <sup>2</sup> Vid. Acta Con. Const. in Act. v. Con. sub Menna.  
<sup>3</sup> Con. Agathen. cap. iii. *Episcopi, si sacerdotali moderatione postposita, innocentes, aut minimis causis culpabiles, excommunicare presumpserint, — à vicinis episcopis cujuslibet provinciæ literis moneantur. Et si parere noluerint, communio illis usque ad tempus synodi à reliquis episcopis denegetur, al. non denegetur.* See Gratian. Caus. xi. quæst. 3. cap. 8. Where this canon is cited, and what the Roman correctors observe of this various reading.

great regard to sacerdotal moderation, and not presume to excommunicate either the innocent, or those that are guilty only of small offences. Otherwise they are liable to be admonished by the neighbouring bishops of the province; and if they obey not, the bishops of the province are to refuse them their communion till the next synod." Some copies read it, "They shall not be denied communion till the next synod: and then it refers to the persons excommunicated, that though they were rashly cast out of the Church for slight causes by their own bishops, the rest of the bishops should not deny them communion till their cause was heard in a synod. The fifth Council of Orleans has a like order,<sup>1</sup> "That no bishop shall suspend any of the faithful from the communion for little and slight causes, but only for those crimes, for which the ancient Fathers command offenders to be cast out of the Church." And this is repeated in the Council of Arvern or Clermont,<sup>2</sup> held about the same time, Anno 549.

SECT. 14.—What the Ancients meant by small Offences in this Matter, and how they distinguished them from the greater.

But it may be asked, What the ancient Fathers meant by slight causes and small offences in this business of ecclesiastical censure? And how they distinguished these from those greater crimes, which made men liable to excommunication and public penance in the Church? The right understanding of these things will be of great use, not only to give us a clear view of the nature of ecclesiastical discipline, but also to shew the vanity of a late distinction between mortal and venial sin, as used by the Romanists, to bring all sins that are mortal under the necessity of auricular confession, and private absolution. Now it is certain, the Ancients did not believe any sins to be venial, as that signifies needing no pardon, but in that sense all sins to be mortal in their own nature, and such as we have need to

<sup>1</sup> Con. Aurel. v. can. 2. Nullus sacerdotum quenquam rectæ fidei hominem pro parvis et levibus causis à communione suspendat: præter eas culpas pro quibus antiqui patres arceri ab ecclesiâ jusserunt committentes.

<sup>2</sup> Con. Arvernens. ii. can. ii. Con. tom. v. p. 102.

ask pardon for at the hands of God. But because there are some sins of human frailty and inadvertency in the best of men, and sins of daily incursion, without which no man lives; these they usually call venial sins, as needing no other repentance, but a general confession; nor any other pardon, but what is daily granted by God to good men, upon their daily prayers and acknowledgment of their offences. Besides these, there are other sins of wilfulness, and of a more malignant nature, which if continued in, without a particular repentance and reformation will prove mortal, and exclude men from the kingdom of heaven: and yet many of these were such, as did not ordinarily bring men under the highest censures of the Church, but were to be cured only by general reproofs and exhortations to repentance. These also in like manner, with respect to the severity of Church-discipline, which did not reach them, were sometimes termed lesser and venial sins, in opposition to those yet more heinous sins, which brought men under excommunication and public penance to make expiation and atonement for them. These sins were mortal in their own nature, and fatal in the effect to the sinner: but yet the Church for many reasons was obliged sometimes to let them pass, without any other censure than a pastoral admonition. But there was a third sort of sins both of a malignant, and public, and flagrant nature, of which sinners might easily be impleaded and convicted: and these were those great sins, (as they are usually termed in opposition to both the fore-mentioned kinds,) on which the highest severities of Church-discipline were exercised, unless where the multitude of sinners, or their abettors, or the danger of schism, as has been noted before, made the thing impracticable and unfeasible. This three-fold distinction of sins, is accurately noted by St. Austin in his Book of Faith and Works: he says,<sup>1</sup> “ There are some sins so great, as to deserve to be

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<sup>1</sup> Aug. de Fide et Operibus. cap. xxvi. Nisi essent quedam ita gravia, ut etiam excommunicatione plectenda sint, non diceret Apostolus: “ Congregatis vobis et meo spiritu, tradere ejusmodi hominem Satanae, &c.” Item nisi essent quedam non eâ humilitate pœnitentiæ sananda, qualis in ecclesiâ datur eis qui propriò pœnitentes vocantur, sed quibusdam correpti-

punished with excommunication, according to that of the Apostle, To deliver such an one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord." Again, "There are other sins which are not to be cured by that humiliation of penance, which is imposed upon those, who are properly called penitents in the Church, but by certain medicines of reproof, according to that of our Lord, Tell him of his fault between him and thee alone; if he hear thee, thou hast gained thy brother. Lastly, there are other sins, for which he had left us a daily cure in that prayer, wherein he hath taught us to say, Forgive us our trespasses, as we forgive them that trespass against us." By this it is plain, that all great and deadly sins did not bring men under the public censure of excommunication, but only those of the first kind, which were of the highest nature. In other places he distinguishes sins only into two kinds, greater and lesser; sins that obliged men to do public penance, and sins, that were pardoned by daily prayer, weeping, fasting, giving, and forgiving, without any obligation to do public penance for them. The former he calls mortal sins, and the other venial; not because they were not mortal in their own nature, but because they were pardoned without the solemnity of a public repentance. So many great sins, such as anger, and evil thoughts, and evil speaking, and excess in the use of lawful things, are reckoned by him in the number of lesser sins, in comparison of such great and deadly sins, as murder, and theft, and adultery. "He that is free," says he,<sup>1</sup> "from great and mortal sins, such as the crimes of murder, theft, and adultery, yet being liable to many lesser sins of the tongue

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tionum medicamentis, non diceret ipse Dominus, "Corripi inter te et ipsum solum, &c." Postremo, nisi essent quædam, sine quibus hæc vita non agitur, non quotidianam medelam poneret in oratione quam docuit, ut dicamus "Dimitte nobis debita nostra, &c."

<sup>1</sup> Aug. Tract. xii. in Joan. p. 47. Liberatus ab illis lethalibus et grandibus peccatis, qualia sunt facinora, homicidia, furta, adulteria, propter illa quæ minuta esse peccata videntur linguæ, cogitationum, aut immoderationis in rebus concessis, facit veritatem confessionis, et venit ad lucem in operibus bonis: quoniam minuta plura peccata, si negligantur, occidunt, &c.

and thoughts, and immoderate use of lawful things, he thereupon exercises himself in making true confession of them, and comes to the light by performing good works; because a multitude of lesser sins, if they be neglected, kill the soul. Many small drops fill a river: a grain of sand is but a small thing, but many grains added together, will load and oppress us. The pump of a ship, if it be neglected, will do the same thing as a boisterous wave. It enters by little and little at the pump, but by long entering, and never draining, at last it sinks the ship. And what is it to drain the soul, but by good works, such as mourning, and fasting, and giving and forgiving, to take care that such sins do not overwhelm the soul?" The lesser sins, he here speaks of, were not only sins of inadvertency and common human frailty, but sins of an higher nature: and yet he calls them little sins, in comparison of those great and deadly sins of adultery and murder, for which men underwent public penance, which they did not for these other sins, which yet would prove fatal, unless men took care, by confession and godly sorrow and fasting, and almsdeeds and charity to their enemies, to clear themselves of them. In another place<sup>1</sup> he speaks of two sorts of repentance for two sorts of sins committed after baptism, which he thus distinguishes: "There is one sort of repentance, which is to be performed every day. And whence can we shew that? I cannot better shew it, than from the daily prayer, where our Lord hath taught us to pray, and shewn us what we are to say unto the Father in these words, Forgive us our trespasses, as we forgive them that trespass against us. There is another more weighty and mournful sort of repentance, from which men are properly called penitents in the Church: by which they are sequestered from partaking of the sacrament of the altar, lest they should eat and drink damnation to

<sup>1</sup> Aug. Hom. xxvii. ex 50. tom. x. p. 177. Est alia pœnitentia quotidiana. Et ubi illam ostendimus? Non habeo ubi melius ostendam, quàm in oratione quotidianâ, ubi Dominus orare nos docuit. — Est et pœnitentia gravior atque luctuosior, in quâ propriè vocantur in ecclesiâ pœnitentes: etiam remoti à sacramento altaris participandi, ne accipiendo indignè, iudicium sibi manducent et bibant. Illa verò pœnitentia luctuosa est, grave vulnus est: adulterium fortè, commissum est, fortè homicidium, fortè sacrilegium. Gravis res, grave vulnus, lethale, mortiferum, sed omnipotens medicus, &c. Vid. Hom. 1. ibid. cap. 3.



themselves. This is a grievous repentance, the wound is very grievous, perhaps adultery, or murder, or sacrilege has been committed. This is a grievous thing, a grievous wound, mortal and deadly, but the physician is almighty." Here again is a plain distinction between such great sins as adultery, sacrilege, and murder, for which men were to do a long and public penance in the Church; and such sins of a lower rank, as were to be done away by daily prayer and daily repentance, which was the remedy for all sins, great and small, that were not of the highest nature. Upon this account he calls public penance by the name of *Pœnitentia Major, the greater repentance*, for great and deadly sins, in opposition to the lesser or daily repentance for sins of a lower nature, which he terms venial sins, because they were more easily pardoned by that ordinary and daily repentance. Thus, in his Instructions to the Catechumens, directing them how to lead their lives after baptism, he tells them,<sup>1</sup> "He did not prescribe them an impossible rule, to live here altogether free from sin: for there were some lesser or more pardonable sins, without which this life is not passed by any. Baptism was appointed for the remission of all sins, of what kind soever: but for lesser sins prayer was appointed. And what says the prayer? Forgive us our trespasses, as we forgive them that trespass against us. We are once washed, or cleansed from sin by baptism, we are daily cleansed by prayer. Only do not commit such things, for which it will be necessary to separate you from the body of Christ, which God forbid. For, they, whom you see doing penance, have committed great crimes,

<sup>1</sup> Aug. de Symbolo ad Catechumenos. lib. i. cap. vii. tom. ix. Non vobis dico, quia sine peccato hic vivetis: sed sunt venialia, sine quibus vita ista non est. Propter omnia peccata baptismus inventus est: propter levia, sine quibus esse non possumus, oratio inventa. Quid habet oratio? "Dimitte nobis debita nostra, sicut et nos dimittimus debitoribus nostris." Semel abluimur baptismate. Quotidie abluimur oratione. Sed nolite illa committere, pro quibus necesse est ut a Christi corpore separenini; quod absit à vobis. Illi enim, quos videtis agere pœnitentiam, scelera commiserunt, aut adulteria, aut aliqua facta immania: inde agunt pœnitentiam. Nam si levia peccata eorum essent, ad hæc quotidiana oratio delenda sufficeret. Ergo tribus modis dimittuntur peccata in ecclesiâ, in baptismate, in oratione, in humilitate majoris pœnitentiæ. Vid. Aug. Hom. 119. de Tempore. cap. viii. Ep. lxxxix. ad Hilarium Quæst. i. Ep. cviii. ad Seleucianam.

either adultery or some such heinous wickedness, upon account of which they are doing penance. For if they had been light sins, the daily prayer would have been sufficient to blot them out. Therefore there are three ways, by which sins are forgiven in the Church, by baptism, by prayer, and by the humiliation of the greater repentance." Where by the greater repentance, it is evident he means the public penance done in the church for crimes only of the highest nature: and therefore, the lesser repentance, accompanying men's daily prayers, was sufficient to blot out both lesser sins of daily incursion, and also greater sins, for which no public penance was required, but only the sincere reformation of the sinner, producing good works, and especially works of charity and mercy. Thus in his *Enchiridion*,<sup>1</sup> "for daily, short and light sins, without which no man lives, the daily prayer of the faithful is sufficient. This prayer blots out all little and daily sins. It blots out also those sins, with which the life of the faithful is more egregiously defiled, provided they change it into better by true repentance; if they say truly, with actions corresponding to their words, "Forgive us our trespasses, as we forgive them that trespass against us." He often distinguishes<sup>2</sup> between *Peccatum* and *crimen*, making the first to be such sins as are forgiven by daily prayer and daily repentance; and the second such flagrant crimes as murder, adultery, fornication, theft, fraud, sacrilege, and such like, for which men were obliged to undergo public penance in the Church. And he understands the same things, when he so often dis-

<sup>1</sup> Aug. *Enchirid.* cap. 71. De quotidianis, brevibus levibusque peccatis, sine quibus hæc vita non ducitur, quotidiana oratio fidelium satisfacit. — Delet omnino hæc oratio minima et quotidiana peccata. Delet omnino hæc oratio minima et quotidiana peccata. Delet et illa, à quibus vita fidelium sceleratè etiam gesta, sed pœnitendo in melius mutata discedit, &c.

<sup>2</sup> Aug. *Hom.* xli. ex 50. Homo baptizatus, si vitam, non audeo dicere sine peccato (quis enim sine peccato ?) sed vitam sine crimine duxerit, et alia habet peccata quæ quotidie dimittuntur in oratione dicente, "Dimitte nobis debita nostra, &c." Quando diem finierit, vitam non finit sed transit de vitâ in vitam. It. *Tract.* 41 in *Joan.* tom. ix. p. 126. Apostolus quando elegit ordinandos—non ait, Si quis sine peccato est; hoc enim si diceret, omnis homo reprobaretur, nullus ordinaretur; sed ait, Si

tinguishes<sup>1</sup> between greater and lesser sins, mortal sins and venial sins; prescribing public repentance for the one, and private repentance for the other. By all which it is manifest, that neither sins of human frailty and daily incursion, to which the best of men are liable; nor many sins of a more malignant nature, as many evil words, and evil thoughts, and excesses in the use of lawful things, and hasty anger and frequent going to law for trifles, were reckoned into the number of those flagrant crimes, for which the severities of Church-discipline were inflicted upon delinquents; but all such sins, being of an inferior nature, or not so easy to be proved upon men, were only matters of reproof, and left to their own consciences to cure, either by daily prayer, or private repentance and reformation.

And that this was so from the beginning, appears from what the learned Du Pin has discoursed upon this matter<sup>2</sup> against Mr. Arnaud and others of his own communion. He observes, that all the Ancients made this very distinction, between great and little sins, and reckoned only very capital and mortal crimes in the number of such sins, as were to be punished with excommunication. Tertullian, even when he disputes against the Church upon the point of absolution and readmission of excommunicated sinners into the Church again, owns notwithstanding, that there were many sins, which did not bring men under the censure of excommunication, because they were sins of daily incursion, to which all men were more or less exposed. Among these<sup>3</sup>

quis sine crimine est, sicut est homicidium, adulterium, aliqua immunditia fornicationis, Furtum, fraus, sacrilegium, et cætera hujusmodi. He says a little before, Crimen est peccatum grave, accusatione et damnatione dignissimum. De Civ. Dei. lib. xxi. cap. 27. Non putare nos esse sine peccatis, etiamsi à criminibus essemus immunes.

<sup>1</sup> Aug. Tract. xxvi. in Joan. p. 93. De Symbolo. lib. i. cap. vii. cont Julian. Pelagian. lib. ii. cap. x.

<sup>2</sup> Du Pin. Bibliothecæ Cent. iv. p. 218.

<sup>3</sup> Tertul. de Pudicit. cap. xix. Sunt quædam delicta quotidianæ incursionis, quibus omnes simus objecti. Cui enim non accidet aut irasei iniquè, et ultra solis occasum, aut et manum immittere, aut facillè maledicere, aut temerè jurare, aut fidem pacti destruere, aut verecundiâ aut necessitate mentiri; in negotiis in officiis, in quæstu, in victu, in visu, in auditu quanta tentamur.—Sunt

he reckons anger, when it is unjust either in its cause or duration, when the sun goes down upon our wrath; and also quarrelling and evil-speaking, a rash or vain oath, a failure in our promise, a lie extorted by modesty or necessity, and many such temptations, which befall men in their business and offices, in gain, in eating, in seeing, and hearing. On the contrary, there are some more grievous and deadly sins, which are incapable of pardon, (according to his rigid principles of Montanism) such as murder, idolatry, fraud, apostacy, blasphemy, adultery, and fornication, and other such defilements of the temple of God. In his book against Marcion, he precisely reckons up seven sins, which he distinguishes by the names of capital crimes,<sup>1</sup> idolatry, blasphemy, murder, adultery, fornication, false-witness and fraud. The Roman clergy observe the same distinction between greater and lesser sins, when they, in their Epistle to Cyprian,<sup>2</sup> style idolatry the great sin, and the grand sin above all others. And Cyprian<sup>3</sup> himself calls it "*summum delictum, the highest of all crimes.* The blasphemy against the Holy Ghost, which has never forgiveness, but makes a man guilty of eternal sin:" that is, a sin, that was to be punished in both worlds, without repentance. Which is the notion, that most of the Ancients had of the sin against the Holy Ghost, (to note this by the way) not that it was absolutely unpardonable,<sup>4</sup> but that men were to be punished for it, both in this world and the next, unless they truly repented of it. Again, Cyprian speaking of idolatry in those, that lapsed in persecution, he<sup>5</sup> distinguishes it

autem et contraria istis, ut graviora et exitiosa, quæ veniam non capiunt, homicidium, idololatria, fraus, negatio, blasphemiam, utique et mœchia et fornicatio, et si qua alia violatio, templi Dei.

<sup>1</sup> Tertul. cont. Marcion. lib. iv. cap. ix. Septem maculis capitalium delictorum, idololatriâ, blasphemiam, homicidio, adulterio, stupro, falso testimonio, fraude.

<sup>2</sup> Ap. Cypr. Ep. xxvi. al. xxxi. p. 63. Grande delictum. Ingens et supra omnia peccatum.

<sup>3</sup> Cypr. Ep. x. al. xvi. p. 36. Summum delictum esse quod persecutio committi coegit, sciunt ipsi etiam qui commiserunt, cum dixerit Dominus, "Qui blasphemaverit Spiritum Sanctum, non habebit remissam, sed reus est æterni peccati."

<sup>4</sup> See chap. vii. sect. 3.

<sup>5</sup> Cypr. Ep. xi. al. xv. ad Martyr. p. 34. Gravissimum atque extremum delictum.

by the title of the most heinous and extreme offence. And speaking also of adultery, fraud, and murder, he calls them<sup>1</sup> mortal sins, by way of distinction from those of a lower kind. So Origen calls some great and mortal sins, such as blasphemy, for which the Church<sup>2</sup> very rarely allowed men to do penance above once: but there are other common sins of daily incursion, such as evil words, and other corruptions of good manners, which admit of frequent repentance, and are redeemed continually without intermission. Where he plainly shews, that the repentance, which the Church allowed but once for great sins, means public penance in the Church: but lesser and common offences were atoned for another way, and as often as they were committed, by a daily repentance. In another place,<sup>1</sup> he reckons up lesser sins, to which all are more or less subject, such as detraction and mutual defamation of one another, self-conceit, banquetting, lying, idle words and such other light faults as are frequently found in men, who have made a good proficiency in the Church. These therefore could not be the sins, which ordinarily subjected men to excommunication, unless we could suppose all men liable to so severe a censure. But there were other crimes, which he calls great sins, and sins unto death; such as adultery, murder, effeminacy and defilement with mankind, which whoever committed, he was to be treated as an heathen man or a publican. St. Ambrose makes the same distinction of sins,<sup>3</sup> “As there is but one baptism, so

<sup>1</sup> Cypr. de Patient. p. 216. Adulterium, fraus, homicidium mortale crimen est.

<sup>2</sup> Orig. Hom. xv. in Levit. tom. i. p. 174. Si nos aliqua culpa mortalis invenerit, quæ non in crimine mortali, non in blasphemiâ fidei, sed vel in sermonibus, vel in morum vitio—hujusmodi culpa semper reparari potest. In gravioribus enim culpâ semel tantum vel raro pœnitentiæ conceditur locus: ista verò communia, quæ frequenter incurrimus, semper pœnitentiam recipiunt, et sine intermissione redimuntur.

<sup>3</sup> Id. Tract. vi. in Mat. p. 60. Nec enim existimo citò aliquem inveniri in ecclesiâ, qui non jam ter in eadem culpâ argutus sit, utputa in detractione, quâ invicem homines detrahunt proximus suis, aut inflatione, aut in epulatione, aut in verbo mendacii vel ocioso, aut in tali aliquâ culpâ levi, quæ etiam in illis qui videntur proficere in ecclesiâ, frequenter inveniuntur.

<sup>4</sup> Ambr. de Pœnit. lib. ii. cap. 10. Sicut unum baptisma, ita una pœnitentia, quæ tamen publicè agitur. Nam quotidiani nos debet pœnitere peccati: sed hæc delictorum leviorum, ix illa graviorum.

there is but one public penance ; for we are to do penance for the sins we commit every day : but this last penance is for small sins, and the former for great ones." And so Prosper, or Julianus Pomerius under his name, says,<sup>1</sup> " There are some sins so small, that we cannot perfectly avoid them, and for the expiation of these we cry daily to God, and say, Forgive us our trespasses as we forgive them that trespass against us : but there are other sins, which ought more carefully to be avoided, because when men are publicly convicted of them, they make them liable to be punished by human judgment : " meaning, that such capital offences were the crimes, which subjected men to excommunication, and not those lesser faults, which were only matter of daily repentance. Cassian observes seven kinds of human failings, which he distinguishes from mortal sins : saying,<sup>2</sup> " It is one thing to commit mortal sin, and another to be overtaken with an evil thought, or to offend by ignorance, or forgetfulness, or an idle word, which easily slips from us, or by a short hesitation in some point of faith, or the subtle ticklings of vain-glory, or by necessity of nature to fall short of perfection. For these seven ways a holy man is liable to fall ; and yet he does not cease to be righteous, and though they seem to be but small sins, yet they are enough to prove, that he cannot be without sin : for he has upon this account need of a daily repentance, and is obliged in truth without any dissimulation to ask pardon, and pray continually for his sins, saying, Forgive us our trespasses." Gregory Nyssen has a Canonical Epistle concerning discipline, wherein, as Du Pin observes, he makes an exact enumeration of those sins, which subjected men to public penance, which are all enormous sins and considerable crimes, such as idolatry, apostacy, divination, murder, adultery, theft, and sacrilege. From all which it is very

<sup>1</sup> Prosper. de Vit. Contemplat. lib. ii. cap. 7. Exceptis peccatis, quæ tam parva sunt ut caveri non possint, pro quibus expiandis quotidie clamamus ad Deum, et dicimus, " Dimitte, &c." Illa crimina caveantur, quæ publicata suos autores humano faciunt damnari judicio.

<sup>2</sup> Cassian. Collat. xxii. cap. 13. Aliud est admittere mortale peccatum, et aliud est cogitatione quæ peccato non caret preveniri, vel ignorantie aut oblivionis errore, aut facilitate ociosi sermonis offendere, &c.

evident, that by the ancient rules no crimes were to be punished with excommunication, but those that were of the highest nature, which they called mortal sins; nor yet all remote violations of the moral law, but only the more immediate, direct and professed transgressions of it. Of the species and effects of anger, as Gregory Nyssen<sup>1</sup> observes they inflicted canonical and public penance upon murder; but not upon the inferior degrees of it, such as stripes, and evil-speaking, or other effects of anger, which are prohibited in Scripture, and bring men in danger of eternal death. So of all the degrees of covetousness, which are very many and heinous, they punished none with excommunication but only notorious oppression, and theft, and robbing of graves, and sacrilege, and the like. So that when they sometimes call sins of this middle rank, light and venial sins, in contradistinction to those they termed mortal, they do not mean what now the vulgar casuists of the Romish Church mean by venial sins, but only that they were not of the number of those capital crimes, for which the Church subjected men to excommunication, and enjoined them public repentance. Which the learned reader may find not only accurately demonstrated by Mr. Daille,<sup>2</sup> but ingeniously confessed by Du Pin,<sup>3</sup> and also Petavius<sup>4</sup> before him. Daille transcribes Petavius's words, and I shall here transcribe those of Du Pin: "I would not have it thought," says he, "that I make these remarks to authorise licentiousness, or to insinuate, that there are some mortal sins, that may pass for venial: God forbid, that I should have so detestable a design! On the contrary, my intention is to create an horror of all sins; first of great crimes: secondly, of sins, which may be mortal, though they appear not so enormous: and thirdly, even of slighter sins also. But I thought myself obliged to observe here, for explaining a passage in St. Ambrose, that none but the sins of the first class did subject men to public penance, and that it is of these only the

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<sup>1</sup> Nyssen. Ep. ad Leontium.  
Auricular. lib. iv. cap. 20.

<sup>2</sup> Dallæ. de Confess. Auricular.

<sup>3</sup> Du Pin. Cent. iv. p. 219.

<sup>4</sup> Petav. Not. in Epiphani. p. 238.

Fathers speak, and which they comprehend under the name of enormous sins and crimes: though there be others, which may be also mortal, and which a Christian ought carefully to shun; but then they are such, for which he was never subjected to the humiliation of a public penance, but only to corrections and reprimands given in secret, as St. Austin informs us." These observations are very just: for it is certain, the Fathers speak against all sins, even those of the lowest rank, as dangerous and mortal, if neglected and wilfully indulged, and not carefully opposed by striving against them, and washing away the guilt by daily repentance: according to what we have heard St. Austin say<sup>1</sup> before, that a multitude of lesser sins overwhelm and kill the soul, if they be neglected; as a small leak in a ship, if it be not carefully stopped or drained, will sink it, as well as a bigger wave: which comparison<sup>2</sup> he uses in many places. And the reader, that pleases, may find the same caution given against lesser sins, as mortal in their own nature, if neglected and indulged, by Nazianzen,<sup>3</sup> Basil,<sup>4</sup> Jerom,<sup>5</sup> Gregory the Great,<sup>6</sup> and many others, who say, there is no sin so small, but that in rigour of justice it would prove mortal, if God would enter into judgment with us, and be extreme to mark what is done amiss against his law, and especially in contempt of it. But to return to the business in hand.

SECT. 15.—Excommunication not inflicted for temporal Causes.

As it was a general rule, not to use excommunication for slight offences, so we may observe, it was no rule to use this weapon, as in after ages, for mere pecuniary matters and temporal causes. It has frequently been complained of by learned men, both of the Protestant and Roman com-

<sup>1</sup> Aug. Tract. xii. in Joan. p. 47.

<sup>2</sup> Vid. Aug. Tract.

i. in 1 Joan. p. 237. Serm. iii. in Psal. 118. p. 545. De Civ. Dei. lib. xxi. cap. xxvii. Ep. 108. Rom. ult. ex 50.

<sup>3</sup> Naz. Orat.

xxx. p. 504.

<sup>4</sup> Basil. Regula. Brev. iv.

<sup>5</sup> Hieron. Ep. xiv.

<sup>6</sup> Greg. lib. ii. in cap. i. Reg. Hom. ii. in Ezek. Gennad. de Eccl. Dogm. cap. 53.



munion, that this is a great abuse of excommunication,<sup>1</sup> that it is often issued forth for the discovery of theft, or the manifestation of secret actions. Of which there are divers instances in the Decretals; and approbation is given to them by the Council of Trent,<sup>2</sup> only reserving such cases, as a special privilege to the bishop; who is to give a premonition to he knows not whom, and condemn a pretended criminal without hearing, contrary to all the rules aforesaid in the primitive Church, which allowed no excommunication in a slight cause, nor in any cause without sufficient evidence, and allowing the criminal to speak for himself. So again, as Du Moulin observes<sup>3</sup> out of Cardinal Tolet, in the Romish Church they excommunicate men for future time, and before any crime is committed, and that for securing only the stocks or trees of the lord of a town or village from spoil, although no man has laid hand upon them. At the request of a creditor they excommunicate a debtor, if he pay not within a certain term, (and his insufficiency to pay is the only remedy, in the utmost extremity, which the law of the Decretals<sup>4</sup> allows him from so severe a censure. But that which is chiefly complained of by their own learned Gerson in this matter, is the abuse of excommunication in the pecuniary concerns of ecclesiastical courts themselves. Bishop Taylor has alleged<sup>5</sup> him in these words: “Not every contumacy against the orders of courts ecclesiastical is to be punished with this death. If it be in matters of faith or manners, then the case is competent: but when it is a question of money and fees, besides that the case is full of envy and reproach, apt for scandal, and to bring contempt upon the Church, the Church has no direct power in it; and if it have by the aid

<sup>1</sup> Taylor, Duet. Dubit. lib. iii. cap. iv. p. 617. Du Moulin. Buckler of Faith. p. 369. Gentillet. Examen. Con. Trid. p. 300. Gerson. in Bishop Taylor. *ibid.*

<sup>2</sup> Con. Trid. Sess. xxv. de Reformat. cap. iii. Excommunicationes illæ, quæ monitionibus præmissis, ad finem revelationis, ut aiunt, aut pro deperditis seu subtractis rebus ferri solent, à nemine prorsus præterquam ab episcopo decernantur.

<sup>3</sup> Du Moulin. *ibid.* ex Tolet. Instruct. Sacerdot. cap. viii.

Gregor. lib. iii. tit. xxiii. de Solution. cap. iii.

Vita Spirituali. lect. iv. corol. vii.

<sup>4</sup> Decretal.

<sup>5</sup> Gerson. de

of the civil power, then for that a civil coercion must be used. It is certainly unlawful to excommunicate any man for not paying the fees of courts: for a contumacy there is an offence against the civil power, and he hath a sword of his own to avenge that. But excommunication is a sword to avenge the contumacy of them, who stubbornly offend against the discipline of the Church, in that wherein Christ hath given her authority, and that is in the matters of salvation and damnation immediate, in such things where there is no secular interest, where there can be no dispute, where the offender does not sin by consequence and interpretation, but directly and without excuse. But let it be considered how great a reproach it is to ecclesiastical discipline, if it be made to minister to the covetousness, or to the needs of proctors and advocates: and if the Church shall punish more cruelly than civil courts for equal offences, and because she hath but one thing to strike withal, if she upon all occasions smites with her sword, it will either kill too many, or hurt and affright none at all." Whatever force there is in these arguments, or however they may affect the Romish Church for this apparent corruption of discipline, they do not in the least affect the primitive Church, which was conscious of no such practice, but forbid all excommunication for light offences, among which pecuniary matters must be reckoned. It is true, bishops sometimes sat judges in civil causes, and their determinations in such cases were peremptory and final: but then their coercive power in such judicatures was not excommunication, but civil punishments borrowed from the state, and which the state obliged itself to see duly put in execution; of which I have given an ample account<sup>1</sup> heretofore, and shewn it to be a very different thing from excommunication, or any kind of ecclesiastical censure.

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<sup>1</sup> Book ii. chap. vii.

SECT. 16.—No Bishop allowed to use it to avenge any private Injury done to himself.

I observe further, as very remarkable in this matter, that no bishop was allowed to excommunicate any man for any private injury done to himself. For though this might be a great crime, yet it looked like avenging himself, and therefore it was thought unbecoming his character to right himself by excommunication, but either he was to bear the injury patiently, or commit his cause to the judgment of others. Upon this account Cyprian distinguishes between injuries done to himself in his personal and private capacity, and injuries done to the detriment of the brethren or whole body of the Church.<sup>1</sup> “I can bear and pass over any affront, that is put upon my episcopal character, as I have always done, when it only concerned my own person; but now there is no longer room for forbearance, when many of our brethren are deceived by some of you, who, whilst they would more plausibly recommend themselves to the lapsers, by an unreasonable and hasty restoring them to the peace of the Church, do more really prejudice their salvation.” Here he plainly distinguishes between personal injuries, which he could bear without any great resentment or thoughts of punishing: but those, that were of a more public nature, and not only affronts to his authority, but prejudicial to the people, those he threatens to animadvert upon according to their deserving. We find a like distinction made by Gregory the Great, who, writing to a certain bishop, who had excommunicated a man for a private injury done to himself, thus reproves him for it:<sup>2</sup> “You shew

<sup>1</sup> Cypr. Ep. x. al. xvi. ad Cler. p. 36. Contumeliam episcopatus nostri dissimulare et ferre possum, sicut dissimulavi semper et pertuli: sed dissimulandi uunc locus non est, quando decipiatur fraternitas nostra à quibusdam vestrum, qui dum sine ratione restituendæ salutis plausibiles esse cupiunt, magis lapsis obsunt.

<sup>2</sup> Greg. lib. ii. ep. xxxiv. Nihil te ostendis de cælestibus cogitare, sed terrenam te conversationem habere significas; dum pro vindicta propriæ injuriæ (quod sacris regulis prohibetur) maledictionem anathematis invexisti.

that you think nothing of heavenly things, whilst you inflict the curse of *Anathema* or excommunication for the avenging a private injury done to yourself, which the holy canons forbid. Therefore be circumspect and cautious for the future, and presume not to do any such thing to any man in defence of your own private injuries. Otherwise you may expect to feel the censures of the Church for your presumption." That there were ancient canons to this purpose in the time of Gregory, cannot be doubted from his testimony, though I know of none at present, that speak directly to this particular case; only in general the Council of Sardica<sup>1</sup> forbids bishops to excommunicate any one in passion or hasty anger, and allows the injured person to appeal to the provincial synod, or the neighbouring bishops for redress in all such cases.

SECT. 17.—No Man to be excommunicated for Sins only in Design and Intention.

It is also worth noting, that the Church inflicted the severe censures of excommunication upon men for overt acts, and not for sins in bare design and intention: because, though these might be great sins before God, as our Saviour says, "He that looks on a woman to lust after her, hath committed adultery with her already in his heart;" yet the Church was no proper judge of the heart, and therefore she did not ordinarily punish such sins, till they made some visible appearance in the outward action. This seems to be the meaning of that canon of the Council of Neocæsarea,<sup>2</sup> which says, "if a man purpose in his heart to commit fornication with a woman, but his lust proceed not into action, it is apparent he is delivered by grace." That is, he sins before God for his wicked design, but the Church inflicts not excommunication upon him, because his intention proceeds

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Unde de cætero omninò esto circumspectus atque sollicitus, et talia cuiquam pro defensione propriæ injuriæ tuæ inferre denuò non præsumas. Nam si tale aliquid feceris, in te scias postea vindicandum. Vid. Gratian. caus. xxiii. quæst. iv. cap. xxvii.

<sup>1</sup> Con. Sardic. can. xiv. in Latin. Edit. xvii.  
Neocæsar. can. iv.

<sup>2</sup> Con.

not to any outward act of uncleanness. So Zonaras<sup>1</sup> interprets it among the Ancients, and Osiander among the modern<sup>2</sup> interpreters. Though some think, that such intentions, if discovered by any overt-acts, might bring a man under ecclesiastical censure.

SECT. 18.—Nor for forced or Involuntary Actions.

The case is more clear as to all forced and involuntary actions, where the will was no way consenting to them. For as they were free from sin, so they were from punishment. There were some indeed, who out of an over-abundant zeal and ignorant pretence of purity, were for excluding men from communion for such things, which were more to be reckoned their misfortunes than their crimes: but the Council of Ancyra prudently corrected this erroneous zeal by a canon<sup>3</sup> to this purpose: “that communion should not be denied to those, who fled, but were apprehended, or betrayed by their servants, and suffered loss of their estates, or torture, or imprisonment, declaring all the while that they were Christians: though they were held, and by violence the incense was put into their hands, and they were forced to receive meat offered to idols into their mouths, declaring themselves all the time to be Christians, and shewing by their behaviour and habit and humble course of life, that they were sorry for that, which happened; these being without sin, are not to be debarred from communion. Or if by the super-abundant caution or ignorance of any, they have been debarred, let them forthwith be received into communion again. And the like is determined in the case of women, that suffer ravishment against their wills, by Gregory Thaumaturgus,<sup>4</sup> and St. Basil.<sup>5</sup> And so by Dionysius of Alexandria,<sup>6</sup> and Athanasius,<sup>7</sup> and others, for any involuntary defilement whatsoever. These were the

<sup>1</sup> Zonard. in can. xxxii. Basil. <sup>2</sup> Osiander in Can. iv. Neocæs. Edit. Witeberg. 1614. Hoc videtur velle hic canon, eum non cadere sub pœnam aliquam disciplinæ ecclesiasticæ, &c.

<sup>3</sup> Con Ancyra. can. iii.

<sup>4</sup> Greg. Thaum. can. i.

<sup>5</sup> Basil. can. xlix.

<sup>6</sup> Dionys. can. iv.

<sup>7</sup> Athan. Ep. ad Ammum. ap. Bevereg. Pandect. tom. ii. p. xxxvi.

general measures observed by the Ancients, to distinguish great and small offences, or innocence from sin, in order to shew what might or might not bring men under the censure of excommunication. But because it will contribute much toward the more exact understanding of the ancient discipline, to know more particularly the several sorts of those greater crimes, for which men were subjected to the highest censures, I will now proceed to make a more distinct inquiry into the nature, and kinds, and degrees of those high misdemeanors in the following chapters.

#### CHAP. IV.

*A particular Account of those called great Crimes, the principal of which was Idolatry. Of its several Species, and Degrees of Punishment allotted to them according to the Proportion and Quality of the Offences.*

SECT. I.—The Mistake of some about the Number of great Crimes, in confining them to Idolatry, Adultery, and Murder.

LEARNED men are not well agreed about the number of those, which the Ancients called great crimes, with reference to the ecclesiastical punishment, nor about the reason and foundation of that title. There were some in St. Austin's time, who were for confining great crimes, for which excommunication was to be inflicted, to three only, adultery, idolatry, and murder: these they allowed to be mortal sins, and made no doubt but that they were to be punished<sup>1</sup> with excommunication, till they were cured by the humiliation of public penance; but for all others they said compensation might easily be made by giving of alms. This St. Austin

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<sup>1</sup> Aug. de Fide et Oper. cap. xix. Qui autem opinantur et cætera eleemosynis facillè compensari, tria tamen mortifera esse non dubitent excommunicatione punienda, donec pœnitentiâ humiliore sanentur, impudicitiam, idololatricam, homicidium.

labours to confute, not only in the place alleged, but in several others,<sup>1</sup> by which it is evident, that these were not the only great crimes, that were punished with excommunication. And therefore those modern authors make a wrong representation of the ancient discipline, who confine it to those three great crimes, or to such as may be reduced to them: since it is apparent from what is now said, that it extended much further; and, as I shall presently shew, included all the great crimes against the whole Decalogue, or transgressions of the moral law in every instance.

SECT. 2.—The Account given of great Crimes in the Civil Law, extended much further.

And it is very observable, that even in the civil law, the account that is given of great crimes, extended much further. For when the Emperors, according to custom, at the Easter festival, granted a general release and indulgence to such as were imprisoned for their misdemeanours, they still excepted several other heinous crimes, specified in their laws, some five, some six, some eight, some ten, which cannot be reduced to the three crimes of idolatry, adultery, and murder. The laws of Valentinian and Gratian except seven capital crimes from any benefit of such indulgence,<sup>2</sup> viz. sacrilege, treason, robbing of graves, necromancy, adultery, ravishment, and murder. The laws of Theodosius the Great except eight capital crimes, treason, parricide, murder, adultery, ravishment, incest, necromancy, and counterfeiting of the imperial coin.<sup>3</sup> And those of Valentinian Junior except ten;<sup>4</sup> sacrilege, adultery, incest, ravishment, robbing of graves, charms, necromancy, counterfeiting the coin, murder and treason. Now when the civil law excepted so many great crimes, under the name of *Atrocia Delicta*, from

<sup>1</sup> Vid. Aug. Hom. ult. ex 50. De Civ. Dei. lib. xxi. cap. 27.

<sup>2</sup> Cod. Theod. lib. ix. tit. 38. De Indulgentiis Criminum leg. iii. Ob diem Paschæ, quem intimo corde celebramus, omnibus quos reatus adstringit, carcer inclusit, claustris dissolvimus. Attamen sacrilegus, in majestate reus, in mortuos, veneficus sive maleficus, adulter, raptor, homicida communione istius muneris separentur. It. Leg. iv. ibid.

<sup>3</sup> Ibid. Leg. vi.

<sup>4</sup> Ibid. Leg. vii, et viii.

the benefit of these indulgences, it is not probable, were there no other argument to persuade it, that the ecclesiastical law would let any of those heinous offences go unpunished, or wholly escape the severity of Church-censure.

**SECT. 3.**—And in the Ecclesiastical Law, the Account of great Crimes extended to the whole Decalogue.

But we have clearer and more certain evidence in the case. For first St. Austin says, the great crimes, which were punished with public penance, were such as were against the whole Decalogue or ten commandments,<sup>1</sup> of which the Apostle says, “they which do such things, shall not inherit the kingdom of God.” Only, as Mr. Daille rightly observes,<sup>2</sup> we must interpret this of capital crimes directly and expressly forbidden in the law, not of all remote branches or lower degrees of sin, that may any way whatsoever be reduced to the principal crime, or indirectly come under the prohibition. For otherwise it would not be true, that all sins forbidden in the Decalogue brought men under public penance, since there are some transgressions only conceived in the heart, and never completed in outward action,<sup>3</sup> which though they might be great breaches of the law, yet they could not come under public censure, but were to be cured by private repentance.

**SECT. 4.**—A particular Enumeration of the great Crimes against the first and second Commandments. Of Idolatry, and the several Species and Branches of it.

Supposing therefore, that there were many great crimes against every precept of the moral law, which might bring men under ecclesiastical censure, and public penance, we will now proceed in the order of the Decalogue, to consider the nature, and kinds, and punishment of them. The great

<sup>1</sup> Aug. Hom. ult. ex 50. cap. iii. tom. x. p. 205. *Tertia actio est pœnitentiæ, quæ pro illis peccatis subeunda est, quæ legis decalogus continet; et de quibus Apostolus ait, ‘Qui talia agunt, regnum Dei non possidebunt.’*

<sup>2</sup> Dallæus de Confess. Auricular. lib. iv. cap. xx. p. 431.

<sup>3</sup> Vid. Aug. Hom. xlv. de Verb. Dom. c. v.



crimes against the first and second commandments, which were commonly joined together, were comprised under the general names of apostacy and irreligion; which comprehended the several species of idolatry; blaspheming and denying Christ in time of persecution; using the wicked arts of divination, magic, and enchantments; and dishonouring God by sacrilege and simony; by heresy and schism; and other such profanations and abuses, corruptions and contempts of his true religion and service. All these were justly reputed great crimes, and ordinarily punished with the severest ecclesiastical censures.

SECT. 5.—Of the *Sacrificati* and *Thurificati*, or such as fell into Idolatry by offering Incense to Idols, and partaking of the Sacrifices.

Of idolaters there were several sorts; some went openly to the temples, and there offered incense to the idols, and were partakers of the sacrifices. These were distinguished by the name of *Sacrificati* and *Thurificati*, as we find them often styled in Cyprian,<sup>1</sup> who speaks of them as defiling both their hands and mouths by the sacrilegious touch: meaning their hands by offering incense, and their mouths by eating of the sacrifices. And of these also there were several degrees. Some, as soon as ever a persecution was set on foot, before they were called upon, or had any violence offered to them, went voluntarily to the temples, and offered sacrifice of their own accord; whilst others held out a long time against torture, and only sacrificed, when the utmost necessity compelled them. Cyprian makes a great difference between these two sorts of lapsers,<sup>2</sup> as he does also

<sup>1</sup> Cypr. Ep. xv. al. 20. ad Cler. Rom. p. 43. Qui sacrilegis contactibus manus suas atque ora maculassent. It. Ep. lv. al. 52. ad Antonian, p. 108. Placuit sacrificatis in exitu subveniri, quia exomologesis apud inferos non est.

<sup>2</sup> Cypr. ibid. p. 103. Inter ipsos etiam qui sacrificaverint, et conditio frequenter et causa diversa est. Neque enim æquandi sunt, ille qui ad sacrificium nefandum statim voluntate prosilivit; et qui reluctatus et congressus diu ad hoc funestum opus necessitate pervenit. Ille qui et se et omnes suos prodidit; et qui ipse pro cunctis ad discrimen accedens, uxorem et liberos et domum totam periculi sui perfunctione protexit: ille qui inquilinos vel amicos suos ad facinus compulit; et qui inquilinis et colonis pepercit;

between those, who went not only themselves, but compelled their wives and children, and servants, and friends to go and sacrifice with them; and those, who to deliver their families and friends from danger, went and exposed themselves alone; by this means protecting not only their own families, but also many Christian brethren and strangers, that were banished and had fled to take shelter in their houses, who were as so many living intercessors to God for them. They who did thus, he thinks, were much more excusable than those, who both went voluntarily, and by their counsel and authority compelled many others to go along with them. Whose crimes he therefore elegantly describes and aggravates after this manner in his Book *De Lapsis*:<sup>1</sup> “ They did not stay, till they were apprehended, to go to the capital, but denied the faith before any question was asked them about it. They were conquered before the fight, and fell without any engagement. They ran to the forum of their own accord, and made haste to give themselves the mortal wound, as their own voluntary act, without compulsion: as if they had desired this long before, and now only embraced the opportunity that was given them, which they always wished for. How was it, that when they went so readily to the capital to do this wicked act, their legs did not sink under them, and their eyes grow dim, and their bowels tremble, and their arms fall down, and their senses become stupid, and their tongue falter, or cleave to the roof of their mouth, and their words fail them? could the servant of God stand there, and speak and renounce Christ, who had before renounced the devil and the world? was not that altar, whither he came to die, more like his funeral pile? ought he not to have abhorred and fled from the altar of the devil, as his coffin or his grave, when he saw it smoke and fume with a stinking smell? to what purpose, thou miserable wretch, didst thou bring thy oblation, and put

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fratres etiam plurimos, qui extorres et profugi recedebant, in sua tecta et hospitium recepit, ostendens et offerens Domino multas viventes et incolomas animas, quæ pro sua sauciâ deprecantur. Vid. Petri Alex. can. 1, 2, 3.

<sup>1</sup> Cypr. de Lapsis, p. 124.

thy sacrifice upon the altar? Thou thyself wert the victim, thou thyself the sacrifice and burnt-offering. There thou didst sacrifice thy salvation, and burn thy faith and thy hope in those abominable fires. But many were not content with their own destruction; the people provoked one another into ruin by mutual calls and exhortations, and the cup of death was handed round by every man to his neighbour. And that nothing might be wanting to consummate the crime, parents carried their children in their arms, or led them after them, that their little ones might lose what they had gained in their first birth. Will not they say, when the day of judgment comes, we did nothing ourselves; we did not leave the bread and cup of the Lord, to run of our own accord to those profane contagions: it was the treachery of others that destroyed us, our parents were guilty of parricide towards us. They deprived us of the privilege of having the Church for our mother, and God for our Father; that whilst we were little, and unable to care for ourselves, and ignorant of so great a wickedness, we should be taken and betrayed by other men's frauds, being by them made partners in their offences." Thus far Cyprian, aggravating the crimes of those, who shewed such a forwardness to commit idolatry, and apostatise with greediness and delight.

Now as these were some of the highest degrees of idolatry, so the Church put a remarkable difference between them and others in her punishments, setting a more peculiar mark or note of distinction upon them in her censures. There are several canons in the Council of Ancyra, which plainly shew this distinction. The fourth canon orders, "That they, who were compelled to go to an idol temple, if they went with a pleasing air, and in a festival habit, and took share of the feast with unconcernedness; that they should do six years penance, one as hearers only, three as prostrators, and two as costanders to hear the prayers, before they were admitted to full communion again. But if they went in a mourning habit to the temple, and wept all the time they eat of the sacrifice, then four years penance should be sufficient to restore them to perfection." The eighth canon orders, "Those, who repeated their crime by

sacrificing twice or thrice, to do a longer penance:" for seven years is appointed to be their term of discipline. And by the ninth canon, "If any not only sacrificed themselves, but also compelled their brethren, or were the occasion of compelling them, then they were to do ten years penance, as guilty of a more heinous wickedness," according as we have heard Cyprian represent it. But if any did neither sacrifice, nor eat things offered to idols, but only their own meat on an heathen festival in an idol-temple, they were only confined to two years penance by the seventh canon of the same Council. These canons chiefly respect such as transgressed after some violence or force put upon them, by torture or banishment, or imprisonment or confiscation, or the like necessity in any other kind of trial: but if any voluntarily apostatised, and prevaricated without compulsion, a severer punishment was laid upon them: for, by the rules of the Council of Nice,<sup>1</sup> they were to undergo twelve years penance, before they were perfectly restored again to full communion. And the same term is appointed by the second Council of Arles,<sup>2</sup> which refers to the Nicene canon. The Council of Valence, in France,<sup>3</sup> goes a little further, and obliges them to do penance all their lives, and allows them absolution only at the hour of death, which they were to expect more fully from the hands of God only, who alone had the absolute power of it, and was infinite in mercy, that no one should despair. Agreeable to which is that rule of Siricius,<sup>4</sup> that apostates should do penance all their lives, and be reconciled only at the hour of death. The Council of Eliberis goes beyond this, and denies such apostates communion at the very last extremity,<sup>5</sup> because this was the great and principal crime above

<sup>1</sup> Con. Nic. can. xi.

<sup>2</sup> Con. Arelat. ii. can. 10.

<sup>3</sup> Con. Valentin. can. iii. Acturi penitentiam usque in diem mortis, non sine spe tamen remissionis, quam ab eo plene sperare debeunt, qui ejus largitatem et solus obtinet, et tam diu ei misericordia est, ut nemo desperet.

<sup>4</sup> Siric. Ep. i. ad Himerium, cap. iii. Apostatis, quamdiu vivunt, agenda penitentia est, et in ultimo fine suo reconciliationis gratia tribuenda.

<sup>5</sup> Con. Eliber. can. i. Placuit inter eos, qui post fidem baptismi salutaris, adultâ ætate, ad templum idolatraturus accesserit, et fecerit quod est crimen principale, quia est summum scelus, nec in fine eum communionem accipere.

all others. And sometimes adultery and murder were a sort of accessories or concomitants of this idolatry, as many times it was in the heathenish games and shews, which were made up of idolatry, adultery, and murder: upon which account this same Council has another canon,<sup>1</sup> which orders, “that if any Christian took upon him the office of a Flamen or Roman priest, and therein offered sacrifice, doubling and trebling his crime by murder and adultery, he should not be received to communion at the hour of death.” Nor need we wonder at this severity, since Cyprian assures us,<sup>2</sup> that before his time many of his predecessors in the province of Afric refused to grant communion to adulterers to the very last; and yet they did not divide communion from their fellow bishops, who practised otherwise. And he says further, concerning voluntary deserters and apostates,<sup>3</sup> who continued in rebellion all their lives, and only desired penance when some infirmity seized them, that they were cut off from all hopes of communion and peace; because it was not repentance for their fault, but the fear of approaching death that made them desire a reconciliation; and they were not worthy to receive that comfort at their death, who would not consider all their life before, that they were liable to die. The first Council of Arles made a like decree,<sup>4</sup> “that such as voluntarily apostatised, and never after sued to the Church, nor

<sup>1</sup> Con. Eliber. can. ii. *Flamines, qui post fidem lavaeri et regenerationis sacrificaverunt: eo quod geminauerint scelera, accedente homicidio; vel triplicaverint facinus, cohærente mœchis, placuit eos nec in fine accipere communionem.*

<sup>2</sup> Cypr. Ep. lii. al. lv. ad Antonian. p. 110. *Et quidem apud antecessores nostros quidam de episcopis istic in provinciâ nostrâ dandam pacem mœchis non putaverunt, et in totum pœnitentiæ locum contra adulteria clausurunt, non tamen à co-episcoporum suorum collegio recesserunt, &c.*

<sup>3</sup> Cypr. *ibid.* p. 111. *Idcirco pœnitentiam non agentes, nec dolorem delictorum suorum toto corde et manifestâ lamentationis suæ professione testantes, prohibendos omaino censuimus à spe communicationis et pacis; quia rogare eos non delicti pœnitentia, sed mortis urgentis admonitio compellit; nec dignus est in morte accipere solatium, qui se non cogitavit esse moriturum.*

<sup>4</sup> Con. Arelat. i. can. 23. *De his, qui apostant et nunquam se ad ecclesiam repræsentent, nec quidem pœnitentiam agere quærent, et postea in infirmitate arrepti petunt communionem, placuit eis non dandam communionem, nisi revaluerint, et egerint dignos fructus pœnitentiæ.*

desired to do penance all their lives till some infirmity seized them, should not be received to communion, unless they recovered and brought forth fruits worthy of repentance." These were the rules by which the ancient discipline was regulated and conducted in reference to such idolaters and apostates, as actually defiled themselves by offering sacrifice to idols, whether it were by force or by choice; whether they lapsed singly, or drew others into the same crime with themselves; and whether they returned immediately and became penitents, or continued apostates and rebels: according to the difference of which circumstances, different degrees of punishment were laid upon them.

SECT. 6.—Of the *Libellatici*; wherein their Idolatry consisted.

Another sort of those, who lapsed into idolatry, and were charged with denying their religion, were called *Libellatici*, from certain *libels* or *writings* which they either gave to the heathen magistrates in private, or received from them, to be excused doing sacrifice in public. Baronius thinks there was one sort of *Libellatici*,<sup>1</sup> and that they all expressly denied Christ, either by themselves or others; but being ashamed to sacrifice or deny him in public, they made a private renunciation, and for a bribe got a libel of security from the magistrate, to indemnify and secure them from being sought after, or called upon to sacrifice in public. But other learned men observe some distinction among them:<sup>2</sup> and indeed there seem at least to have been three sorts of them. Some expressly gave it under their hands to the magistrate, that they were no Christians, denying their religion in word or writing, as others did in action; professing they were ready to sacrifice, if the magistrate should call them to it. Cyprian often speaks of these, and puts them in the same class with those that actually sacrificed. "Let not those flatter themselves," says he,<sup>3</sup> "as if they

<sup>1</sup> Baron. an. 253. n. 20.

<sup>2</sup> Vid. Albaspin. Observat. lib. i. cap. 21.

Cave Prim. Christ. lib. iii. c. v. p. 384. Suicer. Thesaur. tom. ii. p. 210.

<sup>3</sup> Cyp. de Lapsis p. 133. Nec sibi quo minus agant pœnitentiam, blandian-

were excused from doing penance, who, although they did not defile their hands with the abominable sacrifices, yet defiled their consciences by a libel. A Christian, that professes he denies his religion, is witness against himself, that he abjures what he was before; he owns in words to have done, whatever the other did in real action." Another sort did neither abjure, nor sign any libel or abjuration themselves, but sent either an heathen friend, or a servant to sacrifice or abjure in their names, and thereby procure them a libel of security from the magistrate, as if they had done what the others did for them. And indeed the Church so interpreted it, and reckoned these no less criminals than the former. The Roman clergy in their Letter to Cyprian, condemn them both alike,<sup>1</sup> saying, "that this latter sort, though they were not present at the fact of delivering the libel to the magistrate, yet they were in effect present by commanding it to be written and presented. For he that commands a sin to be done, cannot discharge himself of the guilt of it; nor can he be innocent of the crime, by whose consent it is publicly read in court as done, though he was not actually the doer of it. Seeing the whole mystery of faith is summed up in confessing the name of Christ, he that seeks by any fallacious tricks to excuse himself from such profession, does plainly deny it: and he, who when edicts and laws are published against the Gospel, would be thought to comply with and observe them, does in that very thing obey them, in that he would have the world believe that he does obey them." The canons of Peter, bishop of Alexandria, also take notice of this sort of libellers, and ap-

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tur, qui etsi nefandis sacrificiis manus non contaminaverunt, libellis tamen conscientiam polluerunt. Et illa professio denegantis contestatio est Christiani, quod fuerat, abnuentis; fecisse se dixit, quicquid alius faciendo commisit.

So in the Epistle of the Roman Clergy to Cyprian. Ep. xxx. al. xxxi. p. 57. Seipos infideles illicitâ nefariorum libellorum professione prodiderant, quando non minus quàm si ad nefarias aras accessissent, hoc ipso quod contestati fuerant, tenerentur.

<sup>1</sup> Ibid. Sententiam tulimus etiam adversus illos qui accepta fecissent, licet præsentibus cum fierent non affuissent, cum præsentiam suam utique ut sic scriberentur mandando fecissent. Non est enim immunis à seelere, qui ut fieret imperavit; nec est alienus à crimine, cujus consensu, licet non à se admissum crimen, tamen publicè legitur. &c.

point them their punishment, making this difference between a master, who compelled his slave to go and sacrifice for him, and the slave, who went at his command: the slave was<sup>1</sup> to do one year's penance, but the master is enjoined three years, because he dissembled, and because he compelled his fellow-servant to sacrifice: for we are all servants of the Lord, with whom is no respect of persons. Besides these, there was another sort of libellers, who, finding that the fury of the judge was to be taken off by a bribe, went to him, and told him plainly, they were Christians, and could not sacrifice, and therefore desired him to give them a libel of security, for which they would give him a suitable reward. Cyprian speaking of this sort of libellers, brings them in thus apologising for themselves.<sup>2</sup> "I had before both read and learnt from the preaching of the bishop, that the servant of God ought not to sacrifice to idols, nor to worship images; and therefore, that I might not do that, which is unlawful, when the opportunity of getting a libel offered itself, which yet I would not have accepted, had not the occasion presented itself, I went to the magistrate, or employed another to go in my name, and tell him, that I was a Christian, and that it was unlawful for me to sacrifice, or come near the altars of the devils; that therefore I would give him a reward to excuse me from doing that, which I could not lawfully do." Cyprian does not wholly excuse these, but adds, "that though their hands were not polluted with sacrifice, nor their mouths with eating things offered to idols, yet their conscience was defiled: but forasmuch as they seemed rather to sin out of ignorance than maliciousness, he thinks their case a little more favourable than those, that sacrificed; and therefore since some difference was made even among those, that sacrificed, he thinks a greater allowance should be made to these, though he does not particularly tell us what term of penance was imposed upon them."

<sup>1</sup> Petri, can. vi. et vii.

<sup>2</sup> Cypr. Ep. lii. al. lv. ad Antonian. p. 107. Vid. Celerin. Ep. xxi. *ibid.* p. 43. Etecusa pro se dona numeravit, ne sacrificaret; sed tantum ascendisse videtur ad Tria Fata, et inde descendisse.



SECT. 7.—Of those who feigned themselves Mad, to avoid Sacrificing.

Not much unlike this sort of libellers, were they, who counterfeited madness in times of persecution, to get themselves excused by this means from being questioned, or called upon to offer sacrifice. Some of them would go to the very altars, and make as if they intended to sacrifice, or subscribe the abjuration, but then they evaded the thing by pretending to fall into a sort of epileptic fit, which inclined the magistrates to excuse them, and let them escape, as David by such an artifice escaped from Achish, when he intended to kill him. Now this was looked upon as mere dissimulation and collusion, and only a more artful way of denying their religion: and therefore by the penitential rules of Peter, bishop of Alexandria,<sup>1</sup> such, though they neither sacrificed themselves, nor suborned others to sacrifice for them, were subjected to penance for six months, because they, in some measure, denied their religion, and made a shew of countenancing idolatry both by their cowardice and dissimulation.

SECT. 8.—Of Contributors to Idolatry. Of the *Flamines*, *Munerarii*, and *Coronati*. What they were and how guilty of Idolatry.

And indeed it was not only the bare commission of idolatry, that subjected men to ecclesiastical censure; but all promoters, encouragers, and compliers with idolatrous rites were reputed guilty of idolatry in some degree, and accordingly proceeded against as betrayers of their religion. Thus in the Council of Eliberis there is a canon against such Christians as took upon them the office of a *Flamen* or *heathen priest*; part of whose office was to exhibit the ordinary games or shows to the people: and if they did this, though they abstained from sacrificing, they were to do penance all their lives, as encouragers of idolatrous rites, and only be admitted to communion at the hour of death,<sup>2</sup>

<sup>1</sup> Pet. Alex. can. v.

<sup>2</sup> Con. Eliber. can. iii. Item flamines, qui non immolaverint; sed munus tantum dederint, eo quod se à funestis abstinuerunt sacrificiis, placuit in fine eis præstari communionem, actâ tamen legitimâ penitentiâ.

after sufficient evidences of a true repentance. Some learned persons mistake the sense of this canon, understanding the words, "*Munus dare*," as if they meant *giving money* to the judge to excuse them from sacrificing: which would be the same crime as the libellers were guilty of; whereas this canon speaks not of such lapsers, but of those, who took upon them the office of a *Flamen*, whose business among other things was to *give or exhibit*, at his own, or else at a public expense, the *Munera*, that is, the ordinary games, or shows and pastimes to the people. For these were called *Munera*,<sup>1</sup> as appears from the use of the term in the civil law: and they that gave them, were thence termed *Munerarii*, *the masters of the games, or the entertainers*, who kept beasts and men to fight in the amphitheatre for the entertainment of the people, as may be seen in Tertullian<sup>2</sup> and Seneca, and Suetonius<sup>3</sup> and others, who speak according to the propriety of the Latin tongue. Now because these games were held chiefly on the heathen festivals, and in honour of their gods, and were full of idolatrous rites, as well as cruelty and impurity, a Christian could not exhibit them to the people, without incurring the crime of idolatry, at least indirectly by promoting and encouraging the practice of it. And for that reason this canon is so severe against those, who furnished out these shows at their own expense. A lower degree of this crime was, when such a *Flamen* or priest neither offered sacrifices, nor exhibited the games at his own expense, but only wore the crown,<sup>4</sup> which was usual in such solemnities: which being a badge of idolatry, for that reason by another canon of that Council two years penance, as a moderate punishment in comparison of the former, is imposed upon them, that were so far concerned in it. But it may be noted, that Tertullian's Invective

<sup>1</sup> Cod. Theod. lib. ix. tit. xviii. leg. 1. Bestiis primo quoque munere obijciatur. Vid. Gothofred. in Loc. et martial. de Spectaculis. Epigram. vi.

<sup>2</sup> Tertul. Apol. cap. xlv. De vestris semper munerarii noxiorum greges pascunt.

<sup>3</sup> Sueton. Vit. Domit. cap. x. Threccm Mirmilloni parem, munerario imparcm.

<sup>4</sup> Con. Eliber. can. lv. Sacerdotes, qui tantum coronam portant, nec sacrificant, nec de suis sumptibus aliquid ad Idola præstant, placuit post biennium accipere communionem.

against the soldiers' crown or garland, in his Book *Ce Corona Militis*, has no relation to this matter: for the wearing of such a crown seems to have had no concern in religion, but to be a mere civil act done in honour of the Emperors on such days as they gave their largesses or donations to the soldiers. The laurel was only an ensign of victory, and though it was dedicated to Apollo, yet that did not make the use of it unlawful; otherwise the use of the four elements and many other trees, and plants, and animals had all been unlawful, because, as St. Austin shews,<sup>1</sup> they were dedicated to the gods also. Therefore learned men<sup>2</sup> censure Tertullian here, as overstraining his argument upon this point, upon his new principles of Montanism, by which he also denied it to be lawful for a Christian to fly in time of persecution, or to bear arms in defence of the empire,<sup>3</sup> contrary to his former judgment in his apology, where he tells the Emperor, that his army was full of the disciples of Jesus, and mentions the famous undertaking of the thundering legion with a great elogium and commendation. So that this new severity of his, in condemning the Christian soldiers for wearing a laurel-crown, must be reckoned among those peculiarities, which he imbibed after he was fled over from the Church to the school of Montanus; since we no where find soldiers condemned for this in the Catholic Church, much less brought under any discipline or penance for the use of it.

SECT. 9.—How the Office of the Duumvirate made Men guilty of Idolatry, and how it was punished.

But there is another canon in the Council of Eliberis, which orders,<sup>4</sup> “that all Christians, who took upon them the city magistracy or office, called the Duumvirate, should be

<sup>1</sup> Aug. Ep. 154. ad Publicolam.

<sup>2</sup> Vid. Baron. an. 201. n. 16.

Du Pin. Biblioth. vol. i. p. 95. Sellar. Life of Tertul. p. 221.

<sup>3</sup> Tertul. de Coron. Mil. cap. xi.

<sup>4</sup> Con. Eliber. can. lvi. Magistratum verò uno anno, quo agit duumviratum prohibendum placuit, ut se ab ecclesiâ cohibeat.

denied communion for the whole year, in which they held the office, as guilty of some offence against religion." No crime is mentioned, but idolatry is understood. For the grounds and reasons of this canon will be easily explained and understood from the account, that is given of this office in the civil law. Where we learn, that the *Duumviri* were the chief city magistrates, otherwise called *Primates-Curiæ*, chosen every year, for it was but an annual office; and it belonged to them, as it did to the *Flamines* and the *Pontifices*, or *Sacerdotes Provinciarum*, and the *Prætores* and the governors of provinces, or ordinary judges, to exhibit the *Spectacula*, or the games and shows to the people,<sup>1</sup> as Gothofred shews from various laws of the Theodosian Code.<sup>2</sup> And Tertullian not only observes the same,<sup>3</sup> that the city magistrates were the editors of these games; but that the shows themselves were founded in idolatry and attended with many idolatrous ceremonies; which he makes use of as one argument why a Christian should not frequent them. And for this reason the Council of Eliberis orders all Christians, who took upon them the office of the *Duumviri*, to be kept back from communion during the year they went through that office; because they could not exhibit these shows to the people without encouraging and partaking in that idolatry, which was so closely annexed to them. "*Ludorum celebrationes Deorum festa sunt.*" Lactant. lib. vi. c. 20.

<sup>1</sup> Gothofred. Paratitlon. ad Cod. Theod. lib. xv. tit. 5. de Spectac.

<sup>2</sup> Vide Cod. Theod. lib. xii. tit. 1. de Decurionibus. leg. 169. lib. xv. tit. 5. de Spectaculis leg. i.

<sup>3</sup> Tertul. de Spectac. cap. xi. Proinde tituli Olympia Jovi, quæ sunt Romæ Capitolina. Item Herculi Nemæa, Neptuno Isthmia, ceteri mortuorum varii agones. Quid ergo mirum, si apparatus agonum idololatria conspueat de coronis profanis, de sacerdotalibus præsidibus. &c. It. cap. xii. Hæc muneris origo—Et licet transierit hoc genus editionis ab honoribus mortuorum ad honores viventium, Quæsturas dico et magistratus et flaminia et sacerdotia: cum tamen nominis dignitas idololatriæ crimine censeatur, necesse est quicquid dignitatis nomine administratur, communicet etiam maculas ejus, à quâ habet causas, &c. Vid. Apolog. cap. xxxviii. et de Idolatr. cap. xiii.

SECT. 10.—How Actors and Stage-players, and Charioteers, and other Gamesters, and Frequenters of the Theatre and Circus were charged with Idolatry, and punished for it.

And for the same reason all actors and stage-players, and they, who drove the chariots in the public games, and gladiators, and all who had any concern in the exercise or management of these unlawful sports, and all frequenters of them, were obliged either to quit these practices, or be liable to excommunication so long as they continued to follow them; not only because a great deal of impurity and cruelty was committed in them, but also because they contributed to the maintenance of idolatry, which was an appendage of them. All these were comprised in the pomp and service of the devil, which every Christian had renounced at his baptism; and therefore, when any one returned to them, he was charged as a renouncer of his baptismal covenant, and thereupon discarded, as an apostate and relapser, from Christian communion. Thus Cyprian being consulted by Eucratius,<sup>1</sup> whether a stage-player might communicate, who continued to follow that dishonourable trade; he answers, “that it was neither agreeable to the majesty of God, nor the discipline of the Gospel, that the modesty and honour of the Church should be defiled with so base and infamous a contagion.” The Council of Eliberis<sup>2</sup> allows stage-players to be baptised only upon condition, that they renounced their arts, and entirely bid adieu to them: and if after baptism they returned to them again, they were to be cast out of the Church. The first Council of Arles has a like decree,<sup>3</sup> “that all public actors belonging to the theatre, shall be denied communion, so long as they continue to act.” And the third Council of Carthage<sup>4</sup> sup-

<sup>1</sup> Cypr. Ep. lxi. al. ii. ad Eucratium p. 3. Puto nec majestati divine nec evangelicæ disciplinæ congruere, ut pudor et honor ecclesiæ tam turpi et infami contagione fœdetur.

<sup>2</sup> Con. Eliber. can. lxii. Si pantomimi credere voluerint, placuit ut prius artibus suis renuncient, et tunc demum suscipiantur, ita ut ulterius non revertantur. Quod si facere contra interdictum tentaverint, perjiciantur ab ecclesiâ.

<sup>3</sup> Con. Arelat i. can. 5. De theatricis, et ipsos placuit, quamdiu agunt, à communione separari.

<sup>4</sup> Con. Carth. iii. can. 35. Ut scenicis atque histrionibus, ceterisque hujus-

poses the sentence of excommunication to pass upon all such, when it says, "that actors and stage-players, and all apostates of that kind, shall not be denied pardon and reconciliation, if they return unto the Lord." This implies, that they were gone astray and cast out of the Church for their crimes, since they needed pardon and reconciliation, to take off their censure and restore them. The first Council of Arles<sup>1</sup> determines the same in the case of those, who drove the chariots in the public games, that so long as they continued in that employment, they should be denied communion. Tertullian<sup>2</sup> and others say expressly, that these arts were part of those pomps and worship of Satan, which men renounced in baptism. And it appears from a rule in the Constitutions,<sup>3</sup> that no charioteer, or gladiator, or racer, or curator of the public games, or practicer in the Olympic games, or minstrel, or harper, or dancer, was to be admitted to baptism, unless they immediately quitted these unlawful callings. And it was no less a crime to frequent the theatre, and be spectators of these idolatrous practices, as is noted in the same rule of the Constitutions. Therefore as an obstinate adherence to these things debarred catechumens from baptism, so it likewise excluded baptised persons or believers from the privilege of communion.

SECT. 11.—Idol-Makers, their Crime and Punishment.

Another way of contributing to the practice of idolatry, was the art or trade of making idols for the worshippers of them. Many Christians, who abhorred the worship of idols themselves, made no scruple to make idols for others, and live by this calling; which was reputed a very scandalous profession, tending indirectly and consequentially to the upholding and promoting of idolatry. For which reason, no man professing this art could be admitted to baptism,

modi personis, vel apostaticis, conversis vel reversis ad Dominum, gratia vel reconciliatio non negetur.

<sup>1</sup> Con. Arelat. i. can. iv. De agitatoribus, qui fideles sunt, placuit eos, quamdiu agitant, à communione separari.

<sup>2</sup> Tertul. de Spectac. cap. iv. De Coron. Mil. cap. xiii. Salvian. de Provid. lib. vi. p. 197. Cyril. Catech. Myst. i. n. 4.

<sup>3</sup> Constit. lib. viii. cap. xxxii.

unless he promised to renounce it, as we learn from the Author of the Constitutions.<sup>1</sup> And what denied a man one sacrament would also deny him the other. Tertullian calls such,<sup>2</sup> “proctors and purveyors for idolatry,” inveighing against this and some other trades of the like nature. “When you help,” says he, “to furnish out the pomp, the priesthood, the sacrifices of idols, what can you be called but procurers for idols? all heinous sins, for the greatness of the danger attending them, ought to make us extremely cautious, to keep at a distance not only from them, but from all things that minister to the practice of them. For though a crime be committed by others, it is all one, if I am instrumental to the commission of it. By the same reason that I am forbidden to do it, I ought to take care that it be not done by my assistance. I must not be a necessary aid to another in doing that, which I may not lawfully do myself.” Upon these grounds he concludes the trade of making idols to be unlawful, as well as the worship of them. And so did Clemens Alexandrinus,<sup>3</sup> and Justin Martyr<sup>4</sup> before him. Tertullian objects it as a great crime to Hermogenes,<sup>5</sup> that he followed the trade of painting images. But that, which is most material to our purpose here, is his observation,<sup>6</sup> which he makes in his Book of Idolatry upon the punishment due to such, as made a livelihood of this unlawful calling, that any one, who followed it, ought not to have access to the house of God. For it was contrary to the faith which they had professed in baptism.<sup>7</sup> “How have we renounced the devil and his angels, if we still continue to make them? what divorce have we made from them, with whom we not only continue to live, but live upon them? what disagreement is

<sup>1</sup> Constit. lib. viii. cap. 32.

<sup>2</sup> Tertul. de Idol. cap. xi. Certe cum

pompæ, cum sacerdotia, cum sacrificia idolorum instruuntur—quid aliud quam procurator idolorum demonstraris? &c.

<sup>3</sup> Clem. Protreptic. ad Gentes. p. 54. Edit. Oxon.

<sup>4</sup> Justin. Dial. cum Tryph. p. 321.

<sup>5</sup> Tertul. cont. Hermog. cap. i. Pingit Heitè, nubit assidue: legem Dei in libidinem defendit, in artem contemnit his falsarius et cauterio et stilo.

<sup>6</sup> De Idololat. cap. v. Hujusmodi artifices nunquam in domum Dei admitti oportet, si quis eam disciplinam norit.

<sup>7</sup> Ibid. cap. vi.

there between us and them, to whom we are obliged for our maintenance and livelihood? can you deny that with your tongue, which you confess with your hand? can you destroy that in words, which you raise up in your actions? preach one God, and make so many? preach the true God, and make false ones? But, say you, I only make them, I do not worship them. As if the same reason which forbids you to worship them, did not also forbid you to make them. Yea, you worship them, in doing that, which causes them to be worshipped. And you worship them not with the spirit of any vile *nidor*, or *smell* of a sacrifice, but with your own spirit: not with the life of a sheep bestowed on them, but with your own soul. To them you sacrifice your own ingenuity, to them you offer your labour, to them you burn your prudence and understanding. You are more than a priest to them, since by your means it is that they have a priest. Your diligence is their deity. Do you then deny that you worship that, to which you give its very being and existence? but they themselves do not deny it, to whom you offer a fatter, and more costly, and greater sacrifice, even your own salvation." Thus far Tertullian, who notwithstanding seems to complain, that there was a great remissness in the exercise of discipline upon such offenders. For he immediately adds,<sup>1</sup> "One might declaim all the day long with a zeal of faith upon this point, and bewail such Christians as come straight from their idols into the Church, from the shop of the adversary into the house of God, and there lift up to God the Father, those very hands, which are the mothers or makers of idols; adoring God in the Church with those hands, which without doors are themselves adored in the idols, which they have made against God; and taking the body of the Lord into those hands, wherewith they have prepared and given bodies to the devils. Nor is this all. It were but a small thing to defile that body, which they receive from the hands of others, but those very hands deliver it to others, which have first defiled it. For the makers of idols are sometimes chosen into the holy or-

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<sup>1</sup> Tertul. De Idol. cap. vii.



ders of the Church. O monstrous wickedness! The Jews once laid hands upon Christ, but these every day treat his body despitefully. O hands that ought to be cut off!" If Tertullian here does not make too severe an invective, and calumniate the Church, it must be owned there was some neglect in the exercise of discipline, to suffer such offenders not only to communicate, but take orders in the Church, who by the rules of discipline ought not to communicate in the Christian body in any quality whatsoever.

SECT. 12.—The Idolatry of building or adorning Heathen Altars and Temples.

Tertullian in the same book brings the charge of idolatry against all other artificers, who contributed toward the worship of idols, either by erecting altars, or building temples, or making shrines, or beautifying and adorning the idols, or any thing belonging to them. For it was the same thing,<sup>1</sup> whether a man made an idol or only adorned it. He, that built a temple, or erected an altar, to an idol, or overlaid it with gold, did rather more toward its worship, than he, that made it: for the one only gave it an effigies, the other gave it authority; procuring veneration to be paid to it as a god. Upon this score all, who thus contributed toward the worship of idols, though they did not actually sacrifice to them, were ranked in the same class with idolaters, and accordingly subjected to the censures of the Church. Which appears from that famous remonstrance, which St. Ambrose made to the Emperor Valentinian,<sup>2</sup> when he was solicited by Symmachus the heathen to restore the altar of Victory in the Capitol. He told him plainly, that if he did this, no bishop would receive him to communion, but every one courageously repel him, and he

<sup>1</sup> Tertul. de Idol. cap. viii. Nec enim differt, an extruas, vel exornes: si templum, si aram, si ædiculam ejus instruxeris, si bracteam expresseris aut insignia, aut etiam domum fabricaveris. Major est ejusmodi opera quæ non effigiem confert, sed auctoritatem.

<sup>2</sup> Ambrose Ep. xxx. ad Valentin. Junior. Ara Christi dona tua respuit, quia aram, simulacris fecisti. See chap. iii. n. 5.

ready to give him a good reason for their opposition : “ they will tell you,” says he, “ that the Church desires not your gifts, because you have adorned the temples of the heathen with your gifts: the altar of Christ refuses your oblations, because you have erected an altar to the idol-gods.” The case of Marcus Arethusius is famous in story, who chose rather to suffer death under Julian than rebuild a temple, which he had demolished by law in the time of Constantius, as is related at large by Gregory Nazianzen and Sozomen.<sup>1</sup> And Theodoret highly commends Audas,<sup>2</sup> a Persian bishop, for that, having demolished a *Pyræum*, a temple where the Persians worshipped *fire* as a god, though he did this without any legal authority, yet he rather chose to suffer death than rebuild it; because it was the same thing to build a temple to the idol as to worship it. And St. Chrysostom says,<sup>3</sup> it was a very common thing in the time of Julian to call upon all those, who had been concerned in demolishing temples in the preceding reigns of Constantine and Constantius, and prosecute them to death, because they refused to rebuild them.

SECT. 13.—Of Merchants selling Frankincense to the Idol Temples, and the Buyers and Sellers of the public Victims.

Among other promoters and encouragers of idolatry, they reckoned all merchants selling frankincense to the idol temples, and all who made a trade of buying and selling the public victims. Tertullian styles all these, “ *Procuratores idololatriæ, purveyors for idolatry.*” And he expressly says of those, who bought and sold the public victims,<sup>4</sup> “ That no Church would receive them to baptism, without obliging them to renounce that unlawful profession, nor

<sup>1</sup> Naz. Orat. i. in Julian. p. 90. Sozom. lib. v. cap. 9. Theod. lib. iii. cap. 7.

<sup>2</sup> Theod. lib. v. cap. 38.

<sup>3</sup> Chrys. Hom. 40. in Juveninum et Maximum. tom i. p. 548.

<sup>4</sup> Tertul. de Idol. cap. xi. Si publicarum victimarum redemptor ad fidem accedat, permittes ei in eo negotio permanere? Aut si jam fidelis id agere susceperit, retinendum in ecclesiâ putabis? Non opinor.

suffer them to continue in her communion, if they were already of the number of the faithful." And hence he argues more strongly against the *Thurarii*, as he terms those, who made a livelihood of selling *frankincense* to the temples, which he reckons the worse of the two. "With what face can the Christian seller of frankincense,<sup>1</sup> if he chance to go through a temple, spit at the smoking altars, and shew his detestation of those idols, for which he himself has been the purveyor? with what heart or courage can he pretend to exorcise those devils, to whom he has been a foster-father, and made his house a shop to furnish materials for their service?" Hence upon the whole matter he concludes, "That no art, profession, business, or trade, could be wholly free from the imputation of idolatry, which was instrumental and subservient either in making of idols, or furnishing out what was necessary to the support of their worship and service."

SECT. II.—Of eating Things offered to Idols. How and when it stood chargeable with Idolatry.

The case of eating things offered to idols is resolved by the Apostle. It was never lawful to do it in an idol temple, because that was to partake of the sacrifice as a sacrifice, and to communicate with devils; which was an hardening of the Gentiles, and a scandal to the Church of God. The Nicolaitans are condemned for this in Scripture, and the practice of the Basilidians and Valentinians,<sup>2</sup> by writers of the following ages. The Acts of Lucian the martyr tell us,<sup>3</sup> he chose rather to die with hunger, than to eat things offered to idols, when his persecutors would allow him no other sustenance in prison. And Baronius gives another such instance in the people of Constanti-  
nople,<sup>4</sup> who, when Julian had ordered all the meat in the

<sup>1</sup> Tertul. de Idol. cap. xi. Quo ore Christianus thurarius, si per templa transibit, quo ore fumantes aras despuet, et exsufflabit, quibus ipse prospexit? Qua constantia exorcizabit alumnos suos, quibus domum suam culariam prestat?

<sup>2</sup> Agrippa Castor. ap. Euseb. lib. iv.

cap. 7. Irenæ. lib. i. cap. 1.

<sup>3</sup> Ap. Baron. An. 311. n. 6.

<sup>4</sup> Baron. An. 362. p. 24

shambles to be polluted with idolatrous lustrations, freely abstained from it, and used boiled corn instead of bread, so defeating the tyrant's malicious intention. Not that it had been any idolatry to have eaten such meat in such a case: for the Apostle allows it, where it may be done without either communicating with the idols, or giving scandal to the weak: "Whatever is sold in the shambles, eat, asking no questions for conscience sake." And upon this warrant of the Apostle Theodoret justifies the people of Antioch in another such case.<sup>1</sup> For Julian made use of the same devilish stratagem to ensnare them, polluting all the fountains of Antioch and Daphne, and all the meat in the shambles with his idolatrous rites, and all the bread and fruits of the earth and herbs, that the Christians might have nothing to eat, but what was offered in sacrifice to idols. Which is also noted by Chrysostom,<sup>2</sup> and others, who speak of the diabolical wiles of Julian. But in this case the Christians made no scruple of eating any thing, notwithstanding the policy of their adversary, as knowing that the good creatures of God could not be defiled by any such wicked contrivances, so long as they did not consent to them, or communicate in them: "For the earth is the Lord's and the fulness thereof," and what was sanctified to them by the word of God and prayer, could not be unsanctified or polluted by any profane abuses.

SECT. 15.—Whether a Christian out of Curiosity might be present at an Idol Sacrifice, not joining in the Service.

But where there was any real communication with idolatry, or any just ground for a suspicion of it, it was at no hand allowable to give the least countenance to it, or any umbrage to surmise an approbation of it. For this reason the Council of Eliberis forbids any Christian to go to the Capitol,<sup>3</sup> or idol temple, so much as only out of curio-

<sup>1</sup> Theod. lib. iii. cap. 15.  
 bus Pauli. tom. v. p. 593.

<sup>2</sup> Chrys. Hom. iv. de Laudibus Pauli.  
<sup>3</sup> Con. Eliber. can. 59. Prohibendum ne quis Christianus, ut Gentilis ad idolum Capitolii causâ sacrificandi, ascendat et videat: quod si fecerit, pari crimine teneatur. Si fuerit fidelis, post decem annos, actâ pœnitentiâ recipiatur.

sity to see the sacrifice offered, under the penalty of ten years penance imposed upon them. Albaspiny rightly observes,<sup>1</sup> that though there be a little obscurity in the original wording of the canon, yet it must needs intend to prohibit the going to see the sacrifice: for otherwise, if they went to sacrifice, not only a ten years penance, but a penance for their whole lives was imposed upon them by the two first Canons of this Council. So that the plain sense of the canon must be, that if, as a heathen went to sacrifice, so a Christian went only to see the sacrifice, he should be held guilty of the same crime, and do ten years penance for it. Yet this was to be understood, if he had no other call but curiosity to carry him thither: for if by any necessary office or duty of his station he went thither, this was no crime: as if he was of the prince's guard, and only went to attend his sovereign, he was guiltless, because he went not to see the sacrifice, but to do his duty. Thus Theodoret says,<sup>2</sup> Valentinian, when he was a tribune and captain of the guard to Julian, attended his master to the temple of Fortune: but when the door-keepers according to custom sprinkled their lustral or holy water upon those that went in, and a drop of it fell upon his coat, he gave the man a blow upon the face, telling him, he did not think himself purified but profaned. And by this act, says Theodoret, he merited two kingdoms, both an earthly and an heavenly. For Julian immediately banished him for the fact, and confined him to a castle in the desert: but before a year and a few months were past, this noble confessor was rewarded with the imperial crown and the dignity of the Roman Empire. By this it appears, they put a great difference between going to a temple out of mere impertinency and curiosity to see the idolatrous rites and sacrifices, and going thither only upon the necessary obligations of their duty and function. And Tertullian, who is as severe as any in this matter, owns the reasonableness of this distinction. "It were to be wished," says he,<sup>3</sup> "that we could live without seeing those things,

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<sup>1</sup> Albaspiny in Loc.  
Sozomen. lib. vi. cap. 6.

<sup>2</sup> Theod. lib. iii. cap. 16. Item

<sup>3</sup> Tertul. de Idol. cap. 16 and 17.

which we cannot lawfully practice: but because idolatry has so filled the world with evils, a man may be present in some cases, where duty binds him to the man, and not to the idol. If I am called to a priesthood or to a sacrifice I will not go: for that is the proper office or service of the idol: neither will I contribute by my counsel, or my expense, or my labour to any such thing. If when I am called to a sacrifice, I go and assist, I am partaker of the idolatry: but if any other cause joins me to the sacrificer, I am only a spectator of the sacrifice. He applies this particularly to slaves waiting on their heathen masters, and children or clients on their patrons or parents, and officers on governors and judges. If we are careful to observe this rule, neither by word nor deed to give any assistance to the idolatrous service, we may attend on magistrates and powers, after the example of the patriarchs and others of our ancestors, who waited on idolatrous kings,—*usque ad finem idololatriæ, as far as the confines of idolatry would permit them.*” He gives the same resolution in some other private and common cases, as a Christian’s being obliged to attend the solemnity of giving a youth the *Toga Virilis*, the solemnity of espousals or nuptials, or the manumission of a slave,<sup>1</sup> or giving him a new name. For all these things were innocent in themselves: and though idolatrous rites were usually mixed with them, yet a man might be present without communicating in those rites, distinguishing the causes, which required his attendance. They were pure and clean in their own nature: for neither does the habit of a man, nor the ring of espousals, nor the joining of man and woman in marriage, descend originally from any honour of an idol: for all these things are allowed by God; and though sacrifices were used in the ceremony, yet a man whose office and business was not

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<sup>1</sup> Tertul. de Idol. cap. xvi. Circa officia verò privatarum et communium solennitatum, ut togæ puræ, ut sponsalium, ut nuptialium, ut nomenclium, nullum putem periculum observari de afflatu idololatriæ, quæ intervenit. Causæ enim sunt considerandæ, quibus præstatur officium. Eas mundas esse opinor per semetipsas, quia neque vestitus virilis, neque annulus, aut conjunctio maritalis de alicujus idoli honore descendit.

in the sacrifice, but required upon some other account, might lawfully attend them without defilement. This was the resolution of all such cases, where some obligation of office or duty required a man's presence at some idolatrous service; not as contributing any ways his assistance in it, or communicating either directly or indirectly in the service, but only performing what properly belonged to him by virtue of his lawful employment; and being ready, like Valentinian, to show his aversion to all superstitious and idolatrous rites, when any more peculiar occasion required it. The being present barely to perform some other duty, was not interpreted in this case any communicating with idolatry, because the very tenour of his obligation and duty sufficiently demonstrated it to be otherwise.

SECT. 16.—Whether he might eat his own Meat in an Idol Temple.

But where a man had no such necessary call or obligation to perform any duty that required his presence in a temple, then to be present at an idolatrous service, or do any thing that might look with a suspicious aspect towards it, was a sufficient reason to bring him under ecclesiastical censure. Thus no one could pretend any just reason to carry his own meat and eat it in an idol temple, but this must needs imply some disposition towards idolatry: and therefore the Council of Ancyra made a decree,<sup>1</sup> that such as feasted with the heathen upon any idol festival in any place set apart for that service, though they carried their own meat and eat it there, should do two years penance for it. The canon does not expressly call the place an idol temple, but *Τόπον ἀφωρισμένον, a place set apart for the service;* which, whether we take it for a temple, or any other place of feasting, is all one, since it was a place appropriated to the worship of the idol on a festival peculiarly dedicated to the honour of some heathen god.

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<sup>1</sup> Con. Ancyra. can. vii.

## SECT. 17.—Or feast with the Heathen on their Idol Festivals.

And this sort of feasting with the heathens on their proper festivals, whether in a temple or out of a temple, was precisely forbidden under the notion of communicating with them in their impiety. Which are the express words of the Council of Laodicea, prohibiting this practice of keeping such festivals with the Gentiles.<sup>1</sup> Among the Apostolical Canons,<sup>2</sup> there is also one that forbids Christians to carry oil to any heathen temple, or Jewish synagogue, or to set up lights on their festivals under the penalty of excommunication. Which shews, that Christians were sometimes inclined to concur with the Heathens in this practice.

And this seems to be the most rational sense that can be given of those two canons of the Council of Eliberis, which so much trouble interpreters;<sup>3</sup> the one of which forbids the lighting wax-candles by day in the cemeteries or burying-places of the martyrs, for fear of disquieting the spirits of the saints, under the penalty of excommunication: and the<sup>4</sup> other prohibits the setting up of lamps in public under the same penalty of being cast out of the communion of the Church. Alaspiny thinks these orders were made upon a mistaken notion, that the souls of the martyrs were still waiting under the altars; which, he says, was the opinion of Cyprian and Tertullian.<sup>5</sup> But it is more probable, that the Council forbad these rites upon another ground, because they were superstitious and idolatrous rites used by the heathen in their solemnities, as is expressly said by Tertullian,<sup>6</sup> and many others collected by Baronius.<sup>7</sup> And this seems

<sup>1</sup> Con. Laodic. can xxxix. Οὐδέϊ τοῖς ἔθνεσι συνορτάζειν ἢ κοινωνεῖν τῇ ἀζωωτητι αὐτόν. <sup>2</sup> Canon. Apost. lxxi. <sup>3</sup> Con. Eliber. can. xxxiv.

Cereos per diem placuit in Cœmeterio non incendi. Inquietandi enim sanctorum spiritus non sunt. Qui hæc non observaverint, arceantur ab ecclesie communionẽ.

<sup>4</sup> Ibid. can. xxxvii. Prohibendi etiam ne lucernas publicè accendant. Si facere contra interdictum voluerint, abstineant à communione.

<sup>5</sup> Cypr. De Lapsis. De Bono Patientie. Tertul. De Resur. Carnis. cap. xxv. De Anima. cap. viii. Contra Gnosticos. cap. xi.

<sup>6</sup> Tertul. Apol. cap. xxxv, and xlvi. De Idololat.

<sup>7</sup> Baron. An. lvi. n. 72.



to be the true reason why the Council forbid them, that Christians might not symbolize with the heathens in such superstitious practices. But to proceed, the heathen festivals are known in the civil law under the general name of *Vota*, and *Votorum Celebritas*, solemn days of prayer and worship of their gods. And as Gothofred has accurately distinguished them, they comprised. 1. All their *Ludi*, or *days of public shows*, which were in honour of their Gods. Among which the *Maiuma* is very famous, there being a title in the Theodosian Code<sup>2</sup> concerning the permission and regulation of it under the Christian Emperors, till at last it was finally put down by Arcadius. 2. Their other days of public feasting. 3. The Kalends of January or beginning of the new year. Against the superstitious observations of which there are frequent invectives in the writings of the Ancients, particularly in St. Ambrose,<sup>3</sup> Asterius Amasenus,<sup>4</sup> and Prudentius.<sup>5</sup> 4. The third of January, which was a noted festival or day of heathen devotion for the Emperor's safety. Among these may be also reckoned their *Bromialia*, forbidden by the Council of Trullo:<sup>6</sup> and the *Neomenia*, or *new moons*, against which St. Chrysostom has a whole discourse to dissuade Christians from the observation of them: where he particularly inveighs against the impious superstition,<sup>7</sup> that was still reigning in men's hearts, as the relics of paganism. For they were superstitiously addicted to observation of times, and made divination and conjectures upon them; as, if they spent the new moon of such a month in mirth and pleasure, the whole year following would be prosperous and lucky to them. So both men and women gave themselves to intemperance and excess on these days, out of this diabolical persuasion, as he justly terms it, that the good, or bad fortune of the rest of the year depended upon such an ominous beginning of it. Which was the devil's invention to ruin the practice of all virtue.

<sup>1</sup> Gothof. in. Cod. Theod. lib. xvi. tit. 10. De Paganis. leg. 8.

<sup>2</sup> Cod. Theod. De Maiuma. lib. xv. tit. 6.

<sup>3</sup> Ambros. Serm. 17.

<sup>4</sup> Aster. Hom. 4. De Festo Kalendarum.

<sup>5</sup> Prudent. cont.

Symmachum. lib. i.

<sup>6</sup> Con. Trull. can. 62, & 65.

<sup>7</sup> Chrys. Hom. 23. In eos qui Novilunia observant. tom. i. p. 297.

He observes further,<sup>1</sup> that they were used in the celebration of these times to set up lamps in the market place, and crown their doors with garlands, which he condemns together with their superstition and intemperance, as a mixture of diabolical pomp, and childish folly. By which we see how prone men were to follow the heathen in such practices, even when they were delivered both from their ignorance and compulsion: and much more, may we suppose, were they under a temptation to comply with them in the observation of their festivals, whilst they were under the terror of their laws and violent persecutions. Nay, even in St. Austin's time the heathen were so insolent in Afric, as to compel the Christians to observe their festivals, of which the African Fathers, in the fifth Council of Carthage,<sup>2</sup> were forced to complain to the Emperor Honorius, and petition him by his authority to redress the grievance; they represent to him, how the Pagans in many places, not only kept their superstitious feasts themselves, but forced the Christians to join with them; so that it looked like a secret persecution under Christian Emperors: wherefore they desired him to make a law to prohibit them both in city and country, and restrain them by some suitable penalty inflicted on them. Which at first Honorius refused to grant, but afterward he complied with their request upon more mature deliberation. The law is still extant in the Theodosian Code,<sup>3</sup> forbidding all holding of feasts or other solemnities in temples in honour of the gods; and enjoining all bishops and judges of the provinces to take care of the execution of it. Yet this did not so root out the superstition, but that many heathens still continued in it; and some looser Christians were ready enough, either to join with the hea-

<sup>1</sup> Chrys. Hom. 23. p. 300.

<sup>2</sup> Con. Carth. v. can. 5.

Illud etiam petendum, ut quoniam contra præcepta divina, convivia multis locis exercentur, quæ ab errore Gentili attracta sunt, ita ut nunc à Paganis Christiani ad hæc celebranda cogantur, ex quâ re temporibus Christianorum Imperatorum persecutio altera fieri occultè videatur, vetari talia jubent et de civitatibus, et de possessionibus impositâ pœnâ prohibere, &c. Vid. Cod. Afr. can. 63.

<sup>3</sup> Cod. Theod. lib. xvi. tit. 10.

De Paganis. leg. xix. Non liceat omninò in honorem sacrilegi ritûs functionibus locis exercere convivia, &c.

then in their practices, or at least to imitate the luxury and vanity of them under the notion of Christian observations. St. Austin makes a bitter complaint in one of his Epistles,<sup>1</sup> of the insolence of the heathen immediately after the publishing of this law: how upon one of their festivals on the Kalends of June, they came dancing in a petulant manner before the doors of the church: which when the clergy endeavoured to prohibit, they stoned the church: and when the bishop complained to the judges, they stoned it again, and a third time, setting fire to the houses belonging to the church, and killing some of the clergy, and causing others to fly for their lives. “An insolent and daring attempt, not to be paralleled by any thing,” he says, “that was done in the time of Julian.” And what was worse than all, no one of the magistrates or chief men of the place either offered to quell the riot, or give any assistance to the sufferers, except a stranger of some authority, who delivered many of the servants of God out of their hands, whilst the rest only looked on the abuse with pleasure, and some of them were strongly suspected as working underhand to excite this tumult and set the Heathen upon them, being grieved at this new law, which laid a restraint upon these festivals, in which they were wont to take so much pleasure. Which shews how deeply the love of these heathen festivals was rooted in the hearts of many carnal and libertine Christians. In another Epistle he makes as sad a complaint to Aurelius, bishop of Carthage,<sup>2</sup> of the intemperance and debauchery, which many such Christians were wont to commit upon the festivals of their own martyrs, and other anniversary commemorations of their deceased

<sup>1</sup> Aug. Ep. 202. ad Nectarium. Contra recentissimas leges Kalendis Junii festo Paganorum sacrilega solennitas agitata est, nemine prohibente, tam insolenti ausu, ut quod nec Juliani temporibus factum est, petulantissima turba saltantium in eodem prorsus vico ante fores transiret ecclesie, &c.

<sup>2</sup> Aug. Ep. lxxiv. ad Aurelium. Comessationes et Ebrietates ita concessæ et licitæ putantur, ut in honorem etiam Beatissimorum Martyrum, non solum per dies solennes, quod ipsum quis non lugendum videat, qui hæc non carnis oculis inspicit, sed etiam quotidie celebrentur.—Istæ in cæmeteriis ebrietates et luxuriosa convivia, non solum honores martyrum a carnali et impedita plebe eredi solent sed etiam solatia mortuorum.

friends; which was only acting all the impurity of the heathen festivals under the name of Christian. He prays him therefore to take some method, to drive away such profane and sacrilegious impurities from the house of God.<sup>1</sup> But he thinks this could not be done by any rough methods, or in any imperious way, but by instruction, rather than commanding; and by admonition, rather than threatening: for that was the only way to deal with a multitude:<sup>2</sup> the severity of discipline was only to be exercised upon sinners, when their numbers were small. This is a grievous complaint indeed, and he often repeats it in other places:<sup>3</sup> which shews how close the superstition and pleasure of the heathen festivals stuck to the hearts of many ignorant and carnal men, even after they became Christian: and their multitudes in Afric were so great, that though their crimes deserved the severity of excommunication, yet St. Austin in such circumstances could not think that the proper remedy to cure the distemper. St. Ambrose and other Italian bishops, he says, did happily root out this evil custom, and that was some ground to hope it might be effected in Afric. But yet long after this we find the complaint renewed against Christians retaining the relics of heathen superstition in this matter of observing festivals. For the Council of Trullo has a canon,<sup>4</sup> that forbids the observation of the *Kalends*, and the *Bota*, and the *Brumalia*, and the solemnity of the first of March, or May, as different copies read it, and the public dancings, and other ceremonies used by men and women, as handed down by ancient custom under the names of the heathen false Gods: prohibiting likewise the interchanging of habits in men and women,

<sup>1</sup> Aug. Ep. lxiv. Saltem de sanctorum corporum sepulchris, saltem de locis sacramentorum, de domibus orationum tantum dedecus arceatur.

<sup>2</sup> Ibid. Non asperè, quantum existimo, non duriter, non modo imperioso ista tolluntur, magis docendo, quam jubendo; magis monendo quam minando. Sic enim agendum est cum multitudine; severitas autem exercenda est in peccata paucorum.

<sup>3</sup> Aug. cont. Faustum. lib. xx. cap. 21. De Civ. Dei lib. viii. cap. 27.

<sup>4</sup> Con. Trull. can. 62. Τὰς λεγομένας Καλανδάς, ἔτι τὰ λεγόμενα Βοτὰ, ἔτι τὰ καλέμενα Βρμηάλια, ἔτι τὴν ἐν τῇ πρώτῃ τῆς Μαρτίου μηνὸς ἐπιτελιμμένην πανήγυριν κατὰ παλαιὰ τῆς τῶν πιστῶν πολιτείας περιουρηθῆνα βεβλόμεθα. &c.

and wearing of comical and tragical masks, and satirical dresses, and calling upon the name of Bacchus in treading the wine press, with some other such ridiculous vanities, proceeding from the imposture of the devil. The Kalends here signify the first of January. The *Bota* is explained by Balzamon, and others who follow him, the feast of the God Pan, because *Bota* signifies *sheep*: but Gothofred<sup>1</sup> and Suicerus<sup>2</sup> more judiciously render it *Vota*, it being only the Latin name *Vota* turned into Greek, and denoting the heathen festival on the third of January for the safety of the Emperor. The *Brumalia* is by Balzamon understood of the feast of Bacchus: but it may be better explained from Tertullian, who among many other heathen festivals, which some Christians were very much inclined to observe, reckons the *Brumæ*, or *Brumalia*, and objects it by way of reproach to such Christians.<sup>3</sup> “That they were not so true to their religion, as the heathens were to theirs: for the heathens would never observe any Christian solemnity, either the Lord’s day or pentecost, or any other: they will not communicate with us in these things; for they are afraid of being thought Christians: but we are not afraid of being thought heathens, whilst we celebrate their *Saturnalia*, and *Januariæ*, and *Brumæ*, and *Matronales*, and mutually send presents and new year’s gifts, and observe their sports and feasts.” Where by the *Brumæ*, learned men understand,<sup>4</sup> not the feasts of Bacchus, but the festivals of the *Winter-Solstice*, properly called *Bruma*, from which they made a conjecture, whether the remainder of winter would prove fortunate to them or not. This superstition, being a relic of old paganism, continued in the minds of many

<sup>1</sup> Gothofr. in Cod. Theod. lib. xvi. tit. 10. De Paganis. leg. viii. p. 270.

<sup>2</sup> Suicer. Thesaur. Eccles. Tom. i. p. 706. It. Casaubon et Reinesius. ibidem.

<sup>3</sup> Tertul. de Idol. cap. xiv. Saturnalia, et Januariæ, et Brumæ, et Matronales frequentantur, munera commeant, strenæ consonant, lusus, convivia constrepunt. O melior fides Nationum in suam sectam: quæ nullam solennitatem Christianorum sibi vindicat. non Dominicum Diem, non Pentecosten. Etiam si nôssent non communicassent; timerent enim ne Christiani viderentur. Nos, ne ethnici pronunciemur, non veremur. It. cap. x. Etiam strenæ captandæ et septimontium et brumæ, &c.

<sup>4</sup> Vid. Lænius in Loc. et Hospinian. de Festis Ethnicorum. cap. xxviii. p. 127.

Christians to the time of the Council of Trullo, Anno 692. Which was the reason why this Council forbid it, with many other observations of the like nature, under the penalty of excommunication; which, as we have seen, was always the punishment of such crimes, except when the multitude of offenders, as St. Austin says, made it impossible to exercise the severity of ecclesiastical discipline upon them.

SECT. 18.—Of the Idolatry of worshipping Angels, Saints, Martyrs, Images, &c.

I take no notice here of the idolatry that might be committed in the worship of angels, or saints and martyrs, or the Virgin Mary, or images, or the eucharist, because I have had occasion before to speak more at large of these in several parts of this work.<sup>1</sup> And it will be sufficient here only to observe in general, that none but professed heretics were ever accused of this sort of idolatry in the primitive ages, such as the *Angelici*, for worshipping *angels*, and the Simonians and Carpocrations for worshipping images, and the Collyridians for worshipping the Virgin Mary: and these being heretics by profession, there is no question, but that the censures of the Church were inflicted on them, and all such as adhered to or went over to them; which is sufficient to remark here for explaining and confirming the exercise of discipline in the Church.

SECT. 19.—Of Encouragers of Idolatry and Connivers at it.

There is but one thing more to be noted concerning the practice of idolatry, which is, that all favourers and encouragers of idolatry were equally reputed guilty of the crime with idolaters themselves, as partaking in their sin. If a master sent his servant to sacrifice for him, the act was the servant's, but the guilt rebounded on the master's head, as the principal author of it, as we have seen before in the case of the *Libellatici*, who employed their servants to sacrifice for them. If a judge, who was obliged by his office to ex-

<sup>1</sup> See Book viii. chap. viii. Book xiii. chap. iii.

tirpate idolatry, when the laws gave him authority and power to do it, did either publicly neglect his duty, or secretly connive at the practice of idolaters, he was reputed guilty of the crime by participation. Thus St. Austin charges the magistrates of a certain city, as criminals in this respect,<sup>1</sup> “ That when the laws had empowered them to root out all the remainders of idolatry, they were negligent and remiss in putting them in execution :” though the laws themselves, to which<sup>2</sup> he refers, “ Had laid a penalty of twenty pounds in gold upon any judge, or officer belonging to him, if by any dissimulation of theirs the force of the law, prohibiting heathen festivals, was fraudulently evaded.” So before idolatry was forbidden by the imperial laws, whilst under the countenance of Heathen Emperors it rode triumphant, Christians were obliged not only to abstain from sacrificing themselves, but to lend no helping hand by their authority to the sacrifices ; not to make a trade of selling victims ; not to be a guardian or curator of any temple, or collector of their revenues ; not to exhibit the public games and shows, either at his own expense, or the expense of the public, or so much as preside in them, when they were acted ; not to use any of their solemn words or forms peculiar to idolatrous worship, nor to swear by the names of their gods : all which Tertullian remarks and puts together in one place ;<sup>3</sup> giving this as a reason why a Christian, under an heathen government, could not safely take upon him the office of a judge ; because that post would oblige him to countenance idolatry, either by his authority, or some other of those ways, which he could not do without injuring his conscience and doing violence to the laws of his own religion, which do not allow a man to help forward the practice

<sup>1</sup> Aug. Ep. 202.

<sup>2</sup> Cod. Theod. lib. xvi. Tit. 10. De Paganis. leg. xix. *Judices autem viginti librarium auri penâ costringimus, et pari formâ officia eorum, si hæc eorum fuerint dissimulatione neglecta.*

<sup>3</sup> Tertul. de Idol. cap. xvii. *Neque sacrificet, neque sacrificiis auctoritatem suam accommodet, non hostias locet, non curas templorum deleget, non vectigalia eorum procuret, non spectacula edat de suo aut de publico, aut edendis præsit : nihil solenne pronunciet vel edicet, ne juret quidem.*

of idolatry in others. And for this reason the Council of Eliberis<sup>1</sup> made an order. "That no possessors or landlords should allow of any thing, that was brought in their accounts by their managers or tenants, as given to an idol, under the penalty of five years suspension from the communion." And in another canon,<sup>2</sup> they order "All masters to prohibit their servants, from retaining any idols in their houses, as far as lay in their power; or if they could not do this in times of persecution for fear their servants should use some violence toward them, that is, inform against them or betray them, they should at least keep themselves pure, or otherwise be cast out of the Church." In times of peace they were to carry their power a little further: for by a rule of the second Council of Arles,<sup>3</sup> after laws were made by the state to prohibit and root out idolatry, every presbyter within his own territory or district, was to prosecute all infidels, that still continued to light torches to idols, or worship trees, or fountains, or stones, under the penalty of being himself reputed guilty of sacrilege, if he neglected so to do. And every lord or governor of the place, who upon admonition should refuse to correct such errors in those under his command, was to be deprived of the communion. By another canon of the Council of Eliberis,<sup>4</sup> all persons, both men and women, are prohibited to lend any heathen their clothes and apparel to set off the secular pomp under the penalty of three years suspension from the communion. Where by the secular pomp it is most reasonable to understand the idolatrous ceremonies of the heathen on

<sup>1</sup> Con. Eliber. can. xl. Prohiberi placuit, ut eum rationes suas accipiunt possessores, quicquid ad idolum datum fuerit, acceptum non referant; si post interdictum fecerint, per quinquennii spacia temporum à communione esse arcendos.

<sup>2</sup> Ibid can. xli. Admoneri placuit fideles, ut in quantum possint, prohibeant, ne idola in domibus suis habeant. Si verò vim metuunt servorum, vel seipsos puros conservent; si non fecerint, alieni ab ecclesiâ habeantur.

<sup>3</sup> Con. Arlat. ii. can. 23. Si in alicujus presbyteri territorio infideles aut faculas accenderint, aut arbores, fontes vel saxa venerentur: si hæc eruere neglexerit, sacrilegii se esse reum cognoscat. Dominus autem vel ordinator rei ipsius, si admonitus emendare noluerit, communionem privetur.

<sup>4</sup> Con. Eliber. can. 57. Matronæ vel eorum mariti vestimenta sua ad ornandam seculariter pompam non dent. Et si fecerint, triennii tempore abstineant.



their public festivals. But there is one case peculiarly guarded against in that Council, because many well-meaning Christians, in a mistaken zeal against idolatry, were apt to run in a contrary extreme, and think themselves obliged to break and deface idols wherever they found them: to correct which error the Council<sup>1</sup> was forced to make another decree to forbid this unwarrantable practice, and to order, that if any one was slain in such a fact, he should not be enrolled in the catalogue of martyrs: because the Gospel gives no such command, neither do we find it ever practiced by the Apostles. This observation of the Council concerning the practice of the Apostles, seems to be very just. For whatever zeal they had against idolatry, we never read, that they went in a tumultuous way into the heathen temples to demolish their idols; but rather the contrary character is given them by the testimony of the very heathen. Of which we have an illustrious instance in the apology, which the town-clerk of Ephesus made for Paul and his companions, when they were accused by Demetrius and the crafts-men, who made silver shrines for Diana, as if they had done violence to her temple, and to the image, which fell down from Jupiter: "Ye have brought hither these men," says he, "which are neither robbers of churches, nor yet blasphemors of your goddess," Acts xix. 37.

It is true indeed, Eulalia the martyr had done some such thing not long before in Spain: but the Council would not have her action, which might be done by a peculiar impulse of the spirit, drawn into example; because it was an unnecessary provocation of the heathen, and prejudicial to the Church, without any warrant from Scripture; which bids men confess Christ when they are called to do it, but not to provoke the enemy by an imprudent zeal, when there is no just reason for it. And this is what Cyprian before them had always taught his people, both by his preaching and his

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<sup>1</sup> Ibid. can. 60. Si quis idola fregerit, et ibidem fuerit occisus: quoniam in Evangelio non est scriptum, neque invenitur ab Apostolis unquam factum; placuit in numerum eum non recipi martyrum.

writing,<sup>1</sup> “ That they should raise no tumults, nor offer themselves of their own accord to the Gentiles; but when they were apprehended and delivered up to the magistrate, then to speak what the Lord put into their hearts in that hour, who would have us to confess him when called to do it, but not rashly put ourselves upon it.” Thus the Ancients in this matter of idolatry, the great crime of that age, steered their discipline with an even course, keeping a just medium between two extremes; neither allowing any sinful compliance or communication with it, nor encouraging any indiscreet and over-zealous opposition to it. And if Tertulian in the former case has stretched the matter a little too far; as when he determines it to be a species and smatch of idolatry, for a schoolmaster to teach the names of the Heathen Gods to his scholars, or for a Christian to bear arms, or fly in time of persecution; it is easy to account for these singularities, knowing out of what school they came, and that they were not the dictates of the spirit of Christ, but the spirit of Montanus: and it is a sufficient answer to any such pretences, that we meet with no such dogmatical assertions in purer writers, nor any such rules in ecclesiastical discipline, nor any such overbearing custom in the Church of God. I have been the more curious in stating the sense of the Ancients upon these several questions, both because they are useful to explain the discipline of the Church, and also because they may have their use when applied to other cases: and it is not very common to find the subject of idolatry treated of in this way by modern authors.

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<sup>1</sup> *Cypr. Ep. lxxxi. al. lxxxiii. p. 239. Secundum quod me tractante sæpissimè didicistis, quietem et tranquillitatem tenete: ne quisquam vestrum alicquem tumultum de fratribus moveat, aut ultro se Gentilibus offerat, &c. Si quidem dominus nos confiteri magis voluit, quam temere profiteri.*

## CHAP. V.

*Of the Practice of curious and forbidden Arts, Divination, Magic, and Inchantment: and of the Laws of the Church made for the Punishment of them.*

SECT. 1.—Of the several Sorts of Divination, particularly of Astrology.

ANOTHER great crime against religion was the practice of curious and forbidden arts, which are almost innumerable, from the great and various inclination of men to superstition. I shall sum them up under three general names, divination, magic, and enchantment. Divination comprehends all the arts and ways of discovering secrets, or foretelling future events, not knowable by any rules of nature; magic all the arts of mischievous operations by secret and unknown means, which is commonly called sorcery, and by the Latins, *Veneficium* and *Maleficium*, from poisoning and doing mischief; enchantment chiefly relates to a pretended skill and power of doing good, as of curing diseases by certain charms, and words, and signs, and amulets, which has made it the more agreeable to weak and superstitious persons, because it has a pretence and shew of being useful and beneficial to mankind. Among the several species of divination, one of the most noted and infamous was that of astrology, or the pretence of discovering secrets by the position and motion of the stars. Men, who professed this art, are commonly called *Mathematici*, *drawers of schemes and calculations*; under which name they are condemned in both the Codes.<sup>1</sup> And they were infamous not only under the Christian administration, but also under the old Romans. For there is a law of Dioele-

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<sup>1</sup> Cod. Theod. lib. ix. tit. 16. De Maleficis et Mathematicis.

tian<sup>1</sup> in the Justinian Code, which allows the art of geometry as an useful science, but forbids the *Ars Mathematica*, the *astrologer's art*, as a damnable practice. And Tacitus<sup>2</sup> says, "There were decrees of the senate made in the reign of Tiberius for expelling all the astrologers and magicians out of Italy:" but he likewise observes,<sup>3</sup> "That they were a sort of men, which were always forbidden, and yet always retained. For though they were deceitful and fallacious to great men, yet they still had an inclination now and then upon occasion to consult them." Their expulsion out of Italy is also noted by Suetonius, as done twice,<sup>4</sup> in the reigns of Tiberius and Vitellius. Upon which Tertullian<sup>5</sup> in a smart and elegant way, tells some Christians, who pleaded for a toleration of themselves in the profession of this wicked art, "That astrologers were expelled out of Italy and Rome as their angels were out of heaven: the same penalty of banishment was inflicted on the scholars, as had been on their masters before them. Now then the laws of the state, both heathen and Christian, being thus severe against them, it was but reasonable, that the censures of the Church should be as sharp upon them, because they were a species of idolaters, and owed the original of their art to the invention of wicked angels." For this reason the Constitutions<sup>6</sup> put astrologers into the black list of such as were to be rejected from baptism, unless they would promise to renounce their profession. The first Council of Toledo,<sup>7</sup> condemns the Priscillianists with Anathema for the practice of it. For

<sup>1</sup> Cod. Justin. lib. ix. tit. xviii. De Malefic. et Mathemat. leg. ii. Artem geometriæ discere atque exercere publicè interest. Ars autem mathematica damnabilis est atque interdicta omnino.

<sup>2</sup> Tacit. Annal. lib. ii. cap. 32. Facta et de mathematicis magisque Italiâ pellendis senatûs consulta; quorum è numero Pituanus saxo dejectus est.

<sup>3</sup> Idem in Hist. lib. i. cap. 22. Mathematici, genus hominum potentibus infidum, sperantibus fallax, quod in civitate nostrâ et vetabitur semper, et retinebitur.

<sup>4</sup> Sueton. Vit. Tiber. cap. xxxvi. Vit. Vitel. cap. xiv.

<sup>5</sup> Tertul. de Idol. cap. ix. Urbs et Italia interdicetur mathematicis, sicut cælum et angelis eorum, eadem pœna est exilii discipulis et magistris.

<sup>6</sup> Constit. lib. viii. cap. 32.

<sup>7</sup> Con. Tolet. i. In Regula Fidei Cont. Priscillianistas. Si quis astrologiæ vel mathesi existimat esse credendum anathemâ sit.

we must know, that the Priscillianists ascribed all to fate and the necessary influence of the stars, as St. Austin informs us :<sup>1</sup> “ They asserted, that men were bound to fatal stars, and that our bodies were compounded according to the order of the twelve signs of the Zodiac, as they, who are commonly called *Mathematici*, or *astrologers*, maintain, appointing Aries for the head, Taurus for the neck, Gemini for the shoulders, Cancer for the breast, and so running through the other signs, till they came to the feet, which they attributed to Pisces, which is the last sign in the astrologers’ computation.” Leo<sup>2</sup> in one of his Epistles gives the same account of them, “ That they maintained, that the bodies and souls of men were bound to fatal stars, by which folly men were embarrassed in the errors of the pagans, and obliged to worship those stars, that were favourable to them and appease those, that were against them : but they, who followed such vanities, could have no place in the Catholic Church : for he, that gives himself to such persuasions, is wholly departed from the body of Christ.” Sozomen<sup>3</sup> says, Eusebius, bishop of Emesa, was accused of the practice of this art, and forced to fly from his bishopric upon it. He gives it indeed another name, calling it “ apotelesmatical astronomy :” but that<sup>4</sup> signifies the same thing : for there were two parts of astronomy, the one teaching the nature and course of the stars ; which was a lawful art : and the other, the secret effects, and powers of them in their oppositions, conjunctions, &c. which effects were called their *Apotelesmata*, and the art

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<sup>1</sup> Aug. de Hæres. cap. 70. Astruant fatalibus stellis homines colligatos, ipsumque corpus nostrum secundum duodecim signa cæli esse compositum, sicut hi qui vulgò mathematici appellantur ; constituentes in capite arietem, taurum in cervice, geminos in humeris, canerum in pectore ; et cætera nominatim signa percurrentes, ad plantas usque perveniunt, quas piscibus tribuunt, quod ultimum signum ab astrologis nuncupatur.

<sup>2</sup> Leo. Ep. xci. al. xciii. ad Turibium. cap. xi. Fatalibus stellis et animas hominum, et corpora opinantur astringi : per quam amentiam necesse est ut homines paganorum erroribus implicati, et faventia sibi (ut putant) sidera colere, et adversantia studeant mitigare. Verùm ista sectantibus nullus in Ecclesiâ Catholicâ locus est : quoniam qui se talibus persuasionibus dedit, à Christi corpore totus abscessit.

cap. 6.

<sup>3</sup> Sozom. lib. iii.

<sup>4</sup> Justin. Respons. ad Orthodox. 24.

Speaks of the Telesmata of Apollonius.

itself *Apotelesmatica*, and the practicers of it anciently *Apotelesmatici*, as afterwards *Mathematici* and *Chaldæi*. Some think<sup>1</sup> also, these *Apotelesmata* were little figures and images of wax, made by magical art to receive the influence of the stars, and used as helps in divination. So that the apotelesmatical art was the same in all respects with judicial astrology. And therefore Eusebius Emisenus was condemned for the practice of it, as an unlawful art, utterly unbecoming the character of a Christian bishop. For by the account, that has been given, it is plain, that all such kind of divination was looked upon as idolatry and paganism, as owing its original to wicked spirits, and as introducing an absolute fate and necessity upon human actions, and so taking away all freedom from human will, and making God the author of sin: which blasphemies are commonly charged upon this art by the Ancients, St. Austin,<sup>2</sup> Lactantius,<sup>3</sup> Tertullian,<sup>4</sup> Eusebius,<sup>5</sup> Origen and Bardesanes Syrus, who wrote particular dissertations against it, mentioned by Eusebius, who gives some extracts out of them. We may note further out of St. Austin, that these astrologers had sometimes the name of *Genethliaci*<sup>6</sup> from pretending to calculate men's nativities by erecting schemes and horoscopes, as they called them, to know what position the stars were in at their birth, and thence prognosticate their good or bad fortune, or any accidents of their life, by the conjunction of the stars, they were born under. And because some of these pretended to determine positively of the lives and deaths of kings, which was reputed a very dangerous piece of treason; therefore the laws of the state were more severe against them, even under the Hea-

<sup>1</sup> Vid. Selden. De Diis Syriis Syntagma. i. cap. ii. p. 116. Spencer. De Urim, et Thummim. lib. iii. cap. iii. sect. 10. p. 369.

<sup>2</sup> Aug. De Civ. Dei. lib. v. cap. i. &c. De Doctrina Christ. lib. ii. cap. xxi. &c.

<sup>3</sup> Lact. lib. ii. c. 17.

<sup>4</sup> Tertul

De Idol. cap. ix.

<sup>5</sup> Euseb. De Præpar. Evang. lib. vi.

Orig. et Bardesan. ibid. cap. x. et xi. Vid. Nyssen. de Fato. Basil. Hom. i. and vi. in Hexamer.

<sup>6</sup> Aug. de Doct. Christ. lib.

ii. cap. 21. Genethliaci propter natalium dierum considerationes vocantur.

then Emperors, as Gothofred shews out of the ancient lawyers,<sup>1</sup> Ulpian and Paulus : and that was another reason why the Church thought it proper to animadvert upon these with the utmost severity of ecclesiastical censures ; as thinking, that what the heathen laws had punished as a capital crime, ought not to pass unregarded in the discipline of the Christian Church. It was this crime, that expelled Aquila from the Church. For Epiphanius says<sup>2</sup> he was once a Christian ; but being incorrigibly bent upon the practice of astrology, the Church cast him out : and then he became a Jew, and in revenge set upon a new translation of the Bible, to corrupt those texts, which had any relation to the coming of Christ. St. Austin<sup>3</sup> gives a famous instance of an astrologer, who being excommunicated for his crimes afterwards became a penitent, and was reconciled to the Church by his ministerial absolution. The sum of his crimes was this : he taught the fatal influence of the stars, that it was Venus, that made a man commit adultery, and not his own will ; and that it was Mars, and not his own will, that made him commit murder : and that if any man was righteous, it was not from God, but from the influence of Jupiter, a star so called in the heavens. And by this art he had defrauded many people of their money ; but at last he became a convert, and upon his confession and repentance, was received into the Church again, to lay-communion, but for ever denied all promotion among the clergy. By which one instance, we may judge of the greatness of the crime, and the proceedings of the Church against such offenders.

#### SECT. 2—Of Augury and Soothsaying.

Another sort of divination was, that, which was called augury and soothsaying. Which was committed several ways. Sometimes by observing several signs and appearances in the entrails of the sacrifices,

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<sup>1</sup> Gothofred. in Cod. Theod. lib. ix. Tit. xvi. De Malef. et Mathematic. leg. ii.

<sup>2</sup> Epiphau. de Mensur. et Ponder.

<sup>3</sup> Aug. De Mathematico. ad Calcem. Tractatus in Psal. lxi.

which was properly called *Aruspicina* and *Haruspicium*. Sometimes by observations made upon the motion, or flying or singing of birds, which was called augury, in the strictest sense. Sometimes by remarks made upon the voice of men, or their sneezing, which was called an omen, and the thing reputed ominous. Sometimes by observing certain signs in the figure and lineaments of the body; as in the hands, which was called chiromancy; or in the face and forehead, which was called *Μετωποσκοπία*, or *Physiognomy*; or in the back, called, *Νωτομαντεια*, with many other observations of the like nature. The old Romans were much given to these superstitions, insomuch that they had their colleges of augurs, and would neither fight, nor make war or peace, or do any thing of moment without consulting them. The squeaking of a rat, was sometimes the occasion of dissolving a senate, or making a consul or a dictator<sup>1</sup> lay down his office, as begun with an ill omen. Now, though Christianity was a professed enemy to all such vanities; yet the remains of such superstition continued in the hearts of many after their conversion. So that the Church was forced to make severe laws to restrain them. The Council of Eliberis<sup>2</sup> makes the renunciation of this art a condition of baptism, if an augur had a mind to be baptised: and if afterward he returned to the practice of it, he was to be cast out of the Church. Which is also the rule in the Apostolical Constitutions,<sup>3</sup> and the Councils of Agde,<sup>4</sup> Vannes,<sup>5</sup> Orleance,<sup>6</sup> and several others. The constitutions not only censure astrologers, magicians, and inchanters, but also wandering fortune-tellers, augurs and soothsayers, observers of signs and omens, interpreters of palpitations, observers of accidents in meeting others, and making divination upon them, as upon a

<sup>1</sup> Valer. Maxim. lib. i. cap. iii. *Occentus soriceis auditus Fabio Maximo Dictaturam, Caio Flaminio magisterium equitum deponendi causam præbuit.*

<sup>2</sup> Con. Eliber. can. 62. *Si Augur aut pantomimi credere voluerint, placuit, ut prius artibus suis renuncient, et tunc demum suscipiantur, ita ut ulterius non revertantur. Quod si facere contra interdictum tentaverint, projiciantur ab ecclesiâ.*

<sup>3</sup> Constit. lib. viii. cap. 32.

<sup>4</sup> Con. Agathen. can. xlii.

<sup>5</sup> Con. Venetic. can. xvi.

<sup>6</sup> Con. Aurel. i. can. 32.



blemish in the eye, or in the foot, observers of the motion of birds or weasels, observers of voices, and symbolical sounds.

SECT. 3.—Of Divination by Lots.

And it is observable, that in the French Councils last mentioned, there is a peculiar sort of augury condemned under the name of *Sortes Sacræ*, divination by *holy lots*. Which was a piece of new superstition grafted upon an old stock, and introduced with a more specious shew in the room of an heathen practice. For the heathens were used to divine by a sort of lots, which they called *Sortes Virgilianæ*: which was done by a casual opening of the Book of Virgil, and then the first verses, that appeared, were taken and interpreted into an oracle. Thus Spartian says,<sup>1</sup> Hadrian had the empire prognosticated to him by drawing his lots out of Virgil. For the first words that appeared, "*Missus in imperium magnum*," portended that he should become the Roman Emperor. And so Lampridius,<sup>2</sup> in the Life of Alexander Severus, says, that Emperor also understood by this sort of divining-lots out of another verse of Virgil, that he should obtain the government of the Roman Empire. Now many superstitious Christians were of opinion, that this sort of divination might be much better made by using the Holy Scriptures after the same manner, and to the same purpose: and therefore as the Heathen used Virgil, so they used the Bible, to learn their fortune by sacred lots, as they called them, taking the first passage, that presented itself, to make their divination and conjecture upon: and it appears, that some of the inferior clergy, out of a base spirit, and love of filthy lucre, encouraged this practice, and made a trade of it in the French Church. Whence the Gallican Councils are very frequent in the condemnation of it. The

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<sup>1</sup> Spartian. Vit. Hadrian. p. 5. Cum Virgilianas sortes consuleret, &c.

<sup>2</sup> Lamprid. Vit. Alexand. p. 341. Virgilii sortibus hujusmodi illustratus est, tu regere imperio populos, Romane, memento, &c.

Council of Agde<sup>1</sup> takes notice, “ That some of the clergy and laity followed after soothsaying, to the great detriment of the Catholic religion ; and under, the name of feigned religion, professed the art of divination, by what they called the lots of the saints, making use of a casual inspection of the Scriptures to divine futurities by. It is decreed therefore, “ That whoever of the clergy or laity should be detected in the practice of this art, either as consulting or teaching it, should be cast out of the communion of the Church.” This had been decreed about sixty years before in the Council of Vannes, Anno 465, in the very same words. And the first Council of Orleance<sup>2</sup> about five years after the Council of Agde, repeats the decree with a very little variation. But the practice continued for all this : for Gregory of Tours<sup>3</sup> says, Kramnus, the son of King Clotharius, consulted the clergy of Dijon upon some points, and they gave him an answer by this sort of divination. Some reckon St. Austin’s conversion owing to such a sort of consultation : but the thought is a great mistake, and very injurious to him, for his conversion was owing to a providential call, like that of St. Paul from heaven. He says,<sup>4</sup> he heard a voice he knew not whence, saying, “ *Tolle lege, tolle lege, take up the Bible and read :*” which he did, and the first words he chanced to cast his eye upon were those of St. Paul, Rom. xiii. “ Let us walk honestly as in the day ; not in rioting and drunkenness, not in chambering and wantonness, not in strife and envying : but put ye on the Lord Jesus Christ, and make not provisions for the flesh to fulfil the lusts thereof.” Which words, being apposite to his case, he looked upon

<sup>1</sup> Con. Agathen. can. xlii. Quod maximè fidem catholicæ religionis infestat, aliquanti clerici sive laici student auguriis, et sub nomine fictæ religionis, per eas quas sanctorum sortes vocant, divinationis scientiam prætentur, aut quarumcunque scripturarum inspectione futura promittunt. Hoc quicumque clericus vel laicus detectus fuerit vel consulere vel docere, ab ecclesiâ habeatur extraneus.

<sup>2</sup> Con. Veneticum, can. xvi. Con. Aurel. i. can. 32. Si quis clericus, monachus, vel secularis divinationem vel auguria crediderit observanda, vel sortes (quas mentiuntur esse sanctorum) quibuscunque putaverint intimandas, cum his, qui eis crediderint, ab ecclesiæ communione pellantur.

<sup>3</sup> Greg. Turon. Hist. lib. iv. cap. 16.

<sup>4</sup> Aug. Confess. lib. viii. cap. 12.

them as spoken directly to himself, and accordingly applied them to his own condition: and so by God's providence, they became the means of fixing him in that piety, purity, and sobriety, for which he was afterwards so famous in the world. Here was nothing of divination in all this; but a reasonable application of a proper passage to himself, as he says St. Anthony had made of those words of our Saviour, "go, sell all that thou hast, and give to the poor, and thou shalt have treasure in heaven, and come follow me." Which he took as an oracle spoken immediately to himself, and they were the occasion of his turning to the Lord. As to any other use of the Scripture for divination, St. Austin was an enemy to it, and expresses himself against it, reflecting on some, who used it to that purpose: "As for those" says he,<sup>1</sup> "who divine by lots out of the Gospel, though it be more desirable they should do this, than run to ask counsel of devils; yet I am displeas'd at this custom, which turns the divine oracles, which speak of things belonging to another life, to the business of this world and the vanities of the present life." By which it is plain, he looked upon this sort of divination as a great abuse of the Gospel, though not so bad as going directly to consult devils. As for those, which are commonly called divisory lots, there is no harm in them, when applied to things in our own power; as to dividing of lands by lot, or determining in an army, who shall first invade the enemy; or in time of a plague or persecution, what ministers shall stay in a city to take care of the Church; which is a case particularly mentioned by St. Austin,<sup>2</sup> and allowed as lawful. So a prince may distribute his punishments by lot, when he is minded to spare some criminals, and punish others. And when there are two objects of charity in equal circum-

<sup>1</sup> Aug. Ep. 119. ad Januar. cap. 20. Hi verò qui de paginis evangelicis sortes legunt, etsi optandum est, ut hoc potius faciant, quàm ut ad demonia consulenda concurrant. tamen etiam ista mihi displicet consuetudo, ad negotia sæcularia et ad vitæ hujus vanitatem, propter aliam vitam eloquentia oracula divina velle convertere.

<sup>2</sup> Aug. Ep. 180. ad Honorat. Quæ disceptatio, si aliter non potuerint terminari, quantum mihi videtur, qui maneant et qui fugiant, sorte legendi sunt.

stances, and we cannot relieve both, St. Austin<sup>1</sup> thinks there is no harm in casting lots to determine which of them shall have our charity. And there are many other indifferent cases of the like nature, in which lots may be used without any prejudice to religion. And therefore the Church never made any laws to forbid or censure them, save only in disposing of ecclesiastical offices, and the lives of men, which are too sacred to be committed to mere chance or lots without some special divine direction, as in the case of Matthias, and Jonas, which St. Jerom says,<sup>2</sup> “are not to be drawn into example; because special privileges cannot make a common or general law for all cases: and it is plain, that without such special direction, lots of that kind will be matter of mere chance, or else pure divination.

SECT. 4.—Of Divination by express Compact with Satan.

There were some other ways of divination, far more abominable than the former, because they were done by express compact with the devil, and always implied his concurrence and assistance. Sometimes he gave answers by his images and idols, which were called oracles. Sometimes by speaking in his prophets, whom he possessed, who were called *Pythonici* and *Pythonissæ*, possessed with a familiar, or spirit of divination, and Ἐγγαστρομύθοι, because they *spake out of the belly* by the navel. Sometimes men used certain ceremonies in sleeping, in such a posture, in a temple, in the skins of the sacrifices, &c. to receive his impressions and answers by dreams, which was called Ὀνειρομαντεία. Sometimes he gave answers by spectres and appearances from the dead, as he did to Saul by the witch of Endor. This they properly called necromancy, that is, divination by the dead. Sometimes he spake by the skull of a dead man, called Κρανιομαντεία. Sometimes he gave answers by certain signs and figures made in the earth, or water, or air, or fire, or a glass, or a riddle, and a thousand

<sup>1</sup> Aag. de Doct. Christ. lib. i. c. 18.

<sup>2</sup> Hieron. in Jon. i. Nec statim debemus sub hoc exemplo sortibus credere, vel illud de actibus Apostolorum huic testimonia copulare, ubi sorte in Apostolatum Matthias eligitur: Cùm privilegia singulorum non possint facere legem communem.

other ways of imposture, either by real appearances, or by deluding the imagination. The names of which and the transactions may be seen in Delrio,<sup>1</sup> or Lessius,<sup>2</sup> or Du Moulin,<sup>3</sup> who treat more particularly of them. That which is to our present purpose, is only to observe, that, as this crime had in it a mixture of idolatry, heresy, infidelity, apostacy, sacrilege, hypocrisy, curiosity, and ambition; each one of which was an high crime in itself; so the Church was always careful to lay the heaviest censure of excommunication upon it. The general name, under which all the species of it are condemned, is *Μαντεία*, *prophecy-ing* or *divining*, by Satan's inspiration. In the Constitutions<sup>4</sup> among those, that are to be denied baptism, the *Μάνται*, *oracle-mongers*, are particularly specified. And in the Council of Ancyra,<sup>5</sup> those, that follow after such diviners—*Οι Καταμαντευόμενοι*—or take them into their houses to exercise their wicked arts, are to be excluded from communion, and do five years penance. By a law of Constantius in the Theodosian Code<sup>6</sup> the *Vates* and *Harioli*, are reckoned among others, who practice forbidden arts, such as soothsayers, astrologers, augurs, Chaldeans, magicians, and both they, that use such curious divinations, and they, that consult them, are condemned to die, as guilty of a capital crime and offence against religion. Gothofred<sup>7</sup> observes, that this law is often mentioned with some regret by the heathen writers, Ammianus Marcellinus, Mamertinus, and Libanius, who give some instances of Constantius's severity in putting it in execution. Constantine, by a former law or two,<sup>8</sup> had indulged the heathen in the liberty of consulting their augurs, provided they did it in public, and never put any

<sup>1</sup> Delrio. Disquisit. Magicæ.      <sup>2</sup> Lessius de Jure et Justit. lib. ii. cap. xliiii. dubit. 5.      <sup>3</sup> Molinæi Vates. lib. iii. cap. 6, &c.      <sup>4</sup> Constit. lib. viii. cap. 32.

<sup>5</sup> Con. Ancyr. can. xxv. Vid. Basil. can. lxxii. <sup>6</sup> Cod. Theod. lib. ix. tit. 16. de Malefic. et Mathematicis. leg. iv. Nemo aruspicum consulat aut mathematicum, nemo hariolum. Augurum et vatum prava confessio conticescat. Chaldæi ac Magi, et ceteri, quos maleficos ob faciunorum magnitudinem vulgus appellat, nec ad hanc partem aliqui moliantur. Sileat omnibus perpetuò divinandi curiositas. Etenim supplicium eapitis feret gladio ultore prostratus, quicumque jussis obsequium denegaverit.      <sup>7</sup> Gothofred. in Loc.      <sup>8</sup> Cod. Theod. ibid. leg. i. et ii.

questions concerning the state of the commonwealth or the life of the prince; which is noted also by Julius Firmicus Maternas, in his Books of Astrology,<sup>1</sup> written whilst he was an heathen: but Constantius, finding great abuses made of this permission, universally prohibited all such consultations under the forementioned penalty of death: which extended not only to magicians, but to the *Harioli* and the *Vates*; the former of which waited on the altars, to receive their inspiration from the fumes of the sacrifices, as Tertullian<sup>2</sup> describes them; and the latter, the *Vates*, were those, who pretended to prophesy by the perpetual motion of an indwelling demon; whom therefore the Latins called *Fantatici*, and the Greeks, Ἐνθουσιασταὶ and Θεόληπτοι, and Θεοφοροῦμενοι, &c. as may be seen in Theodoret,<sup>3</sup> and Suidas,<sup>4</sup> and many others. Now, because no Christian could practice this art, nor consult those, that did, without direct communicating with devils, therefore the civil law made it a capital crime, and the ecclesiastical law punished it with the severest censure of excommunication.

SECT. 5.—Of Magical Inchantment and Sorcery.

Next to the superstition of divination was that of magic and sorcery; which, because it commonly tended to work mischief, therefore they, who gave themselves to it, were usually termed *Venefici* and *Malefici*, because either by poison or other means of fascination they wrought pernicious effects upon others. The Laws of the Theodosian Code<sup>5</sup> frequently brand them with this name of *Malefici*. Particularly they are charged by Constantine,<sup>6</sup> as making

<sup>1</sup> Firmic. de Mathesi sive Astronom. lib. ii. in fine.

<sup>2</sup> Tertul. Apol. cap. xxiii. Qui aris inhalentes numena de nidore concipiunt.

<sup>3</sup> Theod. Hist. lib. iv. cap. 10. Ἐνθουσιασταὶ καλῶνται ταίμωνες τινος ἐργείαν ἐκδέχομενοι. &c.

<sup>4</sup> Suidas. Voce, Ἐνθός, Harmenopolus, de Sectis. n. 18. de Massalianis.

<sup>5</sup> Cod. Theod. lib. ix. tit. 16. de Maleficiis. leg. vi. Magus, qui maleficus vulgi consuetudine nuncupatur. It. leg. ix, x, xi. ibid. et tit. xxxviii. de Indulgentiis Criminum. leg. i. iii. iv. vi. vii. viii.

<sup>6</sup> Cod. Theod. lib. ix. tit. xvi. leg. iii. Eorum est scientia punianda, et severissimis meritò legibus vindicanda, qui magicis adincti artibus, aut contra hominum moliti salutem, aut pudicos ad libidinem defixisse animos deteguntur.

attempts by their wicked arts upon the lives of innocent men, and drawing others, by magical potions, called *Philtra* and *Pharmaca*, to commit uncleanness. All such, when they are detected, are appointed to be put to death. Constantius<sup>1</sup> charges them further with disturbing the elements, or raising of tempests, and practising abominable, arts in the evocation of the infernal spirits to assist men in destroying their enemies: whom he therefore orders to be executed, as unnatural monsters, and quite divested of the principles of humanity. And it is observable, that in all those laws of the Christian Emperors, which granted indulgence to criminals at the Easter festival,<sup>2</sup> the *Venefici* and the *Malefici*, that is, magical practisers against the lives of men, are always excepted, as guilty of too heinous a crime to be comprised within the general pardon granted to other offenders. And according to these measures the laws of the Church were strict and severe against all such, under whatever character or denomination they were found guilty. The Council of Laodicea<sup>3</sup> condemns them under the name of magicians and enchanters, together with those called *Mathematici* and astrologers, ordering all such to be cast out of the Church. The Council of Ancyra,<sup>4</sup> forbids the art under the name of *Φαρμάκεια*, *pharmacy*, that is, the magical art of inventing and preparing medicaments to do mischief: and five years penance is there appointed for any one, that receives a magician into his house for that purpose. St. Basil's Canons<sup>5</sup> condemn it under the same character of pharmacy or witchcraft, and lays thirty years penance upon it. And the fourth Council of Carthage censures it, under the name of enchantment,<sup>6</sup> joining it with

<sup>1</sup> Cod. Theod. lib. ix. tit. xvi. leg. iii. Multi magicis artibus ausi elementa turbare, vitas insontium labefactare non dubitant, et Manibus accitis audent ventilare, ut quisque suos conficiat malis artibus inimicos: hos, quoniam naturæ peregrini sunt, feralis pestis absumat.

<sup>2</sup> Vid. Cod. Theod. lib. ix. tit. xxxviii. de Indulgentiis Criminum. lib. i. l. iii. iv. vi. vii. viii.

<sup>3</sup> Con. Laodic. can. xxxvi. Οὐ δεῖ ἱερατικὸς ἢ κληρικὸς, μάγος ἢ ἐπαισιῶδες εἶναι ἢ μαθηματικὸς ἢ ἀστρολόγος, &c.

<sup>4</sup> Con. Ancyr. can. xxv.

<sup>5</sup> Basil. can. vii. et lxx.

<sup>6</sup> Con. Carth. iv. can. 89. Auguriis vel incantationibus servientem, à conventu ecclesiæ separandum.

augury, and denying communion to all such as follow after either, not to mention what private writers, Origen,<sup>1</sup> Tertullian,<sup>2</sup> Hermes Pastor,<sup>3</sup> and many others have said against it: Tertullian particularly observing, that there never was a magician or enchanter allowed to escape unpunished in the Church.

SECT. 6.—Of Amulets, Charms, and Spells to cure Diseases.

But there was one sort of enchantment, which many ignorant and superstitious Christians, out of the remains of heathen error, much affected: that was the use of charms and amulets, and spells to cure diseases, or avert dangers and mischiefs, both from themselves and the fruits of the earth. For Constantine had allowed the heathen, in the beginning of his reformation, for some time not only to consult their augurs in public, but also to use charms by way of remedy<sup>4</sup> for bodily distempers, and to prevent storms of rain and hail from injuring the ripe fruits, as appears from that very law, where he condemns the other sort of magic, that tended to do mischief, to be punished with death. And probably from this indulgence granted to the heathen, many Christians, who brought a tincture of heathenism with them into their religion, might take occasion to think there was no great harm in such charms or enchantments, when the design was only to do good and not evil. However it was, this is certain in fact, that many Christians were much inclined to this practice, and therefore made use of charms and amulets, which they called *Periammata* and *Phylacteria*, *pendants* and *preservatives*, to secure them-

<sup>1</sup> Orig. cont. Cels. lib. vii. p. 378.

<sup>2</sup> Tertul. de Idol. cap. ix.

Post evangelium nusquam invenies aut sophistas, aut chaldaeos, aut incantatores, aut conjectores, aut magos, nisi planè punitos.

<sup>3</sup> Hermes Past. lib. i. vision. iii. n. 6. Malefici quidem venena sua in pyxidibus bajulant.

<sup>4</sup> Cod. Theod. lib. ix. tit. de Malefic. leg. iii. Nullis verò criminationibus impicanda sunt remedia humanis quæsita corporibus, aut in agrestibus locis, ne maturis vindemiis metuere-tur imbres, aut ruentis grandinis lapidatione quaterentur, adhibita innocenter suffragia, quibus non cujusque salus aut existimatio læderetur, sed quorum proficerent actus, ne divina munera, et labores hominum sternerentur.



selves from danger, and drive away bodily distempers. These phylacteries, as they called them, were a sort of amulets made of ribbands, with a text of Scripture or some other charm of words written in them, which they imagined, without any natural means, to be effectual remedies or preservatives against diseases. Therefore the Church, to root this superstition out of men's minds, was forced to make severe laws against it. The Council of Laodicea,<sup>1</sup> condemns clergymen that pretended to make such phylacteries, which were rather to be called bonds and fetters for their own souls, and orders all such as wore them to be cast out of the Church. St. Chrysostom often mentions them with some indignation: upon those words of the Psalmist, "I will rejoice in thy salvation,"<sup>2</sup> he says, "We ought not simply to desire to be saved, and delivered from evil by any means whatever, but only by God. And this I say upon the account of those, who use enchantments in diseases, and seek to relieve their infirmities by other impostures. For this is not salvation, but destruction." In another place, dissuading Christians from running to the Jews, who pretended to cure diseases by such methods, he tells them, "That Christians are to obey Christ, and not to fly to his enemies; though they pretend to make cures, and promise you a remedy to invite you to them, choose rather to discover their impostures,<sup>3</sup> their enchantments, their amulets, their witchcraft: for they pretend to work cures no other way; neither indeed do they work them truly at all, God forbid. But I will say one thing further, although they did work true cures, it were better to die, than to go to the enemies of Christ, and be cured after that manner. For what profit is it, to have the body cured with the loss of our soul? what advantage, what comfort shall we get thereby, when we must shortly be sent into everlasting fire?" He there proposes the example of Job, and Lazarus, and the infirm man, who had waited at the Pool of Bethesda,

<sup>1</sup> Con. Laodic. can. xxxvi.

<sup>2</sup> Chrys. in Psal. ix. 15. tom. iii. p. 137.

<sup>3</sup> Chrys. Hom. vi. cont. Judæos, tom. i. p. 56. Ἀνακάλυψον ἀδῶν τὰς μαγανείας, τὰς ἐπωδὰς, τὰ περάμματα, τὰς φαρμακείας. &c.

thirty and eight years, who never betook themselves to any diviner, or enchanter, or juggler, or impostor: they tied no amulets nor plates to their bodies, but expected their help only from the Lord: and Lazarus chose rather to die in his sickness and sores, than betray his religion in any wise, by having recourse to those forbidden arts for cure. This he reckons a sort of martyrdom,<sup>1</sup> when men chuse rather to die, or suffer their children to die, than make use of amulets and charms: for though they do not sacrifice their bodies with their own hands, as Abraham did his son, yet they offer a mental sacrifice to God. On the contrary, he says, “the use of amulets was idolatry, though they, that made a gain by it, offered a thousand philosophical arguments to defend it, saying we only pray to God, and do nothing more; and, the old woman, that made them was a Christian and a believer, with other such like excuses. If thou art a believer, sign thyself with the sign of the cross: say, this is my armour, this my medicament; beside this I know no other. Suppose a physician should come, and instead of medicines belonging to his art should use enchantment only: would you call him a physician? no, in no wise: because we see not medicines proper to his calling: so neither are your medicines proper to the calling of a Christian.” He adds, “that some women put the names of rivers into their charms; and others ashes, and soot, and salt, crying out, that the child was taken with an evil eye, and a thousand ridiculous things of the like nature, which exposed Christians to the scorn of the heathen, many of whom were wiser than to hearken to any such fond impostures.” Upon the whole matter he tells them, “that if he found any henceforward, that made amulets or charms, or did any other thing belonging to this art, he would no longer spare them;” meaning, that they should feel the severity of ecclesiastical censure for such offences. In other places<sup>2</sup> he complains of women, that made phylacteries of the Gospels to hang about their necks. And the

<sup>1</sup> Chrys. Hom. viii. in Colos. p. 1374. Ἐνόσησεν, ἕκ ἐποίησε περιπτα, μαρτύριον ἀντὶ λογίζεσθαι.

<sup>2</sup> Chrys. Hom. lxxiii. in Mat. p. 627.

like complaints are made by St. Basil,<sup>1</sup> and Epiphanius.<sup>2</sup> Which shews, that this piece of superstition, of trying to cure diseases without physic, was deeply rooted in the hearts of many Christians.

The Church indeed often cured diseases without physic, but then it was in the same way, that she dispossessed devils, and wrought many miracles for the good of the world, by the power of Christ, and invocation of his name. “She did nothing,” as Irenæus says,<sup>3</sup> “by invocation of angels, or enchantment, or any other curiosity, but by directing her prayers, pure and clean, and openly to the God, that made all things; and by invocating the name of the Lord Jesus Christ, she wrought miracles for the benefit of men, and not for their seduction.” This was the difference between heretics and the Church: heretics commonly made use of enchantment, as is noted particularly by Irenæus concerning the Basilidians,<sup>4</sup> who had their images, which they used as amulets, having the name of Abraxas or Abraacadabra, or as Baronius thinks,<sup>5</sup> the names of their three hundred and sixty five heavens, answering to the like number of members in human bodies, written upon them. And St. Austin complains, that some of Satan’s instruments, who professed the exercise of these arts, were used to set the name of Christ,<sup>6</sup> before their ligatures and enchantments, and other devices to seduce Christians, and induce them to take the venomous bait under the covert of a sweet and honey-potion, that the bitter might lie hid under the sweet, and make men drink it without discerning, to their destruction.

<sup>1</sup> Basil. in Psal. xlv. p. 229.

<sup>2</sup> Epiphan. Hær. xv. de Pharisæis.

<sup>3</sup> Iren. lib. ii. cap. 57. Nec invocationibus angelicis facit, nec incantationibus, nec aliquâ pravâ curiositate, sed mundè et purè et manifestè orationes dirigens ad Dominum, qui omnia fecit; et nomen Domini nostri Jesu Christi invocans, virtutes secundùm utilitates hominum, sed non ad seductionem perficit.

<sup>4</sup> Iren. lib. i. cap. 23. Utuntur hi magiâ et incantationibus et invocationibus et reliquâ universâ periergiâ, &c.

<sup>5</sup> Baron. An. cxx. n. 10.

<sup>6</sup> Aug. Tract. vii. in Joan. tom. ix. p. 27. Qui seducunt per ligaturas, per præcantationes, per machinamenta inimici, miscent præcantationibus suis nomen Christi: quia jam non possunt seducere Christianos, ut dent venenum, addunt mellis aliquantum, ut per id quod dulce est, lateat quod amarum est, et bibatur ad perniciem.

To such he gives this advice, to seek Christ only in the way, which he has appointed. “When we are afflicted with pains in our head, let us not run to enchanters, and fortune-tellers, and remedies of vanity. I mourn for you, my brethren: for I daily find these things done. And what shall I do? I cannot yet persuade Christians to put their trust only in Christ. With what face can such a soul go unto God, that has lost the sign of Christ, and taken upon him the sign of the devil?” In another place, he bids them,<sup>1</sup> “when they are sick, to receive the body and blood of Christ, and anoint themselves with that unction, which may prove beneficial both to body and soul. For when they may have a double advantage in the Church, why should miserable men endeavour to bring upon themselves such multiplicity of evils by running to enchanters, and fountains, and trees, and diabolical phylacteries, and characters, and soothsayers, and diviners, and fortune-tellers?” He mentions many other superstitions of the like nature, which were the remains of heathenism, such as the sacrilegious custom used about the hind, their crying out when the moon was eclipsed to defend themselves from witchcraft, their keeping Thursday holiday in honour of Jupiter; concerning all which he concludes, that they, who still continued to follow such vanities, ought to be reprovèd, by their fellow Christians;<sup>2</sup> and if after that, they did not amend their ways, they should thenceforward banish them from all society, both in eating and conversation. Some think this homily, rather belongs to Cæsarius Arelatensis; and if so, it only shews, that this crime prevailed among some in France, as it did for many ages after: which ap-

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<sup>1</sup> Aug. Serm. 215. de Tempore. Cùm ergo duplicia bona possint in ecclesiâ inveniri, quare per præcantatores, per fontes, et arbores, et diabolica phylacteria, per characteres et aruspices et divinos sortilegos multiplicia sibi mala miseri homines conantur inferre? Vid. lib. ii. de Doct. Christ. cap. xx. in the last section of this chapter.

<sup>2</sup> Ibid. Quoscunque tales esse cognoveritis, durissimè castigate. Et si emendare noluerint, nec ad colloquium, nec ad convivium vestrum eos venire permittite.

pears from the Capitulars of Charles the Great,<sup>1</sup> where decrees were made against calculators, enchanters, and tempestarians, as they are called, that is, raisers of storms, and tempests, and obligators or makers of phylacteries to bind about the neck. Who are also noted and condemned in the Council of Rome,<sup>2</sup> under Gregory II. Anno 721, and in the Council of Trullo,<sup>3</sup> which forbids any one to consult diviners, or those called *Centenarii*, or any such, to discover secrets, under the penalty of six years penance, according to the rules of the ancient Fathers. And the same penalty is imposed upon those, who carry about she-bears, *πρὸς παίγνιον*, to the delusion and hurt of the people, and use the words, fortune, and fate, and genealogy, and such like names, to impose upon the simple. Also all observers of the clouds, and jugglers, and makers of phylacteries,<sup>4</sup> and diviners, persisting in their heathenish and pernicious practices, are ordered to be cast out of the Church. “For what communion,” says the Apostle, “hath light with darkness? and what agreement hath the temple of Gods with idols? and what part hath he, that believed with an infidel? and what concord hath Christ with Belial?” It is plain from this, there were still some remains of heathenish superstition and idolatry among Christians, especially in the use of phylacteries and divining, and other such vain observations. But it is hard to guess, what are meant by centenarions, who are here joined with diviners, and forbidden to be consulted. There is a law of Honorius<sup>5</sup> in the Theodosian Code, which Gothofred thinks may give a little light to this canon. For

<sup>1</sup> Capitul. Aquisgran. lib. i. cap. lxiv. Con. tom. vii. p. 984. Calculatores, incantatores, tempestarii, vel obligatores non fiant: et ubicunque sunt, vel emendantur vel damnentur.

<sup>2</sup> Con. Rom. can. xii. Si quis hariolos, aruspices, vel incantatores observaverit, aut phylacteriis usus fuerit, anathema sit. Vid. Capitul. Martin. Bra-caren-sis. cap. lxxii.

<sup>3</sup> Con. Trull. can. lxi. ‘Οι μάντεσιν ἑαυτὰς ἐκδιδόντες, ἢ τοῖς λεγομένοις ἱκατοντάρχαις, &c. ὑπὸ τὸν κανόνα πιπτέτωσαν τῆς ἕξεστιας.

<sup>4</sup> Ibid. Τὰς τε λεγομένους νεφελοδιώκτας, γοητευτὰς, ἢ φυλακτηρίους, ἢ μάντεϊς—παντάπασι ἀπορίπτεσθαι τῆς ἐκκλησίας ὀρίζομεν.

<sup>5</sup> Cod. Theod. lib. xvi. tit. x. de Paganis. leg. xx. Chiliarchas insuper et centenarios, vel qui sibi plebis distributionem usurpare dicuntur, censuimus removendos.

there the *Chiliarchæ* and *Centonarii*, *Captains of thousands*, and *captains of hundreds*, are plainly spoken of as leaders of the people, and managers in ordering the idolatrous pomps of the Gentiles; being joined with the *Frediani* and *Dendrophori*, which he shews to be those officers in the pomp, who carried the images of the gods on their shoulders in procession. They were the chief of certain corporations or companies, who are mentioned in another law of Honorius, under the names of *Collegiati* and *Vituriarii* or *Didumarii*, the officers of *Apollo Didumæus*; and *Nemesiaci*, the officers of the goddess *Nemesis*, *Good Fortune*, and the dispenser of fate; and *Signiferi* and *Cantabrarii*, who carried the ensigns and banners of their gods in their pomps and games, and festivals.<sup>1</sup> And these, as Gothofred shews, out of Commodianus,<sup>2</sup> a Christian poet, pretended to divine and tell fortunes, as inspired by the gods: and they incorporated others into these colleges, as principal officers in these pomps; whence they were called *Chiliarchæ* and *Hecatontarchæ*, *captains of thousands*, and *captains of hundreds*. All which agrees with the canon of the Council of Trullo, which joins the *Hecatontarchæ* with the *Vates*, or *diviners*, and makes them fortune tellers, talking much of fortune and fate, and genealogies or nati- vities, to deceive the people. They who carried about she bears or other animals, Balzamon says, were such impostors as pretended, that the hairs of those bears, or toys tied to them, were remedies against witchcraft. And so the Council forbids all these ways of making and using charms and amulets, as the relics of heathen superstition, still remaining among the weaker and baser sort of Christians. I have been the more curious in searching into the true meaning of this canon, because it is passed over in silence by most

<sup>1</sup> Vid. Cod. Theod. lib. xiv. tit. 7. de Collegiatis. leg. ii. et Gothofred. in loc.

<sup>2</sup> Commodian. Instruct. ad Calcem Cypriani Edit. Rigaltii.

Maue ebrio, erudo, perituro, creditis viro,  
 Qui ex arte fietè loquitur, quod illi videtur.  
 Ipse sibi nescit divinare, cæteris audet.  
 Vertitur à se rotans cum ligno bifurci,  
 Ac si putes illum allatum numine ligni.

commentators, and the reader with me must own himself beholden to the learned Gothofred for the explication of it.

SECT. 7.—Of the *Præstigiæ*, or false Miracles, wrought by the Power of Satan.

There is another sort of impostors mentioned in the same canon under the name of Γοητεῖσά, which is a general name for all, that use tricks and impostures; but here it is taken in a more restrained sense, for such as pretended to work miracles by the power of magie, such as Jannes and Jambres among the Egyptians, and Simon Magus among the Jews, and Apollonius Tyanæus and other impostors among the Gentiles. They are otherwise called Θαυμαστοποιὸὶ and Ψηφάδες,<sup>1</sup> by the Greeks, and *Præstigiatores* by the Latin writers. Their tricks were chiefly shewn in making false appearances of things, and imposing upon men by the delusion of the outward senses. The ancient author of the Recognitions, describes their art<sup>2</sup> in the person of Simon Magus, whom he brings in giving himself this vain-glorious character; “I can make myself disappear to those, that would apprehend me, and again, I can appear when I please; when I am minded to fly, I can pass through mountains and stones, as through the mire; when I cast myself headlong from a precipice, I am carried as if I were sailing to the earth without harm; when I am bound, I can loose myself, and bind them, that bound me; when I am close shut up in prison, I can cause the doors to open of their own accord; I can give life to statues, and make them appear as living men; I can make trees grow suddenly out of the earth, and raise up plants in a moment: I can throw myself into the fire, and not be burnt; I can change my countenance, so as not to be known; yea, I can shew myself with two faces unto men: I can make myself a sheep

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<sup>1</sup> Theod. in 2 Thes. ii. ix. Οὐκ ἀληθῆ θαύματα ποιῶσι οὐ ἀπὸ τῶν ψήφων τὰς ἐπωνυμίας ἔχοντες. Athanasius, Quæst. 124. ad Antioch. Ὅτι λεγόμενοι ψηφάδες, ἢ πάλιν αὐτος ὁ ἀντίχριστος ἐρχόμενος, ἐν φαντασίᾳ πλανᾷ τὰς ὑφ’θαλμῶς τῶν ἀνθρώπων. Suidas Vocæ Ψηφολόγοι. Capitular. Aquisgran. lib. i. cap. lxiv. Calculatores, incantatores, tempestarii, &c.

<sup>2</sup> Recognit. lib. ii. n. 9. ap. Coteler. p. 506.

or a goat; I can give little children a beard; and fly in the air; I can shew much gold, or turn lead into gold; I can set up kings, and dethrone them at pleasure." Now Tertullian<sup>1</sup> observes, that Simon Magus, for these juggling practices, and miracles belonging to his profession, was anathematised by the Apostles, and cast off as an alien from the faith. And all such sophisters, as he terms them, had ever the same fate from the beginning of the Gospel. Which observation of Tertullian's is most certainly true, and might be confirmed by abundance of instances in ancient story; and especially of heresiarchs, or founders of new heresies, who pretended commonly to work miracles and wonders, to gain a reputation to their novel opinions. I will only mention one or two, that were famous in this kind. The heretic Marcus, the father of the Marcosians, is thus described by an ancient author, who wrote before the time of Irenæus<sup>3</sup> in these words: "O Marcus, thou idol-maker and wonder-worker, empiric in astrology and art of magic, by which thou dost propagate thy seducing doctrines, making a shew of signs and miracles to them, that are led into error by thee, which are the works of the apostate power, Satan thy father enables thee to do by the angelical power of Azazel, using thee as the fore-runner of the antichristian deceit." And Irenæus<sup>3</sup> himself takes notice of one of his juggling tricks, which was, that when he pretended to consecrate the eucharist in a cup of wine and water, he made it appear of a purple and red colour, by a long prayer of invocation, that it might be thought the grace from above distilled the blood into the cup by his invocation. Such another imposture is mentioned by Firmilian in his letter to Cyprian, where he speaks of a woman, who pretended to be inspired by the Holy Ghost, but was really acted by a diabolical spirit,<sup>4</sup> by

<sup>1</sup> Tertul. de Idol. cap. ix. Exinde et Simon Magus jam fidelis, quoniam aliquid adhuc de circulatoriâ sectâ cogitaret, ut scilicet inter miracula professionis suæ etiam Spiritum Sauctum per manum impositionem enundinaret, maledictus ab Apostolis de fide eiectus est.—Et post Evangelium nusquam invenias sophistas, nisi planè punitos.

<sup>2</sup> Iren. lib. i. cap. xii.

<sup>3</sup> Iren. lib. i. cap. 9.

<sup>4</sup> Firmil. Ep. lxxv. ad Cypr. p. 222. Emersit subitò quaedam mulier, quæ



which she counterfeited ecstasies, and pretended to prophesy, and wrought many wonderful and strange things, and boasted that she would cause the earth to move. Not that the devil has so great power, either to move the earth, or shake the element by his command; but the wicked spirit foreseeing and understanding, that there will be an earthquake, pretends to do that, which he foresees will shortly come to pass. And by these lies and boastings, the devil subdued the minds of many to obey him, and follow him wheresoever he was pleased to command or lead them. And he made that woman walk barefoot through the snow in the depth of winter, and feel no trouble or harm by running about after this fashion. But at last, after having played many such pranks, one of the exorcists of the Church discovered her to be a cheat, and shewed, that it was a wicked spirit, which before was thought to be the Holy Ghost. There are many other such instances in the history of the Montanists<sup>1</sup> and Pepuzians, and the Apellians and Severians,<sup>2</sup> mentioned by St. Austin and other writers: but these are sufficient to shew what pretences were commonly made by heretics to the power of working miracles, which the Church, apprehending them to be wrought by the power of Satan, and not by the Holy Spirit, rejected as impostures, and punished the pretenders with the severest of her censures. For so Eusebius<sup>3</sup> out of Apollinaris particularly tells us of the Montanists, that their new propheties, being judged impious and profane, their doctrine was condemned, and the authors expelled from the communion of the Church, as enthusiasts and demoniacs, who were always excluded from the participation of the holy mysteries, whilst they remained under the power and agitation of Satan. St. Basil<sup>4</sup> appoints the same penance for those, who profess *conjuratio*, *γοητεία*, as for those, who are guilty of

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in extasi constituta, propheten se præferret, et quasi Sancto Spiritu plenu sic ageret.—Mirabilia quædam ac portentosa perficiens, et facere se terram moveri polliceretur. Non quod daemoni tanta esset potestas, &c.

<sup>1</sup> Vid. Aug. de Hæres. cap. xxvi. Euseb. lib. v. cap. 13.

<sup>2</sup> Aug. ibid. cap. xxv. Euseb. lib. v. cap. xiv, et xvi.

<sup>3</sup> Euseb. lib. v. cap. 16.

<sup>4</sup> Basil. can. lxxv.

murder, that is, twenty years in several stations of repentance.

SECT. 8.—Of Observation of Days and Accidents, and making Presages and Omens upon them.

There was one piece of superstition more, which the Ancients frequently censure, as a breach of men's baptismal vow, and part of the pomp and service of Satan, which they professed to renounce in baptism. This was, the observation of days and accidents, as lucky or unlucky, and making presages and omens upon them. St. Chrysostom<sup>1</sup> has a large invective against this sort of superstition. "The pomps of Satan," says he, "are the theatre and the games of the circus, together with the observation of days, and presages and omens. And what are omens? why, suppose when a man goes first out of his doors, he meets a man, that has but one eye, or is lame, he reckons this ominous, or foreboding some ill fortune to him. This is part of the pomps of Satan. For the meeting of a man does not make the day evil, but the spending of it in sin. Keep from sin, and the devil himself cannot hurt you: but if you make presages upon meeting of a man, you discern not the devil's snare, who makes you without reason an enemy to one, who has done you no harm. But there is one thing more ridiculous than this, which I am ashamed to speak, and yet I must mention for your salvation. If a man meets a virgin, he cries out presently, this will be a fruitless day with me: but if he meets an harlot, it will be a good and lucky day, and bring him in great gain and advantage. See how the devil here hides his craft, to make us abhor a chaste and modest woman, and love an impudent harlot. But what shall a man say of those, who use inchantments and ligatures, binding the brazen medals of Alexander the Great about their heads or feet? Are these, I pray, the hopes

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<sup>1</sup> Chrys. Hom. xxi. ad Pop. Antioch. tom. i. p. 274. Πόμπη σατανική ἐστὶ θείατρα ἢ ἰπποδρομῖαι, ἢ παρατήρησις ἡμερῶν ἢ κληθόνες ἢ σύμβολα. See also Hom. xxiii. de Noviluniis, cited before. Chap. iv. sect. 17. et Comment. in Galat. i. p. 973.

of a Christian, that after the cross and death of our Lord, we should place our hopes of salvation or health in the image of an heathen king? know you not what great things the cross has done? how it has destroyed death, abolished sin, taken away the force of hell and the grave, and dissolved the power of death? and canst thou not trust it for curing thy bodily distempers? It has raised the whole world from the dead, and canst thou not confide in it? but thou dost not only seek after such ligatures, but enchantments, entertaining old drunken and staggering women in thy house for this purpose. And the apology you make for so doing, is worse than the error itself. The woman, say you, who makes the charm, is a Christian, and she does nothing but make use of the name of God. For that very reason I the more detest and abhor her, because she uses the name of God to dishonour and reproach it; because she is called a Christian, and does the works of an heathen. The devils confessed the name of God, yet they were devils for all that: they said to Christ, We know Thee, who Thou art, the Holy One of God, yet notwithstanding he rebuked them and cast them out. Wherefore I beseech you, keep yourselves pure from this deceit, and let this word, I renounce thee Satan, be your staff. As you would not go into the market without your shoes and clothes, so never go forth of your doors, without first using this word, I renounce thee, Satan, and thy pomp and service, and I make a covenant with Thee, O Christ. Go no where without this word, and it will be your staff, your armour, your impregnable tower. Join with this word the sign of the cross in your forehead, and so not only the meeting of any man, but the devil himself cannot hurt you." St. Austin gives a like caution against this sort of superstitious observations. "To this kind," says he,<sup>1</sup> "belong all ligatures and remedies, which the school of physicians reject and condemn, whether in enchantments, or in certain marks, which

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<sup>1</sup> Aug. de Doct. Christ. lib. ii. cap. 20. Ad hoc genus pertinent etiam omnes ligaturæ, atque remedia, quæ medicorum quoque disciplina condemnat, &c. It. Enchirid. c. lxxix. Magnum peccatum dies observare et menses et tempora et annos, &c.

they call characters, or in other things, that are to be hanged and bound about the body, and kept in a dancing posture, not for any temperament of the body, but for certain significations, either occult or manifest: which by a gentler name they call physical, that they may not seem to affright men, with the appearance of superstition, but do good in a natural way: such are ear-rings hanged upon the tip of each ear, and rings made of an ostrich's bones for the fingers, or when you are told in a fit of the convulsions or shortness of breath, to hold your left thumb with your right hand." To which may be added a thousand vain observations, as if any of our members beat; if when two friends are walking together, a stone, or a dog, or a child happens to come between them: they tread the stone to pieces, as the divider of their friendship, and this is tolerable in comparison of beating an innocent child, that comes between them. But it is more pleasant, that sometimes the children's quarrel is revenged by the dogs; for many times they are so superstitious, as to dare to beat the dog, that comes between them, who, turning again upon him, that smites him, sends him, from seeking a vain remedy, to seek a real physician indeed. Hence proceed likewise those other superstitions, for a man to tread upon his threshold when he passes by his own house: to return back to bed again, if he chance to sneeze whilst he is putting on his shoes: to return into his house, if he stumble at his going out: if the rats gnaw his clothes, to be more terrified with the suspicion of some future evil, than concerned for his present loss. He says, Cato gave a wise and smart answer to such an one, who came in some consternation to consult him about the rats having gnawed his stockings: that, said he, is no great wonder, but it would have been a wonder indeed, if the stockings had gnawed the rats. St. Austin mentions the witty answer of a wise heathen, to convince Christians this better of the unreasonableness and vanity of all such superstitions observations. And he concludes, that all such arts, whether of trifling or more noxious superstition, are to be rejected and avoided by Christians, as proceeding originally from some pernicious society between men and

devils,<sup>1</sup> and being the compacts and agreement of such a treacherous and deceitful friendship. The Apostle forbids us to have fellowship with devils: and that, he says, respects not only idols and things offered to idols, but all imaginary signs pertaining to the worship of idols, and also all remedies and other observations, which are not appointed publicly by God to promote the love of God and our neighbour, but proceed from the private fancies of men, and tend to corrupt the hearts of poor deluded mortals. For these things have no natural virtue in them, but owe all their efficacy to a presumptuous confederacy with devils: and they are full of pestiferous curiosity, tormenting anxiety, and deadly slavery. They were first taken up, not for any real power to be discerned in them, but gained their power by men's observing them. And therefore, by the devil's art, they happen differently to different men, according to their own apprehensions and presumptions. For the great deceiver knows how to procure things agreeable to every man's temper, and ensnare him by his own suspicions and consent. As this is an excellent account of these superstitious observations, so it seems to intimate, that some difference was made, between the professors of these arts, and those, who through ignorance were deluded by them: and therefore, though the former might fall under the severest discipline of the Church, yet the latter, seemed rather to have been chastised by admonitions and rebukes, as here by St. Austin and St. Chrysostom, and not to have incurred the highest censure of excommunication, because of their simplicity, and perhaps because of the numbers of those, who were daily inclined to mind such observations of days and accidents, without considering either the original of the superstition, or the mischief thereby

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<sup>1</sup> Aug. de Doct. Christ. lib. ii. cap. 23. Omnes igitur artes hujusmodi vel nugatoriae vel noxiae superstitionis, ex quâdam pestiferâ societate hominum et demonum, quasi pacta infidelis et dolosae amicitiae constituta, penitus sunt repudianda et fugienda Christiano, &c. Vid. plura ap. gratian. caus. 26. quest. vii. cap. 15. and 16. Non observetis dies qui dicuntur Ægyptiaci, &c.

done to piety and religion.<sup>1</sup> I have insisted a little longer upon these things, because it is to be feared, there is always reason for a serious caution against such superstitions, which are apt to creep upon unwary men in all ages of the Church.

## CHAP. VI.

### *Of Apostacy into Judaism and Paganism, of Heresy and Schism, Sacrilege and Simony.*

SECT. I.—Of such as apostatised totally from Christianity to Judaism.

BESIDES the forementioned crimes against the first and second commandments, there were a great many others worth our observance, as bringing men under the severest censures of the Church. Among these the disposition, which many shewed toward the antiquated religion and ceremonies of the Jews, is often taken notice of by the Ancients in their accounts of Church discipline. And of these we may observe three sorts or degrees. Some entirely abandoned the Christian religion, and went totally over to the Jews; others mingled the Jewish ceremonies and some of their doctrines with the Christian religion; and others, complied so far with them, as to communicate with them in many of their unlawful practices, though they made no formal profession of their religion. Of the first sort was Aquila, the transiator of the Bible, who at first was a Christian, as Epiphanius<sup>3</sup> informs us, till being expelled from the Church for adhering to astrology, he fled over to the Jews and took sanctuary among them, setting about a new translation of the Bible in spite to the Christians. And such were many in the days of Barchochab<sup>3</sup> the great impostor, who compelled many Christians to deny and curse

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<sup>1</sup> Consult Mr. Thier's *Traite des Superstitions*, cap. xxiii. and Bayle. *Miscel. Reflex.* occasioned by a comet, sect. 89, et mensur. n. 15. tom. ii. p. 171.

<sup>2</sup> Epitaph. de Ponder.

Christ, as Justin Martyr acquaints us.<sup>1</sup> Now, though the imperial laws allowed those, that were originally Jews, the freedom of their religion, and many privileges for a long time under the reigns of Christian Emperors, yet they severely prohibited any Christian going over to them, and laid very great penalties upon all such apostates. Constantine<sup>2</sup> left it to the discretion of the judges to punish such apostates with death, or any other condign punishment. His son Constantius subjected them to confiscation of goods.<sup>3</sup> And Valentinian junior laid upon them the penalty of being intestate,<sup>4</sup> denying them and all other apostates the privilege of disposing of their estates by will. And in compliance with these laws of the state, the Church, after she had anathematised such apostates, shewed her detestation of them further in denying them the privilege of being accepted as credible witnesses in any of her courts of judicature. For he cannot be faithful to man, says the fourth Council of Toledo,<sup>5</sup> who has been unfaithful to God. Therefore those Jews, who were heretofore Christians, and now prevaricate from the faith of Christ, ought not to be admitted to give testimony, although they call themselves Christians, because, as they are suspected in the faith of Christ, so their credit ought to be questioned in human testimony. Therefore their evidence is of no force, seeing they have falsified in the faith; neither is any credit to be given to them, who have cast off the word of truth.

<sup>1</sup> Justin. Apol. ii. p. 72.

<sup>2</sup> Cod. Theod. lib. xxvi. tit. 8. De Judæis. leg. i. Si quis ex populo ad eorum nefariam sectam accesserit, et conciliabulis eorum se applicaverit, cum ipsis penas meritas sustinebit.

<sup>3</sup> Ibid. leg. vii. Si quis ex Christiano Judæus effectus—fœcultates ejus dominio fisci jussimus vindicari.

<sup>4</sup> Cod. Theod. lib. xvi. tit. 7.

De Apostatis. leg. iii.

<sup>5</sup> Con. Tolet. iv. can. 63. Non potest erga homines esse fidelis, qui Deo exstiterit infidelis. Judæi ergo, qui dudum Christiani effecti sunt, et nunc Christi fidem prævaricati sunt, ad testimonium dicendum admitti non debent, quamvis esse se Christianos annuacient: quia sicut in fide Christi suspecti sunt, ita in testimonio humano dubii habentur, &c.

SECT. 2.—Of such as mingled the Jewish Religion and the Christian together.

Another sort there were, who did not wholly cast off the Christian religion, but made up a new religion for themselves by a mixture of both together. Such a miscellany was the heresy of the Nazarenes, and those of the Ebionites, and Cerinthians, and Eleesaites, and Sampseans, who observed circumcision, and other rituals of the Jewish law, together with so much as they retained of the Christian; as may be seen in the accounts, which St. Austin,<sup>1</sup> and other ancient writers give of them. And Gothofred thinks the *Cœlicolæ*, who are specified and condemned in two or three laws of Honorius in the Theodosian Code, were a mongrel sect of the same nature. They joined circumcision and baptism together; agreeing both with Jews and Christians in rejecting idols, and worshipping only heaven, that is, the God of heaven, whence they had the title of *Cœlicolæ*; but in this they agreed with the Jews only, that they rejected the doctrine of a Trinity in the Godhead, and only worshipped God in one person. In which respect the Sabellians also, and Paulianists, and Praxeans, and Theodotians, and Arians, and Photinians, who either denied the divinity of Christ, or confounded the three divine persons into one, are commonly charged by the Ancients as flying back to Judaism in this point, whilst they subverted the true doctrine of the Christian Trinity by their heterodox innovations. It is particularly remarked by learned men concerning Paulus Samosatenis,<sup>2</sup> that the true reason, why he denied the divinity of Christ, was to compliment Queen Zenobia, who was a Jewish proselyte: for he thought, that by reducing Christ to be a mere man, he might reconcile both religions, and take away the partition wall, that divided the Jews and Christians, nothing being so great an offence to the Jews as that Christ was owned by his disciples to be God. There was another sect which called themselves Hypsistarians, that is, wor-

<sup>1</sup> Aug. de Hæres. cap. 8, 9, 10, et 32.

Answer to Baxter's Church Hist. p. 287. Baron. an. 265. n. 1.

<sup>2</sup> Maurice's



shippers of the Most High God, whom they worshipped, as the Jews, only in one person: and they observed their sabbaths; and used distinction of meats, clean and unclean, though they did not regard circumeision, as Gregory Nazianzen,<sup>1</sup> whose father was once one of this sect, gives the account of them. Now it is certain, the Church never allowed any of these miscellaneous doctrines, or mongrel sects: but condemned them all as heretics, and excluded them from her communion. And the laws of the state were particularly severe against the *Cœlicolæ*, those who joined circumeision and baptism together, there being three laws of Honorius in the Theodosian Code directly formed against them. In the first of which he ranks them with the Donatists, and Manichees, and Priscillianists, and Heathens; ordering all general penal laws against heretics to be put in execution against them; and particularly appointing, that the houses of the *Cœlicolæ*, where that new sect held their conventicles, should with the rest be forfeited to the Church.<sup>2</sup> In the second,<sup>3</sup> he calls them the new audacious sect of the Jews, which presumed to disturb the sacraments of the Church, because they rebaptized the Catholics, as the Donatists did. In the third,<sup>4</sup> he styles them again, “the new sect of the *Cœlicolæ*, who brought in an unheard of superstition.” And he threatens them, “That unless within a year they returned to the service of God and the Christian worship, all the laws made against heretics should lay hold of them.” St. Austin also in one of his Epistles mentions this sect of the *Cœlicolæ*,<sup>5</sup> and intimates, that they joined with the Donatists

<sup>1</sup> Naz. Orat. xix. in Funere Patris. tom. i. p. 289.

<sup>2</sup> Cod. Theod. lib. xvi. tit. v. de Hæret. leg. 43. Ita ut ædificia vel horum, vel cœlicolarum etiam (quæ nescio ejus dogmatis novi conventus habent) ecclesiis vindicentur.

<sup>3</sup> Ibid. leg. xlv. Donatistarum Hæreticorum, Judæorum nova atque inusitata detexit audacia, quod Catholicæ fidei velint sacramenta turbare, &c.

<sup>4</sup> Lib. xvi. tit. viii. De Judæis, Cœlicolis, et Samaritanis. leg. xix. Cœlicolarum nomen inauditum quodammodo novum crimen superstitionis vindicavit. Illi nisi infra anni terminos ad Dei cultum venerationemque Christianam conversi fuerint, his legibus quibus præceptum hæreticos adstringi, se quoque noverint adtinendos.

<sup>5</sup> Aug. Ep. 163. ad Elusium. p. 284. Jam miseramus ad majorem cœlicolarum quem audieramus novi apud eos baptismi institutorem instituisse, et multos illo sacrilegio seduxisse.

in rebaptizing the Catholics. And that he means a sect which apostatised from the Christian to the Jewish religion, is evident from the title of *Majores*, given by him to their ministers. For by this title the Jewish ministers are frequently distinguished in the Theodosian Code.<sup>1</sup> So that it is plain, that this sect of the *Cœlicolæ* was a mixture of the Christian and Jewish religion together, and as such was both punished by the laws of the State; and rejected from communion by the laws of the Church.

SECT. 3.—Of such as communicated with the Jews in their unlawful Rites and Practices.

Besides these, there were some Christians, who neither went over wholly to the Jews' religion, nor in any main point complied with them, who yet in some more remote rites and practices refused not to communicate with them, as in observing their festivals and feasting, and marrying with them and receiving their *Eulogiæ*, and having recourse to them for phylacteries and charms to cure diseases: all which therefore are condemned under the penalty of ecclesiastical censure. The Council of Laodicea forbids Christians to Judaize by resting on the Sabbath,<sup>2</sup> under pain of *Anathema*: likewise it prohibits keeping Jewish feasts, and accepting<sup>3</sup> festival presents sent from them: as also receiving unleavened bread from them, which is accounted a partaking with them in their impiety. To the same purpose, among the Apostolical Canons we find one forbidding to fast or feast with the Jews, or to receive any of their festival presents,<sup>4</sup> or unleavened bread under the penalty of deposition to a clergyman, and excommunication to a layman. And by another of the same canons,<sup>5</sup> to carry oil to a Jewish synagogue, or set up lights on their festivals, is paralleled with the crime of doing

<sup>1</sup> Cod. Theod. lib. xvi. tit. viii. De Judæis, Cœlicolis, &c. leg. i. Judæis, et majoribus eorum et Patriarchis volumus intimari, &c. It. leg. xxiii. Annati et majoribus Judæorum. It. lib. xvi. tit. ix. leg. iii. Eadem Inscripção.

<sup>2</sup> Con. Laod. can. xxix.

<sup>3</sup> Ibid. 37, et 38.

<sup>4</sup> Canon. Apost. 70.

<sup>5</sup> Apost. can. 71.

the like for an heathen temple or festival, and both of them equally punished with excommunication. So a bishop, priest, or deacon, who celebrates the Easter festival, before the vernal equinox with the Jews,<sup>1</sup> is to be deposed. Though this is a little more severe than the constitution, that was made about it in the time of Irenæus, and afterward was confirmed by Constantine<sup>2</sup> and the Council of Nice: for they forbid the celebration of Easter with the Jews, but lay not the penalty of deposition or excommunication upon those, that followed that custom, because they had some pretence of apostolical tradition for their practice. The Council of Eliberis<sup>3</sup> forbids Christians to have recourse to the Jews for blessing the fruits of the earth, and that under the penalty of excommunication, because it was a reproach to the manner of blessing them in the Church, as if that was weak and ineffectual. The same Council<sup>4</sup> forbids both clergy and laity to eat with the Jews, upon pain of being cast out of the communion of the Church. And the reason of this is assigned by the Council of Agde;<sup>5</sup> because they use not the meats, that are commonly used among Christians: therefore it is an unworthy and sacrilegious thing to eat with them: for as much as they reputed those things unclean, which the Apostle allows us to receive; and so Christians are rendered inferior to the Jews, if we eat of such things as they set before us, and they contemn what we offer them. Which canon is repeated in the same words in the Council of

<sup>1</sup> Apost. can. viii. Confer<sup>t</sup> Cod. Theod. lib. xvi. tit. v. leg. 9. et tit. vi. leg. 6. De Protopaschitis.

<sup>2</sup> Constant. Ép. ap. Euseb.

de Vit. Const. lib. iii. cap. 18. et 19.

<sup>3</sup> Con. Eliber. can.

xlix. Admoneri placuit possessores, ut non patiantur fructus suos, quos à Deo percipiunt cum gratiarum actione, à Judæis benedici, ne nostram irritam et infirmam faciant benedictionem. Si quis post interdictum facere usurpaverit, penitus ab ecclesiâ abjiciatur.

<sup>4</sup> Ibid. can. l.

Si verò aliquis clericus vel fidelis fuerit, qui cum Judæis cibum sumpserit, placuit cum à communione abstinere, ut debeat emendari.

<sup>5</sup> Con. Agathen. can. xl. Omnes deinceps clerici sive laici Judæorum convivia evitent; nec eos ad convivium quisquam excipiat: quia cum apud Christianos cibus communibus non utantur, indignum est atque sacrilegum eorum cibos à Christianis sumi; quum ea quæ Apostolo permittente, nos sumimus, ab illis judicentur immunda, &c.

Vannes,<sup>1</sup> and there is a rule in the Council of Epone to the same purpose.<sup>2</sup> It appears also from the fourth Council of Toledo, that the Spanish Churches were much infested with this sort of complying and Judaising Christians; some patronising the Jews in their perfidiousness; others turning downright apostates, and submitting to circumcision; and others indifferently conversing with them to the manifest danger of their own subversion. Against which last sort of compliers the sixty-first canon of that Council is particularly directed; and there are six or seven canons more in the same place one after another relating to cases of the like nature, which need not here be related. The Council of Clermont<sup>3</sup> makes it excommunication for a Christian to marry a Jew. And the third Council of Orleans prohibits it under the same penalty,<sup>4</sup> together with sequestration of the persons from each other. St. Chrysostom inveighs against those, who went out of curiosity to the Jewish synagogues, saying,<sup>5</sup> “ It was the same thing as going to an idol temple: if any one sees thee, who hast knowledge, go to a synagogue to see the trumpets, shall not the conscience of him that is weak, be emboldened to admire the Jewish ceremonies? Although there be no idol there, yet the devils inhabit the place. Which I say not only of the synagogue which is here, but that of Dapline, that more impure pit of hell, which they call Matrona. I hear many of the faithful go thither, and sleep in the place. But God forbid I should call them the faithful. For the temple of Apollo and Matrona are equally profane. Is not that a place of impiety, where devils dwell, although there be no image there? Where the murderers of Christ assemble, where the cross is cast out, where God is blasphemed, where the Father is not known, where the Son is reviled, where the grace of the Spirit is rejected?” He particularly bewails

<sup>1</sup> Con. Veneticum. can. xii.

<sup>2</sup> Con. Epauense. can. xv.

Vid. Con. Maticon. i. can. xv. Aurelian. iii. can. xiii.

<sup>3</sup> Con. Arvernense. can. vi.

<sup>4</sup> Con. Aurel. iii. can. xiii.

Vid. Aug. 234. Et Ambros. de Abrahamo. lib. i. cap. 9.

\* Chrys. Hom. i. cont. Jud. tom. i. p. 442. et 443.

those,<sup>1</sup> who went either to see or join with them in the celebration of their fasts and festivals, the feast of trumpets, the feast of tabernacles, and the fast of the great day of expiation, which came all in the month Tisri, or September, when he preached his sermons against the Jews. He notes also the wickedness of some,<sup>3</sup> who would draw others by force to go and take an oath in a Jewish synagogue, upon a most unaccountable persuasion, that an oath given there was more formidable than any other whatsoever. For these and many other reasons, which he there largely pursues,<sup>3</sup> he styles all such only “*half-christians*, Χριζιανὸὶ ἐξ ἡμῶν.” He has two other whole sermons against those,<sup>2</sup> who observed the Jewish fasts, and frequented their synagogues: in the latter of which he addresses himself to them in these words: “We have now clearly proved, that the places where the Jews assemble, are inhabited by devils. How then darest thou, after being in the chorus of devils, return to the assembly of the Apostles? How is it, that thou are not afraid, after communicating with those, who shed the blood of Christ, to come and communicate at the holy table, and partake of that precious blood? Does not horror and trembling seize thee, after having committed so great a wickedness? Dost thou not reverence the holy table? Wherefore, I exhort you, admonish and edify one another. If any man be a catechumen, who labours under this distemper, let him be driven from the doors of the Church: if he be one of the faithful, and initiated in the holy mysteries, let him be driven from the holy table. All sins need not exhortation and counsel: there are some, that naturally require a more quick and sharp abscission. I therefore from henceforth shall abstain from all further admonition, and protest and proclaim, If any man love not the Lord Jesus Christ, let him be anathema. And what greater argument can there be of any one’s not loving Christ, than his communicating with those in their festivals, who killed Christ? It is not I that anathematize these, but

<sup>1</sup> Chrys. Hom. i. cont. Jud. tom. i. p. 433.

<sup>2</sup> Ibid. p. 437.

<sup>3</sup> Ibid. p. 440.

<sup>4</sup> Hom. lii. In eos qui Pascha jejnant. et

Hom. liiii. In eos qui cum Judæis jejnant. tom. v. p. 721.

Paul, yea Christ that speaks by Paul, and says, "Whoever of you are justified by the law, ye are fallen from grace." in his comment upon those words of St. Paul to Titus,<sup>1</sup> "Rebuke them sharply, that they may be sound in the faith," he speaks again of this matter: "If they, who make a distinction of meats, are not sound, but weak, what shall we say of those, who fast with the Jews, and observe their sabbaths with them, and go to their synagogues, to that at Daphne, called the cave of Matrona, and that in Cilicia, called the place of Cronus, or Saturn?" In his sixth Homily against the Jews,<sup>2</sup> he inveighs vehemently against those, who went to the synagogues to get charms and amulets to cure diseases, in which the Jews pretended to a peculiar art above others, and this tempted many vain Christians to have recourse to them: but of this I have spoken before in the last chapter out of Chrysostom, and shall only here add, that the Jews boasted much of this art as coming to them from some apocryphal writings of King Solomon, such as his Book of Prayers, or Incantments to cure Diseases, and his Book of Exorcisms, or Conjurations to cast out Devils, both which are mentioned by Josephus,<sup>3</sup> who magnifies the art as still remaining among them, speaking of one Eleazer, who, according to the rules there prescribed, pretended to cure one possessed with a devil in the presence of Vespasian. Origen also<sup>4</sup> mentions these books, and says, some Christians abjured devils after the same manner by forms out of Apocryphal and Hebrew books, in imitation of those of Solomon which he does by no means allow, but says, it is judaical, and not according to the power given by Christ to his disciples. By all which it appears, that as the Jews pretended much to this power, so many Christians were so vain as to have secret

<sup>1</sup> Hom. iii. in Tit. p. 1709.

<sup>2</sup> Hom. vi. in Judæos. tom.

i. p. 533, &c. See this before, chapter v. sect. 6.

<sup>3</sup> Joseph.

Antiq. lib. viii. cap. 2.

<sup>4</sup> Orig. Tract. xxxv. in Mat. p. 188.

Non est secundam potestatem datam à Salvatore adjurare dæmonia: Judaicum enim est. Hoc etsi aliquando à nostris tale aliquid fiat, simile fit ei, quod à Salomone scriptis adjurationibus solent dæmones adjurari. Sed ipsi qui utuntur adjurationibus illis, aliquoties nec idoneis consitutis libris utuntur. Quibusdam autem et de Hebræo acceptis adjurant dæmonia.

recourse to them, (for Chrysostom says, they were ashamed to do it in public,) imagining their enchantments to be of more efficacy than any others. Which was a double crime, first to make use of charms, and then to take them from the enemies of Christ, to the flagrant scandal of the Christian religion. Whenever therefore any were convicted of this crime, they were sure to feel the utmost severity of ecclesiastical censure.

SECT. 4.—Of such as apostatised voluntarily into Heathenism.

Another sort of apostates were such as fell away voluntarily into heathenism, after they had for some time made profession of Christianity. These differed from common lapsers into idolatry in this, that the common lapsers fell by violence, and the fear and terror of persecution; but these fell away by principle and choice, and out of a dislike to religion, and love of Gentilism, which they preferred before the religion of Christ, when they might without any molestation have continued in it. And as the one usually returned as soon as they had opportunity, so the other commonly continued apostates all their days. The imperial laws, at least from the time of Theodosius, denied such the common privilege of Roman subjects, depriving them of the power of disposing of their estates by will. As appears from two laws of Theodosius the Great in the Theodosian Code,<sup>1</sup> which the other succeeding Emperors confirmed. Particularly Valentinian junior not only denied them the power of making their own wills, but of receiving any benefit from others by will:<sup>2</sup>

<sup>1</sup> Cod. Theod. lib. xvi. tit. 7. de Apostatis. leg. i. His, qui ex Christianis Paganis facti sunt, cripiatur facultas jusque testandi. Omne defuncti, si quod est, testamentum, submotâ conditione, rescindatur. It leg. ii. Ibid. leg. iii. iv. v. vi. vii.

<sup>2</sup> Ibid. leg. iv. Hi qui sanctam fidem prodiderint et sanctum baptismum profanaverint, à consortio omnium segregati, sint à testimoniis alieni, testamenti non habeant factionem, nulli in hereditate succedant, à nemine scribantur heredes. Quos etiam præcepissemus procul abjici, ac longiùs amandari, nisi pœnæ visum fuissent esse majoris, versari inter homines, et hominum carere suffragiis. Sed nec unquam in statum pristinum revertentur; non flagitium morum obliteretur pœnitentiâ, &c.

no man might make them his heirs, nor could they succeed to any inheritance. They were to have no commerce or society with others; their testimony was not to be taken in law; they were to be infamous and of no credit among men, among whom they were allowed to live without banishing, only to make it the greater punishment, to live among men, and not enjoy the common privileges of men. Nay, they were never to regain their ancient state: though they repented and returned, this should be no benefit to them in this respect; their repentance should never obliterate their crime, because they had broken their faith to God. This was their condition in temporals. As to their spiritual estate, by some canons of the Church they were as severely treated. The Council of Eliberis<sup>1</sup> denies communion to the last to all such apostates, because they doubled their crime, not only in absenting from the Church, but in defiling themselves with idolatry also. Whereas such lower apostates as only absented themselves from religious assemblies for a long time,<sup>2</sup> and did not commit idolatry, if afterward they returned again to the Church, they might be admitted upon ten years penance to the communion. Cyprian says,<sup>3</sup> many of his predecessors in Afric denied communion to the last to all such as were guilty of the three great crimes, apostacy, adultery, and murder. And though this rigour was a little abated in his time, yet they still held idolatrous apostates to penance all their lives. Which is also noted by Siricius,<sup>4</sup> bishop of Rome, who says, apostates were to do penance as long as they lived, and only to

Cod. Theod. leg. v. Si quis splendor conlatus est in eos—perdant, ut de loco suo statuque dejecti, perpetuâ urantur infamiâ, &c. Vid. leg. vi. et vii. ibid. et Cod. Theod. xi. tit. 39. de Fide Testium. leg. xi.

<sup>1</sup> Con. Eliber. can. i. Placuit inter eos, qui post fidem baptismi salutaris adultâ ætate ad templum idololatraturus accesserit, et fecerit quod est crimen principale, quia est summum scelus, placuit nec in fine eum communionem accipere.

<sup>2</sup> Con. Eliber. can. xlvi. Si quis fidelis apostata per infuſita tempora ad ecclesiam non accesserit; si tamen aliquandò fuerit reversus, nec fuerit idololatra, post decem annos placuit communionem accipere.

<sup>3</sup> Cypr. Ep. lii. al. lv. ad Antonian. p. 110.

<sup>4</sup> Siric. Ep. i. ad Himerium. cap. iii. Apostatis, quamdiu vivunt, agenda nœnitentia est, &c. See before chap. iv. sect. 4.



have the grace of reconciliation at the point of death. And this favour was allowed them only upon proviso, that they returned and submitted to penance voluntarily in their life time, before any necessity or sickness drove them to it: for if they continued apostates to the last extremity, and only desired to be reconciled, when the fear of imminent death was upon them, then Cyprian assures us,<sup>1</sup> it was denied them; because it was not repentance, but the fear of approaching death only that made them desire a reconciliation. And the first Council of Arles made a like decree,<sup>2</sup> that such apostates should not be received to communion, unless they recovered, and brought forth fruits worthy of repentance. The true reason of which severity was to deter men from depending too much on a death-bed repentance. For except in the case of martyrdom, which Cyprian allows,<sup>3</sup> such apostates had no time to demonstrate by their works that they were real penitents; and therefore the Church denied them absolution, and remitted them wholly to God's unerring judgment.

SECT. 5.—Of Heretics and Schismatics, and their Punishments, both Ecclesiastical and Civil.

The next sort of delinquents against the first commandment were heretics and schismatics, the one of which transgressed against the doctrine of faith delivered by the Church, and the other against the unity of the worship and discipline, which compacted the Church into one mystical body of Christ. In each of these there were several degrees of sin, which were accordingly treated with different degrees of ecclesiastical censure. But because it was impossible for lawgivers to know the particular motives and inducements that might engage men in heresy or schism, therefore the laws were made in general terms against them, and the allowances that were proper to be made upon any occasion for the abatement of the rigor of them with

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<sup>1</sup> Cypr. *ibid.* p. 111. *Nec dignus est in morte accipere solatium, qui non cogitavit se esse moriturum.*

<sup>2</sup> *Con. Arelat. i. can. 23.*

<sup>3</sup> *Cypr. de Lapsis. p. 127. It Ep. xiv. al. 19. et Ep. lv. ad Antonian. p. 102.*

respect to particular persons, were left to the discretion of the judges, that were to put them in execution. I shall first give a short account of the civil penalties, that were inflicted on them by the imperial laws of the State, and then consider the ecclesiastical punishments, that were inflicted on them by the laws of the Church.

SECT. 6.—Of the Civil Punishments inflicted on them by the Laws of the State.

The laws of the State made against heretics and schismatics by the Christian Emperors from the time of Constantine, are chiefly comprised under one title, *de Hæreticis*, in the Theodosian Code, which are too many and long to be here recited: therefore I shall only give a short abstract of them, as they are collected by Gothofred in his premonition to that title.<sup>1</sup> There he observes eleven distinct kinds of punishment inflicted on them in general, besides the particular laws, that were made against their teachers, their bishops and clergy, and their conventicles, and all such as favoured or abetted them.

The first of these is the general note of infamy affixed to them all in common: the laws always styling them infamous persons. *Leg. 7, 13, 54. de Hæreticis. Leg. 2. de Fide Catholicâ.*

Secondly, The affixing on some particular sects special names of infamy and reproach; as when Constantine ordered the Arians to be called Porphyrians: and Theodosius Junior the Nestorians to be branded with the name of Simonians. *Leg. 66. de Hæreticis.*

Thirdly, All commerce forbidden to be held with them. *Leg. 17, 18, 36, 40, 48. de Hæreticis.*

Fourthly, The depriving them of all offices of profit and dignity in the *Militia Palatina*, or *civil administration*. Which was first enacted by Theodosius, and confirmed by the succeeding emperors. *Leg. 9, 25, 29, 42, 48, 58, 61, 65.* Particularly Gothofred commends that, as an elegant

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<sup>1</sup> Gothofred. Paratillon, ad Cod. Theod. lib. xvi. tit. 5. de Hæreticis.

saying of Honorius, *Leg. 42, de Hæreticis*. “*Nullus nobis sit aliquâ ratione conjunctus, qui à nobis fide et religione discedat, We will have no one employed about us, that differs from us in faith and religion.*” Yet he observes that all burdensome offices, both of the camp and *curia*, what we now call military and municipal offices, were imposed upon them. Which is confirmed by one of Justinian’s Novels,<sup>1</sup> which the learned reader may see in the margin.

Fifthly, they were rendered intestate, that is, they were unqualified either to dispose of their estates by will, or receive estates from any others. Thus particularly the Manichees were punished, *Leg. 7, 9, 18, 65. De Hæreticis. et Leg. 3. De Apostatis*. And so the Eumonians, *Leg. 17, 25, 49, 50, 58. De Hæreticis*. And the Donatists, *Leg. 54. De Hæreticis. et Leg. 4.* “*Ne sanctum baptisma iteretur.*” Pursuant to which laws all the goods of heretics, or whatever was left them, were liable to be confiscated either to the Emperor’s exchequer, or to the people of Rome, *Leg. 7, 9, 17, 18, 49. De Hæreticis*.

Sixthly, The right of giving or receiving donations was denied them, *Leg. 7, 9, 36, 40, 49, 50, 58, 65. De Hæreticis. et Leg. 4.* “*Ne sanctum baptisma iteretur.*” Only by one law some few persons were excepted, to whom they might give donations, *Leg. 65. De Hæreticis*.

Seventhly, the Manichees, Cataphrygians, Priscillianists, or followers of Priscilla, the Montanists, Donatists, and all that were rebaptised by them, are deprived of the right of contracting, buying, and selling, *Leg. 40, 48, 54. de Hæreticis, et Leg. 4.* “*Ne sanctum baptisma iteretur.*”

Eighthly, pecuniary mulcts and fines were imposed upon them, *Leg. 39, 52, 54. de Hæreticis*. And these are often mentioned by St. Austin,<sup>2</sup> who yet intimates that they were

<sup>1</sup> Justin. Novel. xlv. Sunt decuriones, quemadmodum jam cohortalibus ante legibus expressum est; neque ullus religionis cultus tali eos fortunâ eximito.—Indigni tamen omni curiali existunt honore. Et quia multa leges decurionibus privilegia tribuunt, tum ne ictus fustium illis inferatur &c. nullo horum perfruunt.—Implento tam personalia quàm patrimonialia munera, neque eos lex ab his eximat: honore autem nullo perfruunt, sed fortunam sustinento cum infamiâ.

<sup>2</sup> Aug. Ep. 68. ad Jannar. p. 124. Pœna decem librarum auri, quæ in

seldom executed against them, and frequently begged off by the Catholics interceding for them.

Ninthly, they were proscribed, transported, and banished, *Leg. 13, 14, 15, 16, 18, 20, 29, 40, 52, 53, 57, 58. De Hæreticis.* Thus Sozomen says,<sup>1</sup> Constantine banished Arius, and all who opposed the decrees of the Council of Nice. And St. Austin says,<sup>2</sup> Constantine banished the Donatists, and all the succeeding Emperors, except Julian the apostate, made severe laws against them. And Julian only recalled them in devilish policy, thinking by division of Christians into several sects, to destroy them totally out of the world. Honorius banished Jovimian into Boa, an island of Dalmatia, as is said in the law particularly made against him in the Code.<sup>3</sup> And Theodosius junior banished Nestorius, as the historians note,<sup>4</sup> after the Council of Ephesus had deposed him.

Tenthly, they were also in many cases subjected to corporal punishment, scourging, &c. before they were sent into banishment, *Leg. 21, 53, 54, 57. De Hæreticis.* And *Leg. 4. "Ne sanctum baptisma iteretur."*

Eleventhly, finally in some special cases they were terrified by sanguinary laws, which made them liable to death, though by the connivance of the princes, or the intercession of the Church they were rarely put in execution against them. Gothofred says, the first law of this kind was made by Theodosius, Anno 382, against the Enekratites, the Saccophori, the Hydroparastatæ, and the Manichees, which is the ninth law *De Hæreticis.* After which example many other such laws were made against the heretical priests, who pretended to exercise their superstition against the prohibition of the law: and against such possessors as allowed them a conventicle to meet in: and against such as

hæreticos ab imperatoribus fuerat constituta, &c. Vid. Ep. l. ad Bonifac. Item. Ep. 166, 167, 173. Cont. Crescon. lib. iii. cap. 47. Cont. Epist. Parmen. lib. i. cap. 12.

<sup>1</sup> Sozom. lib. i. cap. 20.

<sup>2</sup> Aug. Ep. 152. ad Donatistas. Ep. 166. y. 289.

<sup>3</sup> Cod. Theod. lib. xvi. tit. v. De Hæreticis. leg. 53.

<sup>4</sup> Socrat. lib. vii. cap. 34. Evangr. lib. i. cap. 7.

retained and concealed their pernicious books. *Leg.* 15, 16, 34, 35, 36, 38, 43, 44, 51, 53, 54, 56, 63. *De Hæreticis.*

Besides these laws and punishments, which chiefly affected their persons, Gothofred observes several other laws which tended to the extirpation of heresy. Such as

First, those which forbid heretical teachers to propagate their doctrine publicly or privately. *Leg.* 3, 5, 13, 24. *De Hæreticis.* and *Leg.* 2. “*Ne sanctum baptismum iteretur.*”

Secondly, the laws which forbid heretics to hold public disputations by gathering companies of people together. *Leg.* 46. *De Hæreticis.* et *Leg.* 1, et 2, et 3, “*De his qui super religione contendunt.*”

Thirdly, those which forbid heretics to ordain bishops, presbyters, or any other clergy. *Leg.* 12, 14, 21, 22, 24, 26, 27, 57, 58, 65. *De Hæreticis.*

Fourthly, such as deny to those, that are so ordained, the names and privileges of bishops and clergy. *Leg.* 1, 24, 26, 28. *De Hæreticis.* *Leg.* 2, et 3. *De Episcopis.* *Leg.* 1. “*Ne sanctum baptismum iteretur.*”

Fifthly, such laws as prohibit all heretical conventicles and assemblies. *Leg.* 4, 5, 6, 10, 11, 12, 14, 15, 19, 20, 21, 26, 30, 45, 52, 53, 54, 56, 65, *De Hæreticis.* et *Leg.* 7. “*Ne sanctum baptismum iteretur.*”

Sixthly, such as forbid heretics to build conventicles. *Leg.* 1, 2, 6, 7, 8, 12, 30, 65. *De Hæreticis.* et *Leg.* 3. *De Fide Catholicâ.* And forbid any one to leave any legacy to them. *Leg.* 65. *de Hæreticis.* And ordering both the conventicles and whatever was so bequeathed to them, either to be confiscated to the public exchequer. *Leg.* 3, 4, 8, 12, 21, 30. *de Hæreticis.* Or else to be given to the use of the Catholic Churches. *Leg.* 43, 52, 54, 56, 57, 65. *de Hæreticis.* et *Leg.* 2. “*Ne sanctum baptismum iteretur.*” Only excepting the Novatians, to whom Constantine shewed a little favour, because though they were schismatical, yet they held to the Catholic faith. *Leg.* 2. *de Hæreticis.* *Socrat. lib. ii. cap. 39. lib. v. cap. 10. Sozomen. lib. viii. cap. 1.*

Seventhly, such laws as allow slaves to inform against their heretieal masters, and gain their freedom by coming over to the Church. *Leg. 40. De Hæreticis. et Leg. 4. "Ne sanctum baptismum iteretur."*

Eighthly, such laws as deny the children of heretical parents their patrimony and inheritance, except they returned to the Catholic Church. *Leg. 7, 9, 10. De Hæreticis. Leg. 7. "Ne sanctum baptismum iteretur."*

Ninthly, such laws as order the books of heretics to be burned. *Leg. 34, et 65. De Hæreticis.*

This is the short account of those several penal laws, which the Emperors made against heretics, from the time of Constantine to Theodosius Junior, and Valentinian III. which the learned reader may find at length under their respective titles in both the Theodosian and Justinian Code. It is sufficient here to have given an abstract of them, which may serve to give some light to the laws of the Church, that were made against them, which I now proceed to give a more particular account of, as more properly relating to the discipline of the Church.

SECT. 7.—How Heretics were treated by the Discipline of the Church.

First, They were anathematized and cast out of the Church.

And here we may observe in the first place, that heresy was always accounted one of the principal crimes, that a Christian could be guilty of, as being a sort of apostacy from the faith, and a voluntary apostacy, which was a circumstance, that added much to the heinousness of the offence. Therefore Cyprian comparing the crimes of heretics and schismatics with those, that lapsed into idolatry by the violence of persecution, says,<sup>1</sup> "this is a worse crime than that, which the lapsers may seem to have committed, who yet do a severe penance for their crime, and implore the mercy of God by a long and plenary satisfaction. The one seeks to the Church, and humbly intreats her favour; the other resists the Church, and proclaims open war

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<sup>1</sup> Cypr. de Unit. Eccles. p. 117.

against her. The one has the excuse of necessity: the other is detained in his crime by his own will only. He that lapses, hurts himself alone: but he that endeavours to make an heresy or schism, draws many others with him into the same delusion. Here is only the loss of one soul: but there a multitude is drawn into danger. The lapses is sensible, that he has committed a fault, and therefore he mourns and laments for it: but the other grows proud, and swells in his crime, and pleasing himself in his errors he divides the children from the mother, tempts and solicits the sheep from the shepherd, and disturbs the sacraments of God. And whereas a lapses sins but once, he sins every day. Finally, a lapses may afterward become a martyr, and obtain the promises of the kingdom; but the other, being out of the Church, cannot attain to the rewards of the Church, although he be slain for religion." This last argument is often insisted on by Cyprian,<sup>1</sup> and St. Austin and Chrysostom and others, to deter men from engaging in heresy and schism: and it implies, that heretics did voluntarily cut themselves off from the communion of the Church, and stood condemned of themselves, (as the Apostle words it, and some of the Ancients understand it,) by a voluntary excommunication, or separation of themselves from the Church. Yet this did not hinder, but that notwithstanding any such separation of themselves, the Church ordinarily pronounced a more formal *Anathema*, or excommunication against them. As the Council of Nice ends her creed with an *Anathema* against all those, who opposed the doctrine there delivered; and the Council of Gangra closes every canon with *Anathema* against the Eustathian heretics; and there are innumerable instances of this kind in the Tomes of the Councils, which it would be next to impertinent here only to refer to, they are so well known to all, that have ever looked into them.

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<sup>1</sup> Vid. Cypr. Ibid. p. 109, 113, 114. Ep. Iv. ad Antonian. p. 108 et 114. Ep. lvii. et lx. ad Cornel. Aug. cont. Literas Petilian. lib. ii. cap. 23. de Bapt. lib. cap. xvii. Ep. 61 and 204. Chrys. Hom. xi. in Ephes.

SECT. 8.—Secondly, Debarred from entering the Church by some Canons, though not by all.

To proceed then, when they were once formally excommunicated, so long as they continued impenitent, they were by some rules of discipline debarred from the very lowest privileges of Church-communion; being forbidden to enter the church, so much as to hear the sermon, or the Scriptures read in the service of the catechumens. The Council of Laodicea has a canon to this purpose,<sup>1</sup> “that heretics, so long as they continue in their heresy, shall not be permitted to enter into the house of God.” And it is probable, this rule might be observed in the strict discipline of some Churches. But it was no general rule: for I have had occasion to shew before,<sup>2</sup> out of the African and Spanish Councils, and several passages of St. Chrysostom’s Homilies, that liberty was granted to heretics, together with Jews and heathens, to come into the Church and hear the sermon preached and the Scriptures read, being these were proper for their instruction. They thought it not impossible, but that heretics might be converted in the Church, as Polemon, a debauched young man, was converted in the school of Xenocrates; when coming drunk and with his bacchanal wreaths about his head to hear the philosopher read his lecture, which happened to be about temperance and modesty, he was so affected therewith, that he not only became his scholar and his convert, but his successor also in the school of Plato.<sup>3</sup> The historians tell us, that Chrysostom by this means brought over many to acknow-

<sup>1</sup> Con. Laodic. can. vi.

<sup>2</sup> Book xiii. chap. i. sect. 2.

<sup>3</sup> Vid. Valer. Maximum. lib. vi. cap. 9. See the story of Polemon in Diogenes Laertius. lib. iv. Vit. Polemon. 263. See also Horat. lib. ii. sat. iii. ver. 254.

Quero, faciasne quod olim,  
Mutatus Polemon, ponas insignia morbi,  
Fasciolas, cubital, focalia:  
Notus ut ille  
Dicitur ex collo furtim carpsisse coronas,  
Postquam est impransū correptus voce magistri.



ledge the divinity of Christ, whilst they had liberty to come to hear his sermons.<sup>1</sup> And the Fathers of the Council of Valentia in Spain give this as the reason,<sup>2</sup> why they allowed heathens and heretics to come and hear the bishop's preaching, and the reading of the Scriptures, because they had found by experience, that many by these means had been converted to the faith. So that the Church, which always studied men's edification, and not their destruction, in prudence so ordered her discipline, as to encourage heretics to frequent one part of her service, which she allowed to her penitents and catechumens. And if heretics were at any time denied it, there was some very particular and extraordinary reason for it.

SECT. 9.—Thirdly, No one to encourage Heretics and Schismatics by frequenting their Assemblies.

But there was not the same reason for allowing Catholics to frequent the assemblies or conventicles of heretics and schismatics; because this, instead of converting them, had rather been to have confirmed and hardened them in their errors: and therefore the prohibition in this case was more peremptory and universal, that no one should join with heretics in any religious offices, and least of all in their conventicles, under pain of excommunication. To this purpose the Apostolical Canons, "if any bishop, presbyter, or deacon pray with heretics, let him be suspended: but if he suffer them to officiate as clergymen,<sup>3</sup> let him be deposed." And again,<sup>4</sup> "if any clergyman or layman go into a synagogue of Jews or heretics to pray, let him be excommunicated or deposed." In like manner the Council of Laodicea,<sup>5</sup> "none of the Church are permitted to go to the cemeteries or martyries of heretics for prayer or worship, under pain of excommunication for some time, till they repent and confess their error." And again,<sup>6</sup> "it is not lawful to pray with

<sup>1</sup> Sozom. lib. viii. cap. 2.

<sup>2</sup> Con. Valentin. can. i.

<sup>3</sup> Canon. Apost. xlv.

<sup>4</sup> Ibid. can. lxxv.

<sup>5</sup> Con. Laodic. can. ix.

<sup>6</sup> Ibid. can. xxxiii.

heretics or schismatics." "The assembly of heretics," says the Council of Carthage,<sup>1</sup> "is not a Church, but a conventicle. Therefore with heretics no one shall either pray or sing psalms."<sup>2</sup> "If a Catholic," says the Council of Lerida,<sup>3</sup> "offer his children to be baptised by heretics, his oblation shall in no wise be received in the Church." But then this was to be understood, where a man might have baptism from a Catholic, and he chose rather to go to an heretic to receive it, without any necessity to compel him so to do. For otherwise, as has been observed before, out of several places of St. Austin,<sup>4</sup> in case of extreme necessity, a man was allowed to receive baptism from an heretic, rather than die without it. This was not esteemed any breach of Catholic unity, neither was it the case, which the discipline of the Church respected, when she forbade men to encourage heretics by a voluntary joining with them, and receiving baptism from them. Cyril of Jerusalem in this sense,<sup>5</sup> bids his catechumen abhor especially the conventicles of impious heretics, and have no communication with them. Chrysostom compares heretics to those,<sup>6</sup> that deface the king's coin: though it be but in one point, they subvert the Gospel thereby, and therefore Catholics ought to make a separation from them. "No one," he says,<sup>7</sup> "ought to maintain any friendship with heretics. Since they maintain different doctrines, men ought not to mingle or join in their assemblies with them." And he adds, "that to divide the Church by schism, is no less a crime than to fall into heresy, because it exposes the Church to the ridicule of the Gentiles." There he also urges, that famous saying of Cyprian,<sup>8</sup> "the blood of martyrdom cannot blot out this crime. For why

<sup>1</sup> Con. Carth. iv. can. 71. *Hæreticorum cœtus non ecclesia, sed conciliabulum est.*    <sup>2</sup> *Ibid.* can. lxxii. *Cum hæreticis nec orandum nec psallendum.*

<sup>3</sup> Con. Herdense. ca. i. xlii. *Catholicus, qui filios suos in hæresi baptizandos obtulerit, oblatio illius in ecclesiâ nullatenus recipiatur.* Vid. Hieron. *Dialog. cum Lucifer.* cap. v. *Sciens ab hæreticis baptizatus, erroris veniam non meretur.*

<sup>4</sup> Aug. de Bapt. lib. i. cap. ii. et lib. vi. c. v. lib. vii. cap. 52. See these cited at large before, chap. i. sect. 1.

<sup>5</sup> Cyril. *Catech.* iv. sect. 23. *Ἐξαιρέτως μίσει πάντα τὰ συνέδρια τῶν παρανόμων αἱρετικῶν.*

<sup>6</sup> Chrys. in Galat. i. p. 972.

<sup>7</sup> Chrys. *Hom.* ii. in Ephes. p. 1102, et 1108.

<sup>8</sup> *Ibid.* p. 1107.

art thou a martyr? is it not for the glory of Christ? if therefore thou layest down thy life for Christ, why dost thou lay waste his Church, for which Christ laid down his own life?" Thus the Ancients dissuade men from encouraging heretics and schismatics by resorting to their assemblies.

SECT. 10.—Fourthly, No one to eat or converse with Heretics, or receive their Presents, or retain their Writings, or make Marriages with them, &c.

There were many other marks of infamy and disgrace set upon heretics by the laws of the Church joining with the laws of the State, to give men a greater abhorrence of them. No one was so much as to eat at a feast, or converse familiarly with them; no one might receive their *Eulogia*, or *festival presents*; nor read or retain their writings, but discover and burn them; no one might make marriages, or enter into any affinity with them, except they would promise to return into the Catholic Church. As long as they continued in heresy, their names were struck out of the diptychs of the Church: and if they died in heresy, no psalmody or other solemnity was used at their funeral; no oblations were offered for them, nor any memorial ever after made of them in the solemn service of the Church. But because I have spoken of these things fully in the general description of the Church's treatment of excommunicate persons before,<sup>1</sup> it may be sufficient only to have hinted these several points in this place, because these punishments were not peculiar to heretics, but belonged to all in general, that were under the censure of excommunication.

SECT. 11.—Fifthly, Heretics not allowed to be Evidence in any Ecclesiastical Cause against a Catholic.

Yet there are two things of this kind, which it may not be improper to speak a little more particularly of here. 1. That by the laws of the Church, as well as the State, heretics were rendered infamous, and their testimony was not to be taken as evidence in any ecclesiastical cause whatsoever.

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<sup>1</sup> Chap. ii. sect. 11. &c.

“The testimony of an heretic shall not be taken against a bishop,” say the Apostolical Canons.<sup>1</sup> “In all judgment,” says the Council of Carthage,<sup>2</sup> “examination shall be made into the conversation and faith both of the accuser and defendant.” In the African Code there are two canons to this purpose, the one forbidding all excommunicate persons,<sup>3</sup> under which heretics are comprehended, to be evidence against any man, during the time of their suspension. And the other, expressly naming heretics among many others,<sup>4</sup> whose testimony was not to be admitted in law: such as slaves and freedmen against their own masters; all mimics, and actors, and such other infamous persons; all Jews and Heathens; and all such, whose testimony was reprobated by the laws of the State; except it were in some matter of their own private concerns, in which case every man was to have justice, and any one allowed to accuse another. The same equitable distinction is made by the general Council of Constantinople:<sup>5</sup> a man might have a private cause of complaint against a bishop; as, that he was defrauded in his property, or in any the like cases injured by him: in which case his accusation was to be heard, without considering at all the quality of the person or his religion. For a bishop was to keep a good conscience, and any man that complained of being injured by him, was to have justice done him, whatever religion he was of. But if the crime was purely ecclesiastical, that was alleged against him, then the personal qualities of the accusers were to be examined; and in the first place heretics are not allowed to accuse orthodox bishops in causes ecclesiastical; neither any excommunicated persons, before they had first made satisfaction for their own crimes. Gothofred indeed questions whether there be any law in the Theodosian Code, which thus unqualifies heretics from giving evidence: for though there be a law of Valentinian’s,<sup>6</sup> twice repeated in

<sup>1</sup> Canon. Apost. lxxv.

<sup>2</sup> Con. Carthag. iv. can. 96.

<sup>3</sup> Cod. African. can. 129.

<sup>4</sup> Ibid. can. 130.

<sup>5</sup> Con.

Constant. can. vi.

<sup>6</sup> Cod. Theod. lib. xi. tit. 39. De Fide Testium. leg. xi. Hi qui sanctam fidem prodiderint, et sacrum baptismum profanarint, à consortio omnium segregati, sint à testimoniis alieni, &c. Idem repetitur lib. xvi. tit. 7. De Apostatis. leg. iv.

two distinct titles, declaring the proper qualifications of witnesses; yet he thinks in both places it is to be understood of apostates only, and not of heretics. But it is certain, in Justinian's Code,<sup>1</sup> this same law is applied to heretics, rendering them incapable of giving evidence. And Justinian made two laws of his own to confirm this sense of the ancient law. In one of which, he says,<sup>2</sup> "that whereas the judges were at some doubt, whether they should admit the testimony of heretics in determining causes, he thus resolved the matter for their instruction; that where a Catholic was concerned in any dispute, neither heretic nor Jew should be allowed to give evidence, whether both parties were Catholics, or only one: but in such causes, as Jews or heretics had between themselves, the testimony of either might indifferently be admitted, as fit witnesses for such disputers: yet with an exception to all those, who were of the mad sect of the Manichees, of which the Borboritæ were a part, and all who still followed the pagan superstition: also all Samaritans, and Montanists, and Tascodrogitæ and Ophitæ, who differed not much from the Samaritans in the likeness of their guilt; all such are prohibited universally either to give testimony, or to prosecute any action at law." And he mentions and confirms this decree in one of his Novels also.<sup>4</sup> But whether Justinian was the first, that

<sup>1</sup> Cod. Justin. lib. i. tit. vii. De Apostatis. leg. iii. Hi qui sanctam fidem prodiderunt, et sanctum baptismum hæreticâ superstitione profanarunt, à consortio omnium segregati, à testimoniis alieni sint

<sup>2</sup> Cod. Justin. tit. v. De Hæreticis. lib. i. leg. 21. Quoni am multi iudices in dirimendis litigiis nos interpellaverunt, nostro indigentes oraculo, ut eis referretur, quid de testibus hæreticis statuendum sit, utrumque accipiantur eorum testimonia, an respiciantur: sancimus, contra orthodoxos quidem litigantes, nemini hæretico, vel his etiam qui Judaicam superstitionem colunt, esse in testimonio communionem: sive utraque pars orthodoxa sit, sive altera. Inter se autem hæreticis vel judæis, ubi litigandum existimaverint, concedimus fœdus permixtum, et dignos litigatoribus testes introducere: exceptis scilicet his, quos vel Manichæus furor, cujus partem et Borboritas esse manifestum est vel Pagana superstitione detinet: Samaritis nihil omnino, et qui illis non absimiles sunt, Montanistis, et Tascodrogitis, et Ophitis; quibus pro reatûs similitudine omnis legitimus actus interdictus est, &c.

<sup>4</sup> Novel. xlv. Hæreticos prohibere testimonium prohibuimus, quando orthodoxi inter alterutros litigant, &c.

made this law in the State against heretics, as Gothofred would have it, or not, is not very material: it is certain there was such a rule in the Church long before. For St. Austin pleads it in behalf of one of his own presbyters,<sup>1</sup> Secundinus of Germanicia, a place in his diocese: "against a catholic presbyter we neither can nor ought to admit the accusations of heretics." And so he says again, in the case of Cecilian, bishop of Carthage, whom the Donatists accused of many crimes: "neither piety, nor charity, nor truth,<sup>2</sup> will allow the testimony of those men against him, whom we see to be out of the Church." And long before him, Athanasius pleaded the same in his own behalf:<sup>3</sup> when he was accused for suffering Macarius, one of his presbyters, to break the communion cup, he urged, that his accusers were Meletians, who ought not to be credited, being schismatics and enemies both to him and the Church. A great many such rules are collected by Gratian,<sup>4</sup> out of the Epistles of the ancient popes, which, though they be spurious, yet they are founded upon this known practice of the Church, that the testimony of an heretic was not to be received against a Catholic in an ecclesiastical cause, which we have seen fully evinced in the preceding allegations.

SECT. 12.—Sixthly, Heretics not allowed to succeed to any paternal Inheritance.

The other thing here to be observed is, that by the laws of the Church all men, or ecclesiastics at least, were obliged to discourage heresy by denying obstinate defenders of it such temporal benefits and privileges, as it was in their power to deny them. Thus for instance the Council of Car-

<sup>1</sup> Aug. Ep. 212. ad Pancarium. Hæreticorum accusationes contra catholicum presbyterum admittere nec possumus nec debemus.

<sup>2</sup> Ep. 1. ad Bonifac. Ipsa pietas, veritas, charitas, non permittit contra Cæcilianum eorum hominum admittere testimonia, quos in ecclesiâ non videmus.

<sup>3</sup> Athan. Apol. ad Constant. tom. i. p. 731.

<sup>4</sup> Gratian. Caus. iii. Quæst. iv. et v.

thage forbids the bishops and clergy to confer any donations upon heretics, though they be of their kindred, either by gift or will.<sup>1</sup> And the civil law gave force to this decree, by rendering all heretics intestate, that is, incapable either of disposing of their own estates, or of receiving any benefit from the wills of others, as we have seen before, sect. 6. in speaking of the civil sanctions made against them.

SECT. 13.—Seventhly, No Heretic to have Promotion among the Clergy after his return to the Church.

Another law of this kind was that, which forbad the ordination of such as were either baptised in heresy, or fell away after they had been baptised in catholic unity in the Church. They were allowed to be received as penitent laymen, but not to be promoted to any ecclesiastical dignity in any order of the clerical function. But this was a piece of discipline, that might be insisted on, or dispensed with and waived, according as Church governors in prudence thought most for the benefit and advantage of the Church. And therefore though the Council of Eliberis,<sup>2</sup> and some others insist upon this rule, yet the Council of Nice dispensed with it in the case of the Novatians, and the African Fathers in the case of the Donatists, to encourage those schismatics to return to the unity of the Church. But I only just mention this here, because I have more fully stated it on both sides, upon other occasions in the preceding parts of this work,<sup>3</sup> to which the reader may have recourse.

SECT. 14.—Eighthly, No one to be ordained, who kept any in his Family, that were not of the Catholic Faith.

And there I have also noted another rule, which relates

<sup>1</sup> Con. Carth. iii. can. 13. Ut episcopi vel clerici, in eos qui catholici Christiani non sunt, etiamsi consanguinei fuerint, nec per donationes, nec per testamentum, rerum suarum aliquid conferant. Vid. Cod. African. can. 22. Et Con. Africanum vulgo dictum. can. 48.

<sup>2</sup> Con. Eliber. can. li.

<sup>3</sup> Book iv. chap. iii. sect. 12. And Scholast. Hist. of Bapt. part ii. chap. iv.

to the matter now in hand; which was, that no one should be ordained bishop, presbyter, or deacon, who had not first made all the members of his family Catholic Christians. This is a rule we find in the third Council of Carthage,<sup>1</sup> where St. Austin was present: and there is no question but that it was chiefly designed against the Donatists, though it equally affects all heretics, and Jews and Pagans, and all who secretly by connivance gave any encouragement to them: it being thought absurd to promote those to the government of the Church, who had not zeal or interest enough to secure the practice of true religion within the walls of their own families. And the rule tending directly to discourage heresy, I therefore mention it here as a branch of the ancient discipline worthy our observation.

SECT. 15.—No one to bring his Cause before an heretical Judge, under Pain of Excommunication.

Neither can I pass over another rule of the fourth Council of Carthage, which forbids Catholics to bring any cause,<sup>2</sup> whether just or unjust, before an heretical judge, under pain of excommunication. This does not indeed deprive heretical judges of their office, or render their decisions null, when the State thinks fit to allow them, as it sometimes did under Constantius and Valens, and other heretical Emperors. For the Church has no power in this case, which belongs to the civil, and not the ecclesiastical power, as has been shewn before.<sup>3</sup> But the Church had power to lay an injunction upon all her members, not to bring their causes before an heretical judge, by a just analogy to that rule of the Apostle, not to go to law before the unbelievers. And this was one way to discountenance heresy in men of the highest station: and for this reason we may suppose the

<sup>1</sup> Con. Carth. iii. can. 18.—*Ut episcopi, presbyteri, et diaconi non ordinentur, priusquam omnes, qui sunt in domo eorum Christianos catholicos fecerint.*

<sup>2</sup> Con. Carth. iv. can. 87. *Catholicus, qui causam suam, sive justam sive injustam, ad iudicium alterius fidei iudicis provocat, excommunicetur.*

<sup>3</sup> Chap. ii. sect. 5.



Church enjoined it, to give a check to heretics, by obliging Catholics to end their controversies among themselves and have no communication with heretics or unbelievers.

SECT. 16.—What Term of Penance imposed upon relenting Heretics.

We have hitherto considered the punishments laid upon heretics continuing in their obstinacy and perverseness, and bidding defiance to the communion of the Church. We are now to view the Church's discipline and behaviour toward them, when they shewed any disposition to relent and return to the unity of the faith. Now heresy being reckoned among the greatest of crimes, a proportionable term of penance was laid upon it. The Council of Eliberis<sup>1</sup> appoints ten years penance for such as went over from the Catholic Church to any heresy, if ever they returned and made confession of their crime, before they should be admitted to communion. Only an exception is made in the case of infants, because their fault was not their own, but their parents': therefore they are ordered to be received without any delay. The Council of Rome, under Felix,<sup>2</sup> sets a more particular mark upon bishops, presbyters, and deacons, who suffered themselves to be rebaptised by heretics, because this was in effect to deny their Christianity, and own that they were pagans. Such are denied communion even among the catechumens all their lives, and only allowed lay-communion at the hour of death. Others are enjoined the same penance,<sup>3</sup> as the Council of Nice puts upon lapsers, that is, twelve years, in the several stations of penitents, unless they had the plea of necessity or fear, or danger to

<sup>1</sup> Con. Eliber. can. xxii. Si quis de catholicâ ecclesiâ ad hæresim transitum fecerit, rursusque ad ecclesiam recurrerit—decem annis agat pœnitentiam, cui post decem annos præstari communicatio debet. Si verò infantes fuerint transducti, quia non suo vitio peccaverint, incunctanter recipi debent.

<sup>2</sup> Con. Rom. an. 487. can. ii. Ad exitus sui diem in Pœnitentiâ (sui resipiscunt jacere conveniet: nec orationi non modo fidelium, sed nec catechumenorum omnimodis interesse, quibus communicatio laica tantùm in morte reddenda est.

<sup>3</sup> Ibid can. iii.

excuse them. But if they were children,<sup>1</sup> their ignorance and immaturity was a more reasonable plea to shorten their penance, and restore them more speedily to communion. The Council of Agde<sup>2</sup> contracted this term of penance universally for all such lapsers into heresy, reducing it to the terms of three years only. For though the ancient canons imposed a longer penance, yet they saw good reason to relax this severity, and make the conditions of reconciliation a little easier. The Council of Epone repeats and confirms this decree,<sup>3</sup> with a little various reading of one clause, which reduces the term of penance to two years only.

SECT. 17.—How this varied according to the Age and State and Condition of several Sorts of Heretics.

It appears from some of the forementioned canons, that a great difference was made in the term of penance imposed upon heretics, with respect to the age of the offenders. Children were more favourably dealt with, by reason of their ignorance and want of mature judgment, than adult persons. And we may observe the same difference made in many other cases of the like nature. They, who were baptised and educated in the Catholic faith, were more severely treated, if after that they deserted the Church, and fell into heresy, and especially such heresies as required them to take a new baptism. The foresaid canons chiefly respect deserters; and particularly that of Felix in the Roman Council, such as were rebaptised in heresy: concerning which both the civil and ecclesiastical laws speak with great

<sup>1</sup> Con. Rom. an. 487. can. 4. Pueris autem, quibus ignorantia suffragatur ætatis, aliquandiu sub manûs impositione detentis, reddenda communio est: Nec eorum expectanda pœnitentia, quos excipit à coercitione censura.

<sup>2</sup> Con. Agathen. can. lx. Lapsis, id est, qui in catholicâ fide baptizati sunt, si prævaricatione damnabli post in hæresim transierint, grandem redeundi difficultatem sanxit antiquitas. Quibus nos, annorum multitudine breviate pœnitentiam biennii imponimus, ut præscripto biennio, tertio sine relaxatione jejurent, et ecclesiam studeant frequentare, &c.

<sup>3</sup> Con. Epauenc. can. 29. Præscripto biennio tertiâ die sine dilatione jejurent, &c.

indignation and severity; the one confiscating the goods of all rebaptisers, and banishing their persons; and the other requiring the rebaptised to go through a long course of penance in order to their re-admission to the communion of the Church again; of which the reader may find a more ample account in a former book,<sup>1</sup> under the proper title of rebaptisation. Whereas they, that were born and bred and baptised originally among heretics, had more favourable allowances made them, with respect to their difficult circumstances, and great prejudices naturally arising thence. This is expressly said by St. Austin,<sup>2</sup> in one of his Epistles to a Donatist bishop: "The Church has one way of treating those, who desert her, if ever they repent; and another way of treating those, who were never before in her bosom, till they come to beg her peace: she humbles the former by a severer discipline, but receives the latter more gently, loving both, and ministering to the cure of both with the charity and affection of a mother." So again, in his Book of One Baptism,<sup>3</sup> against Petalian, "We observe this distinction, to humble those, who were once in the Catholic Church, and afterward desert it, with a severer penance, than those, who were never in it. Neither do we admit them into the clergy, whether they were rebaptised by them, or run over to them, or were clergymen or laymen among them." This distinction was particularly observed by the African synod, with relation to such persons, as were baptised in their infancy among the Donatists: in the Council of Carthage, Anno 397, which is inserted into the African Code,<sup>4</sup> a proposal was made, that such, as had been baptised among

<sup>1</sup> Book xii. chap. v. sect. 7.

<sup>2</sup> Aug. Ep. xlviij. ad Vincentium. p. 73. Aliter tractat illos, qui eam deserunt, si hoc ipsum pœnitendo corrigant; aliter illos qui in eâ nondum fuerunt, et tunc primùm ejus pacem accipiunt; illos ampliùs humiliando, istos leniùs suscipiendo, utrosque diligendo, utrisque sanandis maternâ charitate serviendo.

- <sup>3</sup> Aug. de Unico Bapt. cap. xii. Nec illud sine distinctione præterimus, ut humiliorem agant pœnitentiam qui jam fideles ecclesiam catholicam deseruerunt, quàm qui in illâ nondum fuerunt. Nec ad clericatum admittuntur, sive ab Hæreticis rebaptizati sint, sive prius suscepti ad illos redierint, sive apud illos clerici vel laici fuerint.

<sup>4</sup> Cod. African. can. xlviij.

the Donatists, in their infaney, by their parents' fault, without their own knowledge and consent, should upon their return to the Church be allowed the privilege of ordination: and in the next Council the proposal was accepted,<sup>1</sup> and a decree passed accordingly in favour of them. The Council of Nice granted the same indulgence to the Novatian elergy;<sup>2</sup> but we rarely find any of those, who deserted the Church, in which they had been baptised, allowed this privilege; the laws being more peremptory against them, to debar them from all clerical dignity, and only receive them as private Christians to lay communion.

SECT. 18.—Heresiarchs more severely treated than their Followers.

Yet considerations of prudence sometimes obliged the Church to dispense with those laws also, and receive even deserters, in some cases, to clerical dignity again; of which I have given some instances in a former book.<sup>3</sup> But then she always set a mark of infamy upon heresiarchs, or first founders of heresy, making a distinction between them and those, that followed them; allowing the one sometimes to continue in the clerical function upon their repentance, but commonly degrading the other without hopes of restitution. St. Austin takes notice of this difference in the case of the Donatists: he says,<sup>4</sup> “the Church of Afric observed this moderation from the beginning toward them, according to the decree made by those in the Roman Church, who were appointed to judge and decide the dispute between Cecilian, and the party of Donatus: they condemned only Donatus, who was proved to be the author of the schism; but ordered the rest to be received in their clerical honours upon

<sup>1</sup> Cod. African. can. lviii.

<sup>2</sup> Con. Nic. can. viii.

<sup>3</sup> Book iv. chap. vii. sect. 7 and 8.

<sup>4</sup> Aug. Ep. 50. ad

Bonifac. p. 87. Hoc erga istos ab initio servavit Africa Catholica, ex episcoporum sententiâ qui in Ecclesiâ Romanâ inter Cecilianum et partem Donati judicaverunt, damnatoque uno quodam Donato, qui author schismatis fuisse manifestatus est, cæteros correctos, etiamsi extra ecclesiam ordinati essent, in suis honoribus suscipiendos esse censuerunt.

their repentance, although they were ordained out of the Catholic Church."

SECT. 19.—And voluntary Deserters more severely, than they, who complied only out of Fear.

Another distinction was made, as in the case of lapsers into idolatry, between such heretics, as voluntarily deserted the Church out of choice, and those, who complied with heretical errors only by force and compulsion, being terrified into them by the violence of some persecution. In this latter case, bishops were allowed to moderate their penance, as the circumstances of the matter seemed to require. As appears from the direction,<sup>1</sup> given by Pope Leo to the bishop of Aquileia, concerning the penance of such as were compelled by fear and violence offered to them by certain heretics, to submit to a second baptism: they were to be put under penance, he says, for some time, but a moderation was to be used in the term of it, according to the bishop's discretion.

SECT. 20.—A Difference made between such Heretics, as retained the Form of Baptism, and such, as rejected or corrupted it.

Another difference was made between such heretics, as retained the due form of baptism, and those, who wholly rejected it, or corrupted it in any essential part. The former were to be received only by imposition of hands, confessing their error, as having received a true baptism, though out of the Church before; but the others were to be received only as heathens, having never been truly baptised, and therefore were obliged to receive a new baptism to make them members of the Church. Of which, because I have given a full account elsewhere,<sup>2</sup> I need say no more in this place

<sup>1</sup> Leo ep. 77. ad Nicetam. cap. vi. Qui ad iterandum baptismum vel metu coacti sunt, vel terrore traducti, his ea custodienda est moderatio, quâ in societatem nostram non nisi per pœnitentiæ remedium et per impositionem episcopalis manûs communionis recipiant unitatem, temporis pœnitendinis habita moderatione, tuo constituenda iudicio, &c.

<sup>2</sup> Book xi. chap. 2, and 3. And Scholast. Hist. of Bapt. part i. chap. i. sect. 20, &c.

SECT. 21.—No one to be reputed a formal Heretic, before he contumaciously resisted the Admonition of the Church.

Finally, they made some distinction between such heretics, as contumaciously resisted the admonitions of the Church, and such as never had any admonition given them, or amended quietly upon the first admonition. Men might entertain very dangerous errors, but till the Church had given them a first and second admonition, according to the Apostle's rule, they were not reputed formal heretics, nor treated as such, till they joined contumacy to their error. St. Austin puts the case thus between two men,<sup>1</sup> who are equally involved in the error of Photinianism, denying the divinity of Christ; but the one is baptised in heresy, out of the communion of the Catholic Church; the other is baptised in the Catholic Church, having the same error, which he believes to be the Catholic faith: "I do not yet call this man an heretic, unless, when the doctrine of the Catholic faith is declared to him, he chuses rather to resist it, and hold to his former opinion: before he does this, he, that is baptised out of the Church, is plainly the worse of the two. But that man is worse than both the former, who knowing this opinion, which he holds, only to be taught among heretics divided from the Church, yet for some secular end and advantage chuses to be baptised in the Church, and continue in it after baptism: this man is not only to be accounted a separatist, but so much the more wicked one, for adding heresy to his error, and dissimulation and hypoerisy to the division of the faith." In another place, he says,<sup>2</sup> "they

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<sup>1</sup> Aug. de Bapt. lib. iv. cap. 16. *Constituamus duos aliquos isto modo, unum eorum, verbi gratia, id sentire de Christo quod Photinus opinatus est et in ejus hæresi baptizari extra ecclesie catholice communionem: alium verò hoc idem sentire, sed in catholice baptizari, existimantem istam esse catholicam fidem. Istum nondum hæreticum dico, nisi manifestatâ sibi doctrina catholice fidei resistere maluerit, et illud quod tenebat elegerit; quod antequàm fiat, manifestum est illum qui foris baptizatus est esse pe-jorem, &c.*

<sup>2</sup> De Civ. Dei. lib. xviii. cap. 51. *Qui in ecclesia Christi morbi dum aliquid pravumque sapiunt, si correpti ut sanum*

are properly heretics, who, when they are reprov'd for their unsound opinions, contumaciously resist; and instead of correcting their pernicious and damnable doctrines, persist in the defence of them, and leave the Church, and become her enemies. But they, who defend not their opinion, though false and perverse,<sup>1</sup> with any pertinacious animosity, especially if they were not the first broachers of it, but received it from the seduction of their parents, and were careful in their inquiries after truth, being ready to embrace it when they found it; they were not to be reckon'd among heretics." And with much stronger reason, we have heard him say before,<sup>3</sup> "that a man, who, in extreme necessity, received baptism from heretics, when he could not have a catholic to administer it to him, was in no fault, because his mind and will was still united to the Catholic Church. From all which it is easy to discern, how great a difference they made in the degrees of heresy and its guilt, and how the discipline of the Church was managed in a great measure according to these distinctions.

SECT. 22.—The like Distinctions observed in inflicting the Censures of the Church upon Schismatics, according to the different Nature and various Degrees of their Schism.

I have already shewn,<sup>3</sup> that a like discrimination was made between schismatics of different kinds, and that the censures of the Church were inflicted on them only in proportion to the quality of their offence, observing the different nature and various degrees of their separation or schism. Some only absented from Church, for a short time, suppose two or three Lord's days successively, without any justifiable reason for it: and it was thought sufficient to correct such by a moderate punishment of as many weeks suspen-

*rectumque sapiant, resistent contumaciter; suaque pestifera et mortifera dogmata emendare nolunt, sed defendere persistent, hæretici fiunt et foras exeuntes, habentur in exercentibus inimicis.*

<sup>1</sup> Ep. 162. p. 277. See this cited before, chap. i. sect. 16.

<sup>2</sup> Aug. de Bapt. lib. i. cap. 2. lib. vi. cap. 5. lib. vii. cap. 52. See before chap. i. sect. 4.

<sup>3</sup> Book xvi. chap. i. sect. 5.

sion. Others attended some part of the service, suppose the sermon, and the psalmody, and the first prayers for the catechumens; but then withdrew, as if they had been penitents, when the service of the faithful or the communion office came on, and the eucharist was to be offered and received by all, that were not for some fault excluded from it: and these, as greater criminals, were denied the privilege of making any oblations, and excluded for some time from all other holy offices of the Church. A third sort of separatists, which are most properly called schismatics, were such as withdrew totally and universally from the communion of the Church; pretending that her communion was polluted and profane by the mixture of sinners; or finding out other such reasons to charge her with sinful terms of communion, and justify their own separation by many the like pretences, of which the history of the Novatians and Donatists affords many instances. Now, against these the Church commonly proceeded more severely, using the highest censure of excommunication or anathema, as against more professed and formal schismatics, and destroyers of that inviolable unity and peace, which ought to be most sacredly preserved in the body of Christ. Of all which schismatics and their punishments, because I have spoken particularly before in discoursing of the unity of the Church, I need say no more in this place, but proceed to another crime, that of sacrilege, which comes next in order to be considered.

SECT. 23.—Of Sacrilege, particularly of diverting Things appropriated to sacred Uses, to other Purposes.

The Roman casuists are wont to call many things sacrilege,<sup>1</sup> which the Ancients reckoned no crimes at all: as the laying taxes or tribute upon ecclesiastics by the civil power, without the consent of the pope, for which secular princes are excommunicated by the famous bull in "*Cœnâ Domini*," as they call it: and the bringing ecclesiastical persons for any crime before the secular tribunals. Some other things

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<sup>1</sup> Vid. Lessius de Jure, lib. ii. cap. 45. Dubitat. 3, and 4.



they brand with the odious name of sacrilege, which many of the Ancients reckoned to be virtues, and instances of zeal and piety towards God: as the removing of images out of all places of divine worship; for which the Council of Eliberis, and Epiphanius, and many others, were so remarkable in ancient history, who yet, if we were to speak in the style and language of these modern casuists, were to be reckoned guilty of the horrid sin of sacrilege. Since therefore the matter stood thus, we are not to expect to find any punishments in the penitential discipline of the ancient Church, allotted to such mere pretended crimes and imaginary vices. But against real sacrilege, none could be more zealous than the Ancients. Particularly against diverting any thing to private use, which was given to the public service of the Church. "If any one," say the apostolical canons,<sup>1</sup> "either of the clergy or laity take wax or oil out of the Church, let him be cast out of communion, and make restitution with the addition of a fifth part." And again,<sup>2</sup> "Let no one divert to his own use any of the sacred utensils of gold, or silver, or linen; for it is a flagitious thing: and if any one be apprehended so doing, let him be excommunicated." So likewise in the fourth Council of Carthage,<sup>3</sup> "let those, who deny the Church such oblations as are given by the dead, or give them not without difficulty, be excommunicated as murderers of the poor." And the second Council of Vaison,<sup>4</sup> "They, who detain the oblations and refuse to give them to the Church, are to be cast out of the Church as infidels; for such a provocation of God is a denying of the faith: both the faithful, who are gone out of the body, are defrauded of the plenitude of their

<sup>1</sup> Canon. Apost. 72.

<sup>2</sup> Ibid. can. 73.

<sup>3</sup> Con.

Carth. iv. can. 95. Qui oblationes defunctorum aut negant ecclesiis, aut cum difficultate reddunt, tanquam egentium necatores, excommunicentur.

<sup>4</sup> Con. Vasense. ii. can. 4. Qui oblationes defunctorum retinent, et ecclesiis tradere demorantur, ut infideles sunt ab ecclesiâ abjiciendi: quia usque ad inanitionem fidei pervenire certum est hanc pietatis divinæ exacerbationem: quia et fideles de corpore recedentes fraudantur votorum suorum plenitudine, et pauperes consolatu, alimoniam et necessariam sustentationem fraudantur. Hi enim tales quasi egentium necatores, nec credentes judicium Dei habendi sunt. Unde et quidam patrum ait, amico quidpiam rapere, furtum est; ecclesiam verò fraudare, sacrilegium. Hieron. Ep. ii. ad Nepotian.

vows, and the poor also of the comfort of their food and necessary subsistence. Such are to be esteemed murderers of the poor, and infidels with respect to the judgment of God." Whence one of the Fathers says, "To take from a friend, is theft; but to defraud the Church, is sacrilege." This is cited from St. Jerom. And St. Ambrose goes a little further, and says,<sup>1</sup> "They, who give their own estates to the Church, and then in a fickle humour retract, and revoke them again, like Ananias and Sapphira, lose the reward both of their first and second action: the first act is void of judgment, and the second is downright sacrilege." Therefore whether a man retracted what he himself had given to the Church, or detained what was given by others, or robbed her of what she was actually possessed of, it was all the same species of sacrilege, and the canons equally punish them all with the same sentence of excommunication;<sup>2</sup> reducing clergymen, when found guilty of this crime, to the communion of strangers, which was a punishment peculiar to them, of which more hereafter. I have already shewn in a former Book,<sup>3</sup> that for this reason bishops, who were intrusted with the goods and revenues of the Church, were not allowed to alienate any part of them, except it were in great necessity, to relieve the poor, or redeem captives; in which case, St. Ambrose himself, and many others, disposed of the plate of the altar, and the vessels and utensils belonging to the Church; thinking it better, that the inanimate temples of God should want their ornaments, than that his living temples should perish for want of relief. This was not sacrilege in the eye of the law, either ecclesiastical or civil, but an act of mercy allowed by both: for the laws against sacrilege, next to the honour of God, had al-

<sup>1</sup> Ambros. de Poenitent. lib. ii. cap. 9. Sunt, qui opes suas tumultuario mentis impulsu, non iudicio perpetuo, ubi ecclesie contulerunt, postea revocandas putaverunt. Quibus nec prima merces rata est, nec secunda: quia nec prima iudicium habuit et secunda habuit sacrilegium.

<sup>2</sup> Vid. Con. Agath. can. 4, 5, 6. Con. Turon. ii. can. 24. Con. Arelat. ii. can. 28.

<sup>3</sup> Book v. chap. vi. sect. 6 and 7.

ways a view to the necessities of the poor: and therefore as this practice tended to relieve them in great exigencies, it was just the reverse of that inhuman sacrilege, which the Ancients called murdering the poor, against which so many severe laws were made to abolish and correct it.

SECT. 21.—Of Sacrilege committed in robbing of Graves.

Another great crime of near a-kin to the former, which was sometimes condemned and punished under the name of sacrilege, was robbing of graves, or defacing and spoiling the monuments of the dead. These were always esteemed a sort of sacred repositories, and inviolable sanctuaries even by the very heathen, as appears from the Edict of Julian,<sup>1</sup> and what Gothofred<sup>2</sup> has collected at large out of the old laws and heathen writers upon the subject. And the violation of them was always esteemed a piacular crime, and sometimes punished with death. The imperial laws made it capital, and therefore when the Christian Emperors at Easter granted their indulgence or pardon to criminals in prison,<sup>3</sup> they still excepted robbers of graves among those other flagitious criminals, which were to have no benefit from their indulgence, as has been shewn before,<sup>4</sup> in speaking of those called *Atrocia Crimina*, great and capital crimes. That, which tempted men to commit this wickedness, was, that often riches and jewels were buried with the dead, and fine marble pillars and statutes, ornaments and monuments were erected over their graves; all which became spoil and plunder to such as were impiously and sacrilegiously disposed to invade them. Now as the imperial laws prosecuted such criminals with suitable punishments, fines, tortures, transportation, and death: so the ecclesiastical laws pursued them with spiritual penalties, agreeable to her spiritual regimen

<sup>1</sup> Cod. Theod. lib. ix. tit. 17. De Sepulchris Violatis. leg. v.

<sup>2</sup> Gothofr. in leg. ii. ibid.

<sup>3</sup> Cod. Theod. de Indulgentiis Criminum. lib. ix. tit. 38. leg. iii. iv. vii. viii. Valentin. Novel. v. de Sepulchr.

<sup>4</sup> Chap. iv. sect. 2.

and jurisdiction. Gregory Nyssen says,<sup>1</sup> “The holy fathers teach us to place the violation of burial places among those sins, which are to be expiated by public penance.” But he distinguishes two degrees of this crime, the one punishable by ecclesiastical censure, the other not so. For if any one took the stones or materials, which are usually cast up before the burial places of the dead, and applied them to some other useful purpose, without exposing the corps to the air or light, or offering any abuse or injury to it: though this was not commendable or allowable; for indeed the civil laws absolutely forbid it,<sup>2</sup> as was said before; yet custom however exempted this from any public punishment in the Church, because there was some benefit in it by an application of the materials to a more useful purpose; and as Gothofred also observes,<sup>3</sup> “there was something of seeming zeal in it, to demolish the heathen altars and images, which were often erected at the graves of pagans.” But then, as Gregory adds, there was another degree of this crime, which was more horrible, when men raked into the ashes of the dead, and disturbed their bones, in pursuit of treasure, cloths or other ornaments, that might be buried with them: and this, he says, was punished with the same term of penance as simple fornication, that is, nine years in the several stations of repentance. The fourth Council of Toledo makes it a double punishment for any clergyman to be guilty of this crime:<sup>4</sup> “if any clerk is apprehended demolishing sepulchres, for as much as this is a crime of sacrilege punishable with death by the public laws, he ought by the canons to be deposed from his orders, and after that do three years penance for such his transgression.” The reader that pleases may see elegant invectives against this crime in Sidonius Apollinaris<sup>5</sup> and St. Chrysostom,<sup>6</sup>

<sup>1</sup> Nyss. Ep. Canon. ad Letoium. can. vi. et. vii.

<sup>2</sup> Cod. Theod.

lib. ix. tit. 17. de Sepulchris Violatis. leg. i. ii. iii.

<sup>3</sup> Gothofr. in leg. v. ibid. p. 145.

<sup>4</sup> Con. Tolet. iv. can. 45. Si

quis clericus in demoliendis sepulchris fuerit deprehensus, quia facinus hoc pro sacrilegio legibus publicis sanguine vindicatur: oportet canonibus in tali scelere proditum, à clericatûs ordine submoveri, et penitentiae triennio deputari.

<sup>5</sup> Sidon. lib. iii. Ep. xii.

<sup>6</sup> Chrys. Hom. xxxv.

in 1 Cor. p. 6.

who justly represent it, as one of the most unnatural and inhuman barbarities that can be offered to the nature of man, because the dead are altogether innocent and passive, and in a condition to excite pity and compassion only; being destitute and without ability to resist or right themselves against invaders.

SECT. 25.—The Sacrilege of the ancient *Traditores*, who delivered up their Bibles and holy *Utensils* to the Heathen to be burnt.

Another sort of men, who were anciently accused and condemned as sacrilegious persons, were those, whom they commonly called *Traditores*, for delivering up their Bibles, and other sacred utensils of the Church to the heathen to be burnt, in the time of the Diocletian persecution. The first Council of Arles,<sup>1</sup> held immediately after the persecution, makes it deposition from his order for any clergyman, who could be convicted by the public acts of this crime, either of betraying the Scriptures, or any of the holy vessels, or the names of his brethren to the persecutors. The Donatists frequently, but falsely, objected this crime to Cecilian, bishop of Carthage, and those, that ordained him, that they were *Traditores*: upon which St. Austin tells them,<sup>2</sup> that if they could evidently make good the charge, the Catholics would not scruple to anathematise them after death. But the truth of the matter was, these very objectors were *Traditores* themselves, though they had the impudence to absolve one another, while they threw the charge upon innocent men, as Optatus<sup>3</sup> and St. Austin<sup>4</sup> shew out of the Acts of their own Council of Circa, where they acted this comedy, which stood as a witness against them.

<sup>1</sup> Con. Arelat. i. can. 13. De his, qui Scripturas Sanctas tradidisse dicuntur, vel vasa dominica, vel nomina fratrum suorum, placuit nobis, ut quicumque eorum in actis publicis fuerit detectus, non verbis nudis, ab ordine cleri amoveatur.

<sup>2</sup> Aug. Ep. l. ad Bonifac. Ep. 152. ad Donatistas.

<sup>3</sup> Optat. lib. i. p. 39.

<sup>4</sup> Aug. cont. Crescon. lib. iii. cap. 27, &c.

SECT. 26.—The Sacrilege of profaning the Sacraments, and Churches, and Altars, and the Holy Scriptures, &c.

Neither was this the only sacrilege the Donatists were guilty of, but they and their accomplices stand charged with many others. Optatus objects to them their breaking and burning the communion tables,<sup>1</sup> which they found in the catholic churches. And their profaning the holy sacrament in a most vile manner, of which he gives a most remarkable instance: some of the Donatist bishops in their mad zeal ordered the eucharist, which they found in the catholic churches, to be thrown to the dogs, but not without an immediate sign of divine vengeance upon them: for the dogs, instead of devouring the elements, fell upon their masters, as if they had never known them, and tore them to pieces, as robbers, and profaners of the holy body of Christ: which makes Optatus put them in mind of that admonition of our Saviour,<sup>2</sup> “Give not that, which is holy unto the dogs, neither cast ye your pearls before swine, lest they trample them under their feet, and turn again and rend you.” It was a like profanation of the holy eucharist, which Cornelius charges upon Novatian,<sup>3</sup> when he obliged his partizans, instead of saying Amen, at the reception of it, to swear by the body and blood of Christ, that they would never desert his party, nor return to Cornelius. It was also reckoned a piece of sacrilege to give the catholic churches to heretics, in which St. Ambrose stoutly opposed the younger Valentinian, when he sent him an order to deliver up one of the churches of Milan to the Arians: he returned him this courageous answer: “those things,<sup>4</sup> which are God’s, are not subject to the emperor’s power. If my patrimony is demanded, you may invade it; if my body, I will offer it of my own accord. I will not fly to the altar and supplicate for life, but more joyfully sacrifice my life for the altar.” There are some instances of men turning Churches into<sup>5</sup>

<sup>1</sup> Optat. lib. vi. p. 94 et 95.

<sup>2</sup> Lib. ii. p. 55.

<sup>3</sup> Cornel. Ep. ad Fabium. ap. Euseb. lib. vi. cap. 43.

<sup>4</sup> Ambros. Ep. xxxiii. ad Marcellin. de Tradendis Basilicis.

<sup>5</sup> Vid. Baron. an. 572. p. 575. De Chariberto Rege.

stables; but as these were very abominable, so there were but few, that fell into such prodigious profanations. We may reckon also all sorts of idolatry, and divination, and magic, and the abuse of Scriptures, for lots and charms and amulets among the species of sacrilege, as some of the ancient Councils do:<sup>1</sup> but I have spoken fully of these under former heads, and therefore there is no occasion here to repeat them. I only add, that to molest or hinder a clergyman in the performance of his proper office by avocation to other business, and laying him under a necessity of following other employments, inconsistent with the duties of his proper station and function, is, in the civil law, called sacrilege. Constantine in his first settlement of religion made a law,<sup>2</sup> “that they, who ministered in the service of God, should be excused from all personal duties in the state; that the sacrilegious envy of some, who gave them disturbance, might not withdraw them from the service of religion.” And agreeable to the tenor of this law, we find a rule of the Church as ancient as St. Cyprian, that no one should employ a clergyman in the business of a secular trust,<sup>3</sup> to be a guardian or curator of his worldly concerns by his last will and testament, under the penalty of excommunication, or having his name blotted out of the Diptychs of the Church after death.

There are abundance of laws in the Theodosian Code, beside that of Constantine, settling great privileges, exemptions, and immunities upon the clergy, in regard to their office; as also upon churches, in regard to the respect and veneration, that is due to them, as the houses of God and places of divine worship: upon which account they were made sanctuaries or places of refuge for men in certain proper cases, whence they might not be taken by violence, without the imputation of a sort of sacrilege fixed on the in-

<sup>1</sup> Con. Toletan. iv. can. 28.

<sup>2</sup> Cod. Theod. lib. xvi. tit. ii. de Episc. et Cler. leg. ii. Qui divino cultui ministeria religionis impendunt, id est, hi qui clerici appellantur, ab omnibus omnino muneribus excusentur: ne sacrilego livore quorundam à divinis obsequiis avocentur. Vid. leg. vii. *ibid.*

<sup>3</sup> Cypr. Ep. lxxvi. al. i. ad Cler. Furnitan. p. 3.

vaders. But of all these privileges and immunities, I have had occasion to discourse at large before,<sup>1</sup> in speaking of Churches and the clergy, and therefore need not here repeat them; but only mention a law of Honorius,<sup>2</sup> which expressly charges the crime of sacrilege upon all such, as offered any injury or affront to ministers officiating in the Church, or to the service itself, or to the place: ordering all such criminals to be notified by public officers, not waiting for the bishop's accusation of them, to the governor of the province, who was to proceed against them, and condemn them with the punishment of capital offenders.

SECT. 27.—The Sacrilege of depriving Men of the Use of the Scripture, and the Word of God, and the Sacraments, particularly of the Cup in the Lord's Supper.

There is one species of sacrilege more, which the casuists of the Romish Church for a good reason never mention: that is, the grand sacrilege of their own Church in depriving men of the use of the Holy Scriptures, and the cup in the Lord's supper, both which, with unparalleled magisterial authority, are sacrilegiously and injuriously taken from them. That the Ancients reckoned it the sin of sacrilege to divide the communion without reason, and deny men the use of the cup, needs no other proof at present, but the testimony of Gelasius, one of their own popes, which is still extant in their canon law,<sup>3</sup> in the words of the following decree: "We understand there are some, who receive only a por-

<sup>1</sup> Book. v. chap. iii. book. viii. chap. xi.      <sup>2</sup> Cod. Theod. lib. xvi. tit. ii. de Episc. leg. 31. Si quis in hoc genus sacrilegii proruperit, in ecclesias catholicas irruens, sacerdotibus et ministris, vel ipsi cultui, locoque aliquid importet injuriæ—provinciæ moderator, sacerdotum et catholicæ ecclesiæ ministrorum, loci quoque ipsius, et divini cultûs injuriam, capitali in convictos sive confessos reos sententia noverit vindicandum. Nec expectet ut episcopus injuriæ propriæ ultionem deponat, cui sanctitas ignoscendi solùm gloriam dereliquit, &c.      <sup>3</sup> Gelas. ap. Gratian. De Consecrat. dist. ii. cap. 12. Comperimus autem, quod quidam sumptâ tantummodò corporis sacri portione, à calice sacri cruoris abstineant. Qui proculdubio (quoniam nescio quâ superstitione docentur obstringi) aut integra sacramenta percipiant, aut ab integris arceantur; quia divisio unius ejusdemque mysterii sine grandi sacrilegio non potest provenire.



tion of the holy body, and abstain from the cup of the holy blood. Who doubtless, being bound by some vain superstition, ought either to receive the whole sacrament, or to be excluded from the whole: because one and the same mystery cannot without grand sacrilege be divided." Such sacrilegious dividers of the communion, are also condemned by Pope Leo,<sup>1</sup> and ordered to be excommunicated. And they, who take the eucharist, and use it for any other end besides communicating, are censured by the first Council of Toledo, can. xiv. and that of Cæsaraugusta, can. iii. as sacrilegious also, deserving to be banished the Church with *Anathema* or excommunication. But of these, I have discoursed more at large in a former book, see Book xv. chap. iv. sect. 13. and chap. v. sect. 1. against communicating in one kind.

There were many hereties in the ancient Church, who were guilty of sacrilege in relation to the other sacrament of baptism. Some rejected it wholly, others corrupted it in the material part, and others in the form of words necessary to the administration: of all which the reader may find a large account in a former book,<sup>2</sup> which particularly handles the subject of baptism. But there were none, that ever presumed sacrilegiously to deny Christians their proper birth-right, which is to read the Scriptures. Some hereties corrupted them; and others rejected such parcels of them, as they thought most opposite to their peculiar notions: but none, who allowed them to be the inspired writings and oracles of the Holy Ghost, ever denied the people liberty to search and examine them for their own instruction. This is a piece of sacrilege peculiar to these later ages, which the Ancients knew nothing of, and therefore had no occasion to make canons or rules of discipline to correct it. There are many exhortations to read the Scriptures; but no orders to keep them locked up in an unknown tongue, or to forbid the people to use them upon any occasion. And the only reason, why there are no censures anciently to be found

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<sup>1</sup> Leo. Ser. iv. de Quadragesimâ.

<sup>2</sup> Book. ii. chap. ii, and iii.

against this sort of sacrilege, is, because the sin itself was utterly unknown to the primitive ages.

There was indeed sometimes a neglect in ignorant or careless teachers in preaching the word of God to the people: and this is censured by some laws even in the civil code,<sup>1</sup> as a sacrilegious withdrawing from the people the necessary food of their souls. But of this I need say no more in this place, having fully represented the laws obliging bishops and presbyters to be faithful and diligent in discharging this part of their duty, while we were discoursing of preaching,<sup>2</sup> and the usages relating to it, in the ancient Church.

There are some other things, which sometimes bear the name of sacrilege; but because they more properly belong to other species of sin; as breach of vows, to perjury; and defilement of consecrated virgins, to fornication; we will consider the discipline and treatment of these and the like offences, under their proper heads, and proceed to the last sort of sin, which shews irreverence to God in the use of sacred things, commonly called simony, which is also a sort of sacrilege, because it sets spiritual and sacred things to sale, which are not the subject of a secular contract.

SECT. 28.—Of Simony in buying and selling Spiritual Gifts.

This is commonly distinguished by the Ancients into three sorts. 1. Buying and selling of spiritual gifts. 2. Buying and selling of spiritual preferments. 3. Ambitious usurpation, and sacrilegious intrusion into ecclesiastical functions without any legal election or ordination. The first sort was that, which most properly had the name of *simony* from *simon* Magus, who pretended with money to purchase the gift of the Holy Ghost. And this was always thought to be committed, when men either offered or received money for ordinations. Which was a crime of a very high nature, and always punished with the severest cen-

<sup>1</sup> Cod. Theod. lib. xvi. tit. 2. de Episcopis. leg. xxv. Theodosi M. Qui divinæ legis sanctitatem aut nesciendo confundunt, aut negligendo violant et offendunt, sacrilegium committunt.

<sup>2</sup> Book xiv. chap. iv. sect. 2.

tures of the Church. The Apostolical Canons,<sup>1</sup> seem to lay a double punishment, both deposition and excommunication, upon such of the clergy as were found guilty of this crime: "if any bishop, presbyter, or deacon obtain this dignity for money, both he that is ordained, and the ordainer shall be deposed, and also cut off from all communion, as Simon Magus was by Peter." The general Council of Chalcedon has a canon to the same purpose,<sup>2</sup> "that if any bishop gave an ordination, or any ecclesiastical office, or preferment of any kind for money, he himself should lose his office, and the party so preferred be deposed." The same punishment is appointed in the second Council of Orleans,<sup>3</sup> the second of Braga,<sup>4</sup> the fourth of Toledo,<sup>5</sup> the eleventh of Toledo,<sup>6</sup> the Council of Constantinople, under Gennadius,<sup>7</sup> the Decrees of Gelasius,<sup>8</sup> Symmachus,<sup>9</sup> Hormisdas,<sup>10</sup> and Gregory the Great,<sup>11</sup> St. Basil,<sup>12</sup> the second Council of Nice,<sup>13</sup> and the Council of Trullo.<sup>14</sup> Particularly the eighth Council of Toledo,<sup>15</sup> makes it both degradation and excommunication in every clerk so ordained. And also punishes the receivers of simoniacal gifts with equal severity; if clergymen, with the loss of their honour; if laymen, with perpetual excommunication to the hour of death. And the Civil Law also provided in this case,<sup>16</sup> to prevent simoniacal ordinations, that both persons ordained, and also their electors and ordainers should all take an oath, that

<sup>1</sup> Can. Apost. 29. *Καθ'αρείω ἐὶ ἀπότος ἐὶ ὁ χειροτονήσας, ἐὶ ἐκκοπέσθω παντάπασι ἐὶ τῆς κοινωνίας, ὡς Σίμων ὁ Μάγος ὑπ' ἐμῶν Πέτρος.*

<sup>2</sup> Con. Chalced. c. ii.

<sup>3</sup> Con. Aurelian. ii. can. 3, and 4.

<sup>4</sup> Con. Bracar. ii. can. 3.

<sup>5</sup> Con. Tolet. iv. can. 18.

<sup>6</sup> Con. Tolet. xi. can. 8.

<sup>7</sup> Con. C. P. Epist. Synod. Con.

tom. iv. p. 1025.

<sup>8</sup> Gelas. Deeret. Ep. i. ad Episc. Lucaniae

cap. xxvi.

<sup>9</sup> Symmach. Deeret. cap. ii.

<sup>10</sup> Hor-

misd. Epist. ad Episc. Hispan. cap. ii.

<sup>11</sup> Greg. lib. vii. Ep. 110.

<sup>12</sup> Basil. Ep. lxxvi. ad Episcopos.

<sup>13</sup> Con. Nic. ii. can. 5.

<sup>14</sup> Con. Trull. can. xxii.

<sup>15</sup> Con. Tolet. viii. can. 3. Qui-

cunq; propter accipiendam sacerdotii dignitatem quodlibet præmium fuerit detectus obtulisse, ex eodem tempore se noverit anathematis opprobrio condemnatum, atque à participatione Christi corporis et sanguinis alienum. Illi verò qui hæc causâ munerum acceptores extiterint; si clerici fuerint, honoris amissione mulentur: Si laici, anathemate perpetuo condemnentur.

<sup>16</sup> Vid. Justin. Novel. 123. cap. i. Novel. 137. cap. ii.

there was nothing given or received, or so much as contracted or promised for any such election or ordination. And for any bishop to ordain another without observing this rule, is deposition by the same law, both for himself, and him, that is so ordained by him.

The Ancients also reduce to this sort of simony, the exacting of any reward for administering baptism, or the eucharist, or confirmation, or burying, or consecration of Churches, or any the like spiritual offices, which were to be administered freely without demanding any reward. The Council of Trullo, particularly forbids any clergyman to require any thing for administering the eucharist:<sup>1</sup> “for grace is not to be set to sale, neither do we impart the sanctification of the spirit for money, but give it without craft to all, that are worthy. And he, that does otherwise, shall be deposed as a follower of the wicked error of Simon Magus.” The eleventh Council of Toledo forbids not only the taking of money for promotions to holy orders, but also for administering baptism, or confirmation,<sup>2</sup> or chrism; and the bishop, that connives at any of his clergy so doing, is ordered to be excommunicated for two months: and if a presbyter without his knowledge commits such offence, he is to be excommunicated four months: a deacon three months; and those of the inferior orders, excommunicated at discretion. There are several other ancient canons to the same purpose in the Councils of Eliberis,<sup>3</sup> and Braga,<sup>4</sup> and the decrees of Gelasius,<sup>5</sup> which have been mentioned on another occasion,<sup>6</sup> where we treated of the proper methods of raising funds and maintenance for the clergy, and need not here be repeated.

SECT. 29.—Of Simony in purchasing ecclesiastical Preferments.

But they did not only call that simony, which consisted in trafficking for the gifts of the Holy Spirit, but also all

<sup>1</sup> Con. Trull. can. 23.

<sup>2</sup> Con. Tolet. xi. can. 8.

<sup>3</sup> Cou. Elib. can. 48.

<sup>4</sup> Con. Bracar. ii. al. iii. can. 7.

<sup>5</sup> Gelas. Ep. al. 9. ad Episc. Lucan. cap. 7.

<sup>6</sup> Book v. chap. iv.

sect. 14.

purchases made of the spiritual preferments of the Church and all promotions made without just merit, out of mere favour and affection. The Council of Chalcedon, not only threatens deposition to any bishop, that sets grace to sale and ordains a bishop, or *Chorepiscopus*, or presbyter, or deacon, or any clerk for money ;<sup>1</sup> but also if he promotes an *(Economus* or *steward*, or an *Eclicus*, that is, an *advocate* or *defensor*, or a *Paramonarius*, that is, a *bailiff* or *steward of the lands*, for his own filthy luere. And both the elergy, so ordained, are to be degraded; and the officers, so promoted, to lose their places : and if any one be instrumental, as a mediator, in such dishonourable and unlawful traffic; if he be a clerk, he is to be degraded; if a layman, or a monk, to be anathematized. By the laws of Justinian, every elector was to depose upon oath, that he did not chuse the party elected either for any gift or promise, or friendship, or any other cause, but only because he knew him to be a man of the true Catholic faith, and unblameable life, and good learning. Gregory the Great says,<sup>2</sup> “ there were some, who took no reward of money for ordination, and yet were in some measure guilty of simony, because they gave holy orders for human favour, and thence sought the reward of praise and favour among men. They did not give freely what they had freely received, because for giving an holy office they required the gift of favour. For there were three sorts of bribes, one from obsequiousness, another from the hand, and another from the tongue. That from obsequiousness was a servile subjection unduly paid : that from the hand was money ; that from the tongue, was favour.” But whether this sort of simony made men liable to ecclesiastical censure, he does not say, but only speaks against it as a great corruption, from which they,

<sup>1</sup> Con. Chalced. can. ii.

<sup>2</sup> Justin. Novel. 123. cap. i.

<sup>3</sup> Greg. Hom. ii. in Evangel. Sunt nonnulli qui quidem nummorum præmia ex ordinatione non accipiunt, et tamen sacros ordines pro humanâ gratiâ largiuntur, atque de largitate eâdem laudis solummodo retributionem quærunt. Hi nimirum quod gratis acceptum est, gratis non tribuunt, quia de impenso officio sanctitatis nummum expetunt favoris.—Aliud munus est ab obsequio, aliud munus à manu, aliud munus à linguâ, Munus quippe ab obsequio est subjectio indebitè impensa; munus à manu pecunia est; munus à linguâ favor.

who give holy orders, ought to keep themselves free, according to that of the prophet, Isa. xxxiii. 15. "He that shaketh his hands from holding of bribes."

SECT. 30.—Of Simony, in ambitious Usurpation of Holy Offices, and Intrusion into other Men's Places and Preferments.

The last sort of simony was, when men by ambitious arts and undue practices, by the favour and power of some great or wealthy person, got themselves invested in any office or preferment, to which they had no regular call or legal title, or when they intruded themselves into other men's places, which were legally filled before. This was the common practice of schismatical and other ambitious spirits, who would either thrust themselves irregularly into a vacant see, or usurp upon one, that was already lawfully possessed and held by another. Thus Novatian got himself clandestinely and simoniacally ordained to the bishopric of Rome, to which Cornelius had been legally ordained before him, as Cyprian,<sup>1</sup> and others often complain. And so Majorinus was ordained anti-bishop of Carthage, in opposition to Cecilian, the legal bishop, by the help of Lucilla, a wealthy woman, who spirited the faction, that was the first beginning of the schism of the Donatists, as Optatus and St. Austin at large inform us.<sup>2</sup> Now all such ordinations, being founded on ambition and usurpation, and generally obtained either by force, or favour, or fraud, or bribery, were usually vacated and declared null, and both the ordained and their ordainers prosecuted as criminals by degradation and reduction to the state and communion of laymen: of which, because I have given a full account of it in a former Book,<sup>3</sup> will not stand to make any further proof in this place: but only note, that it was equally a simoniacal crime for any bishop, ambitiously to thrust himself irregularly into any

<sup>1</sup> Cypr. Ep. lii. a. iv. ad Antonian. p. 104. Ep. xli. et xlii. ad Cornel. et Cornel. ap. Euseb. lib. vi. cap. 43.

<sup>2</sup> Optat. lib. i. p. 41, et 42.

Aug. cont. Epist. Parmen. lib. i. cap. 3.

<sup>3</sup> Scholast. Hist. of

Bapt. Part. ii. chap. ii. and iv.

vacant see, or remove himself by any sinister arts from a lesser see to a greater, in contempt and despite of the rules prescribed by the Church in that case to be observed. For as I have noted in speaking formerly upon this subject,<sup>1</sup> there were many severe laws made against bishops arbitrarily removing themselves from one see to another. Though the translation of bishops was not absolutely and universally forbidden, because the Church had sometimes occasion for this expedient: yet care was taken, that ambitious spirits should not move themselves at pleasure, but all translations were regularly to be made only by the authority, consent, and approbation of a provincial council, and to do otherwise was esteemed a crime of simoniacal ambition of the highest nature, as proceeding from avarice or love of pre-eminence, and using irregular methods, bribery, favour, and faction, to compass an end against the laws of the Church. And therefore the ancient Canons of Nice,<sup>2</sup> and Antioch, and those called Apostolical, not only barely forbid and disallow this practice: but the Council of Sardica,<sup>3</sup> finding by experience that simple prohibitions were not sufficient to repress it, and restrain aspiring men from it, backed her injunctions with the highest censures, making two very remarkable canons, which run in these words: "That evil custom and pernicious corruption is by all means to be rooted out, that no bishop have liberty to remove himself from a lesser city to another. For the reason why he does this, is plain; seeing we never find a bishop labouring to remove himself from a greater city to a less. Whence it is manifest, that all such are inflamed with ardour of covetousness, and rather serve their ambition, and vain glory, that they may seem to be invested with greater authority and power. Wherefore this sinister practice ought to be punished more severely." "And in my opinion," says Hosius, the president of the Council, "such ought not to be allowed so much as lay-communion." The next canon adds, "That if any one be so vain or pre-

<sup>1</sup> Book vi. chap. iv. sect. 6.  
Antioch. can. 21. Apost. can. xiv.

<sup>2</sup> Con. Nic. can. xv. Con.  
<sup>3</sup> Con. Sardic. can. 1, and 2.

sumptuous, as to think to excuse himself in this matter, by saying, that he received letters of invitation from the people, seeing it is possible some might be corrupted by bribes and rewards to raise a faction in the Church, and desire to have him for their bishop." "I think," says Hosius again, "these fraudulent arts and underhand practices ought to be undoubtedly punished, so as that such an one should not be allowed even lay-communication at his last hour." And to this the Council readily agreed: which shews what apprehensions they had of this sort of simony, as most dangerous and pernicious to the Church. And it is worth remarking further, that whereas it might happen, that such an ambitious bishop might, by the power of a faction, be able to maintain himself in his usurpation, in spite of all ecclesiastical censures: therefore in this case the third Council of Carthage gave orders,<sup>1</sup> "That recourse should be had to the secular magistrate against such a refractory and contumacious bishop, who would not submit to the milder sentence of an admonition; and that in such an exigence of absolute necessity the ruler of the province should be entreated, according to the directions of the imperial laws, to use his judicial authority to expel him out of the Church, which he kept possession of by force, without giving any signs of acquiescing or amendment." Whether there were any imperial laws made with a direct view to this particular case, I cannot say: but it is certain there were general laws made by Gratian and Honorius,<sup>2</sup> obliging all bishops, who were censured and deposed by any synod, to submit to the sentence of the synod, and not to make any disturbance by endeavouring to keep or regain the sees out of which they

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<sup>1</sup> Con. Carth. iii. can. 38. *Necessitate ipsâ cogente liberum sit nobis, recitorem provincie, secundum statuta gloriosissimorum principum, adversus illum adire, ut qui nisi admonitioni acquiescere noluit, et emendare illicitum, auctoritate judiciariâ protinus excludatur. Vid. can. xliii. ib. et Cod. Afric. can. 48, et 53.*

<sup>2</sup> Cod. Theod. lib. xvi. tit. 2. de Episc. leg. xxxv. *Honorii. Quicumque residentibus sacerdotibus fuerit episcopali loco detrusus et nomine, si aliquid vel contra custodiam, vel contra quietem publicam moliri fuerit deprehensus, rursusque sacerdotium petere, à quo videtur expulsus, procul ab eâ urbe quam infecit, secundum legem diuine memorie Gratiani, centum milibus vitam agat, &c.*



were synodically expelled, under the penalty of being banished an hundred miles from the city, where they pretended to raise any such disturbance. This was the law of Honorius, which refers to a former law made by Gratian upon the same subject, which is also mentioned by Sulpicius Severus in his history as enacted against the Priscillianists,<sup>1</sup> though it be not now extant in the Theodosian Code. And to these laws the African Fathers might refer, when they order all such contumacious bishops to be expelled by the authority of the civil magistrate, according to the tenor of the imperial laws made in this behalf, to which they refer also in other canons relating to the same purpose.<sup>2</sup> And thus much of the several greater crimes against the first and second commandments, which made men liable to the penitential discipline and censures of the Church.

## CHAP. VII.

### *Of Sins against the Third Commandment, Blasphemy, Profane Swearing, Perjury, and Breach of Vows.*

#### SECT. I.—The Blasphemy of Apostates.

THE greater sins against the third commandment, which chiefly brought men under public ecclesiastical censure, were blasphemy, profane swearing, perjury, and breach of vows solemnly made to God. For all these reflected a particular dishonour upon his name. Blasphemy they distinguished into three sorts; First, the blasphemy of apostates and lapsers, whom the heathen persecutors obliged not only to deny, but curse Christ. Secondly, The blasphemy of heretics and other profane Christians. Thirdly, the blasphemy against the Holy Ghost. The first sort we find mentioned in Pliny, who, giving Trajan an ac-

<sup>1</sup> Sever. Hist. lib. ii. p. 116.

<sup>2</sup> Cod. Afric. can. 93. al. 95.

count of some Christians, who apostatised in the persecution in his time, tells him, they all worshipped his image, and the images of the gods, and also cursed Christ.<sup>1</sup> And that this was the common way of renouncing their religion, appears from the demand which the proconsul made to Polycarp, and Polycarp's answer to it: he bid him revile Christ, “*Λοιδόρησον τὸν Χριστὸν* :”<sup>2</sup> to whom Polycarp replied, “These eighty-six years I have served him, and He never did me any harm: how then can I blaspheme my King and my Saviour?” In the Epistles of Dionysius, bishop of Alexandria, where he gives an account of the persecution, that happened there, we find this was the usual way, whereby the heathen required the Christians to abjure their religion. They bid Metras, the Martyr,<sup>3</sup> say the atheistical words, which when he refused to do, they stoned him to death. So again they bid Apollonia say, the impious words,<sup>4</sup> beating out her teeth, and threatening to burn her alive, if she refused to comply with them; and threatening all others with the same punishment, that would not say the blasphemous words. Now, though Valesius thinks it difficult to tell what these impious, blasphemous, and atheistical words were, yet it seems plain enough they meant blaspheming Christ, which was the thing the heathen insisted on, as their certain indication of Christians renouncing their religion. And so Justin Martyr says,<sup>5</sup> when Barchocab, the ringleader of the Jewish rebellion under Adrian, persecuted the Christians, he threatened to inflict terrible punishments upon all, that would not deny Christ and blaspheme him. This then being only a more solemn way of renouncing religion, by adding blasphemy to apostacy, all lapsers of this kind were deservedly reckoned among apostates, and accordingly punished with their punishment, to the highest degree of ecclesiastical censure.

<sup>1</sup> Plin. lib. x. ep. 97. Omnes et imaginem tuam, deorumque simulachra venerati sunt, iique et Christo maledixerunt.

<sup>2</sup> Euseb.

lib. iv. cap. xv.

<sup>3</sup> Ap. Euseb. lib. vi. cap. 41.

*Κελεύσαντες ἄθρα λέγειν ῥήματα, &c.*

<sup>4</sup> Ibid. τὰ τῆς ἀσιβείας

*ῥήματα ἐκφωνήσιν. Et paulo post, Δύσφημα ῥήματα ἀννηυῖν.*

<sup>5</sup> Justin. Apol. ii. p. 72.

## SECT. 2.—The Blasphemy of Heretics and profane Christians.

Another sort of blasphemers, were such as made profession of the Christian religion; but yet either by impious doctrines or profane discourses, uttered blasphemous words against God, derogatory to his majesty and honour. In this sense heretics are commonly charged with blasphemy, and more especially, those, whose doctrines more immediately detracted from the excellencies, properties, and actions of the divine nature. Thus Chrysostom terms those blasphemers,<sup>1</sup> who introduced fate in derogation to the providence of God: and Irenæus, those likewise, who denied God to be the creator of the world.<sup>2</sup> And the Arians and Nestorians are generally charged with blasphemy, impiety, and sacrilege,<sup>3</sup> for denying the Divinity of our Saviour, and the incarnation of the divine nature. So that the same punishment as was inflicted upon heretics and sacrilegious persons, was consequently the lot of this sort of blasphemers. St. Chrysostom joins blasphemers,<sup>4</sup> and fornicators together, as persons, that were to be expelled from the Lord's table. He says further,<sup>5</sup> “under the Mosaical economy the law was, Let him, that curseth father or mother, die the death. What shall we then say of those, who in the time of grace and truth, and such extraordinary knowledge, not only curse father and mother, but blaspheme the God of the universe? All the punishments of this world and the next are not sufficient to chastise a soul, that is arrived to this prodigious height of wickedness. For there is no sin greater than this, none equal to it. It is an addition to all other crimes, confounding all religion, and drawing inexorable punishment after it.”

<sup>1</sup> Chrys. Hom. ii. de Fato et Provid. tom. i. p. 118.

<sup>2</sup> Irenæ. Præfat. in lib. iv. Nunc autem, quoniam novissima sunt tempora, extenditur malum in homines, non solum apostatas eos faciens, sed et blasphemus in plasmatorum instituit.

<sup>3</sup> Cod. Theod. lib. xvi. tit. 5. De Hæreticis. Leg. vi. Theodosii. Ariani sacrilegii venenum, &c. It. Leg. viii. Sacrilegum dogma Arianorum. Hilarii fragment. p. 144. Arii blasphemiam, &c. It. de Synodis. p. 104. Evagr. lib. i. cap. 2.

<sup>4</sup> Chrys. Hom. xxii. De Ira. tom. i. p. 277.

de Fato. tom. i. p. 811.

<sup>5</sup> Hom. ii.

Neither was it only this doctrinal blasphemy of heretics, proceeding from corrupt and vicious principles, that they thus treated both with their censures and invectives; but also all other blasphemies of profane Christians, whether occasioned by ill opinions fixed in the mind, or other sudden emotions of a vicious temper. This we learn from Synesius's way of proceeding against Andronicus, the oppressing governor of Ptolemais. He admonished him for his other crimes while there was any hopes of making a just impression on him: but when he added blasphemy to all the rest, presuming to say, no man should escape his hands, though he laid hold of the very foot of Christ; Synesius thought he was no longer to be admonished, but to be cut off as a putrified member, and accordingly he proceeded to pronounce against him that famous excommunication,<sup>1</sup> which we have had so often occasion to mention,<sup>2</sup> as the most formal sentence that occurs in ancient story. I only add, that the civil laws set a particular mark upon this crime. For by the laws of Justinian blasphemy is reckoned a capital offence, to be punished with death.<sup>3</sup> And by the former laws, since heresy was reputed blasphemy against God, all the penalties inflicted on heretics, one of which was in some cases death also, must be supposed to be punishments awarded by law to this sort of blasphemers.

SECT. 3.—The Blasphemy against the Holy Ghost. What Notion the Ancients had of it: and what Censures they inflicted on it.

Another sort of blasphemy was, the blasphemy against the Holy Ghost, of which I must be a little more particular, because the sense of the Ancients concerning it is not very commonly understood. Some apply it to the great sin of lapsing into idolatry, and apostacy, and denying Christ in time of persecution. Thus Cyprian understands it, when he says,<sup>4</sup> “ They, who commit idolatry by the violence of

<sup>1</sup> Synes. Ep. lviii. p. 196. Vid. C.P. sub Menna. act. i. al. 5.

<sup>2</sup> See it at length, chap. ii. sect. 8.

<sup>3</sup> Justin. Novel. 77.

<sup>4</sup> Cypr. Ep. x. al. xvi. p. 36. Summum enim delictum esse quod persecutio committi cogit; cum dixerit Dominus et Judex noster, “ Qui me confessus

persecution, know their offence to be a very great crime, seeing our Lord and judge has said, ‘Whosoever shall confess me before men, him will I confess before my Father, which is in heaven. But he that denieth me, him will I also deny.’ And again, ‘All sins and blasphemies shall be forgiven to the sons of men: but he, that blasphemeth against the Holy Ghost, shall not have forgiveness; but is guilty of eternal sin.’ St. Hilary gives the same account of this blasphemy,<sup>1</sup> making it to consist in denying Christ to be God. And therefore he also charges the Arians and all other such heretics with this blasphemy,<sup>2</sup> because their doctrine robbed Christ of his Divinity, and denied him to be of the same substance with the Father, however they venerated him as God, and ascribed the name of God to him upon the account of his admirable works and glorious operations. Athanasius, and the author of the Questions to Antiochus, under his name, are of the same opinion. Athanasius has a particular discourse upon this subject, where he notes the errors of Origen and Theognostus upon it, and delivers his own opinion in opposition to them. They said,<sup>3</sup> that all they, who had received the gifts of the Holy Ghost in baptism and afterward run into sin, committed the unpardonable sin against the Holy Ghost. Which he refutes both from the practice of St. Paul, who received the incestuous Corinthian, and other great sinners to pardon; and also from the practice of the Church in opposition to the Nova-

fuerit coram hominibus, et illum confitebor coram Patre meo qui in cœlis. Qui autem me negaverit, et ego illum negabo.” Et iterum dixerit, “Omnia peccata remittentur filiis hominum et blasphemiæ: qui autem blasphemaverit Spiritum Sanctum, non habebit remissionem, sed reus est æterni peccati.”

<sup>1</sup> Hilar. in. Mat. canon. xxxi p. 184. Sciebat exterrendos, fugandos, negaturos: sed quia Spiritus blasphemia nec hic nec in æternum remittitur, metuebat ne se Deum abnegarent, quem cæsum et consutum et crucifixum essent contemplaturi. Quæ ratio servata in Petro est, qui cum negaturus esset, ita negavit, “Non novi hominem.”

<sup>2</sup> Ibid. can. xii. p. 164. Christo aliqua deferre, negare quæ maxima sunt: venerari tanquam Deum, Dei communione spoliare, hæc blasphemia Spiritus est: ut cum per admirationem operum tantorum Dei nomen detrahare non audeas, generositatem ejus quam confiteri es coactus in nomine, abnegatâ paternæ substantiæ communione decerpas.

<sup>3</sup> Athan. in illud, Quicumque dixerit verbum. tom. i. p. 971.

tians. "Why then," says he, "are we angry at Novatus for taking away repentance, and saying, there is no pardon for those that sin after baptism?" His own opinion he delivers after this manner:<sup>1</sup> "The Pharisees in our Saviour's time, and the Arians in our days, running into the same madness, denied the real Word to be incarnate, and ascribed the works of the Godhead to the devil and his angels, and therefore justly undergo the punishment, which is due to this impiety, without remission. For they put the devil in the place of God, and imagined the works of the living and true God, to be nothing more than the works of the devils. Which was the same thing, as if they had said, that the world was made by Beelzebub, that the sun arose at his command, and the stars in heaven moved by his direction. For as the one were the works of God, so were the other: and if the one were done by Beelzebub, so were the other also. For this reason Christ declared their sin unpardonable, and their punishment inevitable and eternal." In another place he says,<sup>2</sup> "They, who spake against Christ, considering him only as the son of man, were pardonable, because in the beginning of the Gospel the world looked upon him only as a prophet, not as God, but as the son of man: but they who blasphemed his Divinity after his works had demonstrated him to be God, had no forgiveness, so long as they continued in this blasphemy: but if they repented they might obtain pardon: for there is no sin unpardonable with God to them, who truly and worthily repent." And the same is said by the author of the Questions to Antiochus<sup>3</sup> under his name. St. Ambrose also defines this sin to be denying the Divinity of Christ,<sup>4</sup> "Whoever does not confess God in Christ, and Christ to be of God, and in God, deserves no pardon."

Some again make it to consist in denying the Divinity of

<sup>1</sup> Athan. in illud, tom. i. p. 975.

<sup>2</sup> Athan de Communi Essentiâ Trinum Personarum, tom. i. p. 237.

<sup>3</sup> Quæst. et Respons. ad Antioch. q. lxxi. tom. ii. p. 358.

<sup>4</sup> Ambros. Com. in Luc. lib. vii. cap. xii. tom. v. p. 108. Quicumque non confiteatur in Christo Deum, atque ex Deo et in Deo Christum, veniam non meretur.

the Holy Ghost. Thus Epiphanius brings the charge<sup>1</sup> against the *Pneumatomachi*, or Macedonian heretics, whose error consisted particularly in opposing the Godhead of the Holy Ghost, and making him a mere creature. He says, all heresies blaspheme and deny the truth, some more, some less: as these *Pneumatomachi* did, blaspheming the Lord and the Holy Spirit, and having pardon of sins neither in this world, nor the world to come. He shews how they were not pardoned in this world, because their doctrine was condemned by the Church in the Council of Nice, and their persons anathematised or cast out of the communion of the Church. But then as they might be admitted to communion again upon their repentance, so we must suppose, he means their sin was capable of pardon in the next world upon the same condition, and only unpardonable upon the supposition of obstinacy and continuance in it without repentance. St. Ambrose also in his Treatise of the Holy Ghost, writing<sup>2</sup> against the same heretics, charges them as guilty of this blasphemy against the Holy Ghost, for denying the Divinity of his person. And the same charge is brought against them by Philastrius,<sup>3</sup> when he says, “The Lord declared that all sins should be forgiven unto men beside the blasphemy against the heavenly essence of the Holy Spirit.—*Concedi omnia peccata hominibus præter blasphemiam de divini et adorandi Spiritus Essentiâ.*”

Philastrius brings the charge in general against all heresies,<sup>4</sup> as blasphemers of the Holy Ghost. And St. Ambrose does the same,<sup>5</sup> but then he does not assert the sin to be absolutely unpardonable, but exhorts them to return to the Church, with hopes of obtaining mercy and forgiveness.

Others place this sin in a perverse and malicious ascribing the works of the Holy Spirit to the power of the devil.

<sup>1</sup> Epiphanius. Hæres. 74. Pneumatom. n. 14. Athanas. Ep. ad Afric. n. 11.

<sup>2</sup> Ambros. de Spir. Sancto. lib. i. cap. 3.

<sup>3</sup> Philastr. de

Hæres. cap. xx. Bibl. Patr. tom. iv. p. 17.

<sup>4</sup> Philast. Hæres.

Rhetorii.

<sup>5</sup> Ambros. de Pœnitent. lib. ii. cap. 4. Eos

quoque asserit diabolico uti spiritu qui separarent ecclesiam Dei: ut omnium temporum hæreticos et schismaticos comprehenderet, quibus indulgentiam negat. Ibidem paulo post. Revertimini ad ecclesiam, si qui vos separastis impiè; omnibus enim conversis pollicetur veniam, &c.

And some of these suppose the malignity of it to consist in doing this against knowledge and manifest convictions of conscience, which renders them self-condemned, and their sin simply and absolutely unpardonable. The Author of the Questions upon the Old and New Testament, under the name of St. Austin,<sup>1</sup> who is supposed to be one Hilary, a Roman deacon, expressly delivers his opinion after this manner: "The Jews," says he, "did not sin against the Holy Ghost out of ignorance, but maliciousness. For they knew the works, which our Saviour did, to be the true works of God: but to divert the people from believing on him, they pretended, against their own knowledge and conscience, to say, That they were the works of the prince of devils. Upon which account our Lord said to them, 'Ye have the key of knowledge, and ye neither enter yourselves, nor suffer others to enter.' That sentence then was pronounced against the malignant, for whom there is no remedy to be found to bring them to salvation. For this is the greatest of all sins, pretending that to be false, which men know to be true, and denying the wonderful works of God against their own knowledge and conscience."

But in two things this author is singular: 1. In saying the Jews acted against knowledge and conscience. For St. Austin expressly says,<sup>2</sup> "They did it in ignorance, by that blindness, which happened to Israel in part, till the fulness of the Gentiles be come in." And it seems evident from those words of St. Peter in his sermon to them, Acts iii. 17. "I wot, brethren, that in ignorance ye did it, as did also your rulers." 2. In that he makes their sin simply and absolutely unpardonable, which the Ancients generally do not, save only when it is accompanied with insuperable obstinacy and final impenitency, which in the nature of the

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<sup>1</sup> Aug. Quæst. in Vet. et Nov. Test. q. 102. tom. iv. p. 452. Non enim errore peccaverunt in Spiritum Sanctum, sed malevolentia. Scientes enim prudentesque opera quæ viderunt in gestis Salvatoris Dei esse, ut populum à fide ejus averterent, hæc simulabant esse principis dæmoniorum.—Hæc ergo sententia contra malevolos prolata est, quibus remedium inveniri non potest ut salventur. Nihil enim hoc crimine gravius est; fingit enim falsum esse, quod scit esse verum, &c.

<sup>2</sup> Aug. Expos. in Rom.

p. 366. tom. iv.



thing can have no pardon. For all others among the Ancients suppose it possible for men to repent of this sin, and thereby make themselves capable of pardon, though with great difficulty, and that the unpardonableness of it arises from men's own obstinacy and impenitency only, which makes them liable to punishment both in this world and the world to come. Thus St. Chrysostom delivers his opinion in his Comment upon the words of our Saviour.<sup>1</sup> "Is there no remission for those, who repent of their blasphemy against the Spirit? How can this be said with reason? For we know it was forgiven to some, that repented of it. Many of those Jews, which blasphemed the Holy Ghost, did afterwards believe, and all was forgiven them. What is therefore the meaning of it? That it is a sin less capable of pardon than all others. And unless they repented of it (so Anianus translates it) they should be punished in both worlds, and have pardon in neither." Which he observes to be the difference between this kind of sinners and many others. For some sinners are punished both in this world and the next; others only in this world; others only in the next; others neither in this world, nor the next. He gives examples of all these. Some are punished both here and hereafter. As these blaspheming Jews: for they suffered vengeance here in the great calamities which befell them in the destruction of Jerusalem: and hereafter they must undergo intolerable torments, as the men of Sodom, and many others. Some suffer only in the next world, as the rich man, who is tormented in flames, and not master of so much as a drop of water to cool his tongue. Some suffer only in this world, as he that committed fornication among the Corinthians: and others neither in this world, nor the next, as the Apostles, and Prophets, and holy Job, and such like. For their passions were not punishments for their sins, but only exercises and combats to crown them with victory. Now he supposes that blasphemy against the Holy Ghost is a sin of the first kind; that is, one of those, for which men, if they do not timely repent of it, shall suffer both

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<sup>1</sup> Chrys. Hom. xlii. in Mat. xii. p. 391.

here and hereafter, as the men of Sodom; in which respect it is said never to have forgiveness, neither in this world nor the next, because it is punished in both. Vid. Chrys. Hom. iii. in Lazarum. tom. v. p. 69, where he uses the same distinction of sins punished only in this world, or only in the next, or else as the sins of Sodom, punished in both.

Victor of Antioch, who was cotemporary with St. Chrysostom, gives the same account of the unpardonableness, of this sin. He says,<sup>1</sup> “when our Saviour discourses of the sin of blasphemy, he neither determines blasphemy against the Son to be absolutely remissible, nor the blasphemy against the Holy Ghost to be simply irremissible; as if there was no place of repentance left for such blasphemers, when they were disposed to return to a sober mind: but only by drawing a comparison betwixt the one and the other, he shews, that the blasphemy against the Son, ought to be esteemed the lesser of the two, because it seems to be levelled against him only as man.”

Now from what has hitherto been discoursed, it is easy to conceive after what manner the discipline of the Church was exercised upon such sort of blasphemers. For first, if all apostates, and idolaters, and such as denied Christ, or blasphemed him, or denied his Divinity, or the Divinity of the Holy Ghost, and such as fell into heresy or schism, were reputed in some measure to blaspheme the Holy Ghost: then the same punishments that were inflicted on all such offenders, must consequently be reckoned the punishments of those, that blasphemed the Holy Ghost. And since we have seen those punishments under those respective heads before, we need inquire no further after them in this place; but only observe, secondly, That the Ancients, as many

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<sup>1</sup> Victor. Com. in Marc. iii. Bibl. Patr. tom. i. p. 411. Cùm de blasphemie peccato Salvator noster disserit, neque convitium in filium absolute remissibile, neque blasphemiam rursus in Spiritum Sanctum irremissibile simpliciter definire vult: quasi nullus prorsus ejusmodi blasphemis, dummodo ad sanam mentem redire in animum induxerint, pœnitentiæ locus relictus sit; verùm comparatione quâdam inter hanc et illam factâ, indicat eam quæ cadit in filium, tanquam quæ in hominem proximè ferri videatur, multo minorem censi.

at least as went upon this supposition, that the blasphemy against the Holy Ghost was committed in these several crimes, could not imagine it to be a sin simply and absolutely incapable of pardon: because they did not shut the door of repentance to any such offenders, or reckon them altogether reprobate and desperate, but invited them to repent, and prayed for their conversion, and received them again to peace and communion upon their humble confession and evidences of a true repentance. Which argues, that they did not believe the sin against the Holy Ghost to be altogether unpardonable, but only to the impenitent; since they granted pardon to the penitent in this world, and gave them hopes of obtaining pardon from God in the world to come.

It is true indeed, St. Austin, and several others in the Latin Church, seem to say, that this sin is altogether unpardonable both in this world and the next. But if we rightly take their meaning, they differ not at all from the former. For they suppose, that no man perfectly commits the sin against the Holy Ghost, but he that finally dies obdurate, and in resistance to all the gracious motions and operations of the Holy Spirit to the end of his days: in which case, it is but natural to conclude from the nature of the thing, that such men can have no pardon for their sin, neither in this world nor the world to come: not because any thing they do in their life time, makes it an unpardonable sin in itself; but because they wilfully continue impenitent to the last, and so make it impossible and impracticable upon the principles of the Gospel, to obtain pardon either of God or his Church, in this world or the world to come: since the covenant of grace and pardon only respects those, who embrace it in this life, and not such as put off repentance to another world, where they will repent without remedy, or, in the Apostle's words, "find no room for repentance," or change of God's purposes," though they seek it carefully with tears."

In this sense Fulgentius understands our Saviour's words as menacing punishment to those, that obstinately continue in their wickedness, and let judgment overtake them in their sins. He says, "Repentance is of advantage to every

man in this life, whatever time he truly turns to God, *Quamlibet iniquus, quamlibet annosus, although he be the greatest of sinners, although he be grown old in sin*: but if he continue obdurate to the last, there is no mercy for him. For as mercy will receive and absolve those, that are converted,<sup>1</sup> so justice will repel and punish the obdurate. For they are those, who sin against the Holy Ghost, and shall not have remission of sins either in this world or the world to come." The Author of the Book, of True and False Repentance,<sup>2</sup> under the name of St. Austin, says the same, "That they only sin against the Holy Ghost, who continue impenitent unto death. For the Holy Spirit is love, who gives his grace to us as an earnest. He therefore that sins and desires not to recover his grace, nor ever after is concerned to be loved by him, nor seeks to him from whom he received his earnest, sins against the Holy Spirit, and shall never obtain pardon, either living, or after death: but no one sins against the Holy Spirit, that flies unto him for mercy." And therefore he says, "Our Saviour's words to the Jews, were rather an admonition to them, not to continue in sin, because if they went on as they had begun, their blasphemy would lead them unto death." Bacchiarus,<sup>3</sup> an African writer about the time of St. Austin, explains himself after the same manner. He says, "This sin consists in such a despair of God's mercy, as makes men give over all hopes of attaining by the power of God to that state and condition, from which they are fallen. And so consequently go on in sin without repentance to their lives' end."

St. Austin speaks often of this crime, and he places it in a

<sup>1</sup> Fulgent. de Fide ad Petrum. cap. iii. Sicut enim misericordia suscipit absolutitque conversos, ita Justitia repellit, punietque obduratos. Hi sunt, qui peccantes in Spiritum Sanctum, neque in hoc sæculo neque in futuro remissionem accipient peccatorum.

<sup>2</sup> Aug. de Verâ et Falsâ pœnitentiâ, cap. iv. tom. iv. Soli peccant in Spiritum Sanctum, qui impœnitentes existunt usque ad mortem, &c.

<sup>3</sup> Bacchiar. Epist. de Recipiendis Lapsis. Bibl. Patr. tom. iii. p. 133. Dico hoc ipsum, desperare de Domino, in Spiritum esse peccare, quia Dominus est Spiritus, et ideo non remittitur ei, quia non crediderit Dominum reddere sibi posse quod perdidit.

continual resistance of the motions and graces of the Holy Spirit, by an invincible hardness of heart, and final impenitency to the end of a man's days. "Some," says he,<sup>1</sup> "placed it in the commission of mortal sins after baptism, and after having received the Holy Ghost, as doing despite to so great a gift of Christ, by falling into such sins as adultery, murder, apostacy, or separation from the Catholic Church." But this, he thinks, cannot be the meaning of it; because the Church allows room for repentance for all sins, and corrects heretics only with this intent, that they may repent. He says further,<sup>2</sup> that it consists not in denying the Divinity or Person of the Holy Ghost, or believing him to be a creature, unless men persist in these errors to the end of their days. For many Catholic Christians were once Jews, or Pagans, or heretics, such as the Arians, Eno-mians, Macedonians, Sabellians, Patripassians, and Photinians, who all deny either the Divinity or the Personality of the Holy Ghost. And if all these, who speak against the Holy Ghost, have no forgiveness, in vain do we promise or preach to men, that they should turn to God, and obtain peace and remission of sins by baptism, or in the Church. For it is not said, with any exception, this sin shall not be forgiven, save only in baptism: but, "It shall not be forgiven, neither in this world, nor in the world to come." Hence he infers, that it is not all kind of blasphemy against the Holy Ghost, but a particular sort of blasphemy that is thus threatened. And that is, final impenitency, or resisting to the uttermost the gracious offers of remission of sins made by the Holy Ghost.<sup>3</sup> "This impenitency, is the blasphemy, that has neither remission in this world; nor in the world to come. But of this impenitency no one can judge, so long as a man lives in this life. We are to despair of no man, so long as the patience of God leads him to repentance, and does not snatch away the sinner out of life, who would not the death of a sinner; but rather that he should return and live. A man is a pagan to day; but how know-

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<sup>1</sup> Aug. Serm. xi. de Verbis Domini. cap. iv.

<sup>2</sup> Ibid. cap. iii.

<sup>3</sup> Ibid. cap. xiii.

est thou, but that he may become a Christian to morrow? To day he is an unbelieving Jew: but what if to morrow he should believe in Christ? To day he is an heretic: but what if to morrow he should embrace the catholic truth? To day he is a schismatic: but what if to morrow he should return to the peace of the Church? What if they, whom you mark as immersed in any kind of error, and damn as desperate, should repent, before they end this life, and find true life in the world to come? Judge nothing, brethren, before the time. For this blasphemy of the Spirit, which has no remission, and which we have shewn to be a persevering hardness of an impenitent heart, cannot be descried in any man whilst he continues in this life." At last he concludes,<sup>1</sup> "There is but one way to avoid the condemnation of this unpardonable blasphemy, which is, to beware of an impenitent heart, and to believe that repentance profits not but only in the Catholic Church, where remission is granted, and the unity of the spirit is preserved in the bond of peace." St. Austin often repeats this notion,<sup>2</sup> and he gives the same account of what the Apostle calls the sin unto death, for which he forbids men to pray. He says, "It means that hardness and impenitency of heart, whereby men obstinately reject faith, and charity, and remission of sins to their last hour." And whereas he had seemed to say in one place,<sup>3</sup> "That this blasphemy consisted in a malicious and envious opposition to brotherly charity, after a man had received the grace of the Holy Ghost:" he explains this in his *Retractions*,<sup>4</sup> saying, there ought to be

<sup>1</sup> Aug. Ser. xi. de Verbis Domini. cap. xxiv. <sup>2</sup> De Cor-  
rept. et Gratia. cap. xii. Ego dico id esse peccatum ad mortem, fidem quæ  
per dilectionem operatur, deferere usque ad mortem. It. Ep. l. p. 88. Hoc  
est autem duritia cordis usque ad finem hujus vitæ, quæ homo recusat in  
unitate corporis Christi, quod vivificat Spiritus Sanctus, remissionem acci-  
pere peccatorum. Enchirid. cap. lxxxiii. Qui in ecclesiâ remitti peccata  
non credens, contemnit tantam divini muneris largitatem, et in hæc obstina-  
tione mentis diem claudit extremum, reus est irremissibili peccato in Spiritum  
Sanctum, in quo Christus peccata dimittit.

Dom. in Monte. lib. i. cap. xxii. <sup>3</sup> Aug. de Serm.

cap. 19. Sed tamen addendum fuit, si in hæc tam secleratâ mentis perversitate  
finierit hanc vitam; quoniam de quoocunque pessimo in hæc vitâ constituto  
non est utique desperandum, nec pro illo imprudenter oratur, de quo non  
desperatur. <sup>4</sup> Retract. lib. i.

added this condition, if he ends this wicked perverseness of mind : because we are not to despair of the very worst man, while he continues in this life ; neither is there any imprudence in praying for him, of whom we do not despair. He confirms this notion again at large in his Commentary upon the Epistle to the Romans. Where he first gives this description of it :<sup>1</sup> " That man sins against the Holy Ghost, who despairing, or deriding, or contemning the preaching of grace, by which sins are washed away, and the preaching of peace, by which we are reconciled to God, refuses to repent of his sins, and resolves to continue hardening himself in the impious, and deadly sweetness of them, and therein persists to his last end." He then shews by great variety of instances, that any other blasphemy against the Spirit is capable of pardon, except this, which includes obduration to the last. The Pagans daily blaspheme the whole Trinity and the whole system of the Christian religion : and yet the Church makes no scruple to receive them to pardon of sins by baptism upon their conversion. The Jews are charged by Stephen for resisting the Holy Ghost, and yet Paul, who was then one of the number of those, whom he so charged, was afterwards filled with the same spirit, which he had resisted. The Samaritans opposed the Holy Ghost, and yet both Christ and his Apostles attest to the conversion of many of them. Simon Magus had conceived very ill opinions of the Holy Spirit, so as to think his gifts might be purchased with money ; yet St. Peter did not despair of him, so as to leave him no room for pardon, but kindly admonished him to repent. Neither does the Catholic Church shut the gate of pardon to any heretics or schismatics, or leave them without hopes of appeasing God, upon their correction and amendment : though some of them deny the very being and person of the Holy Ghost ; others

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<sup>1</sup> Aug. Expos. in Rom. i. tom. iv. p. 363. Ille peccat in Spiritum Sanctum, qui desperans vel irridens atque contemnens prædicationem gratiæ, per quam peccata diluuntur, et pacis, per quam reconciliamur Deo, detrectat agere pœnitentiam de peccatis suis, et in eorum impiâ atque mortiferâ quâdam suavitate perdurandum sibi esse decernit, et in finem usque perdurat.

make him a mere creature, and deny his Godhead; others make the substance of the whole Trinity mutable and corruptible; others deny the mission of the Holy Ghost upon the Apostles, and make his first descent to be upon Montanus; and others despise his sacraments, and rebaptise those, who were baptised before in the name of the Father, Son, and Holy Ghost. Nay, he thinks some of those very Jews, to whom our Saviour gave a caution against this crime, afterward repented of their blasphemy, though proceeding from envy and malice: and that St. Paul may be reckoned one of that number; being a blasphemer, and a persecutor and injurious, as they were, in ignorance and unbelief; and putting himself in the number of those, who were sometimes foolish, disobedient, deceived, serving divers lusts and pleasures, living in envy and malice, hateful and hating one another. If, therefore, neither Pagans, nor Hebrews, nor heretics, nor schismatics, yet unbaptised, are precluded from the sacrament of baptism, whatever opposition they have made to the Holy Ghost before, if they sincerely repent, and condemn their former life; if also they, who have attained to the knowledge of the truth, and are baptised, may, after they have fallen into sin and resisted the Holy Ghost, be restored to the peace of God by repentance; finally if they, to whom our Saviour objected blasphemy against the Holy Ghost, might repent and be healed by flying to the mercy of God: what remains, but that by the sin against the Holy Ghost, which our Lord says, "Is never forgiven neither in this world nor the world to come," we should understand nothing else but perseverance in malignity and wickedness, with despair of the indulgence and mercy of God? For this is to resist the grace and peace of the Spirit, of which we are speaking. He says also, that our Saviour in the same place, where he reproves the Jews for their blasphemy, intimates, that the door of repentance and amendment was not yet shut against them, when he says, "Either make the tree good, and its fruit good; or else make the tree evil, and its fruit evil." Which

<sup>1</sup> Aug. Expos. in Rom. i. tom. iv. p. 366. Quid aliud restat, nisi ut peccatum in Spiritum Sanctum, quod neque in hoc seculo neque in futuro dimitti Dominus dicit, nullum intelligatur nisi perseverantia in nequitia et malignitate cum desperatione indulgentiæ Dei? &c.



could not with any reason have been said to them, if now for that blasphemy they could not have changed their mind for the better, and have brought forth the fruit of good works, or should in vain have brought them forth without remission of their sin. He therefore concludes, that they had not yet committed fully the unpardonable sin, but only begun it, in saying, "That he cast out devils by Beelzebub," and that Christ admonishes them not to complete it, by resisting his grace and peace, either by despairing of pardon, or presuming on their own righteousness, or continuing impenitent, and persevering in their sins: for this was to speak the blasphemous word against the Holy Ghost, by which Christ wrought those miracles to bring them to his grace and peace. He observes here, that to speak blasphemy against the Holy Ghost, is not put to denote barely the uttering it with the tongue, but the conceiving it in the heart, and expressing it in actions. For as they are not properly said to confess God, who do it only with the sound of their lips, and not with their good works: so he, who speaks the unpardonable word against the Holy Ghost, is not presumed to say it perfectly, unless he do, as well as say it: that is, despair of the grace and peace, which the spirit gives, and resolve to persevere in his sins. That as the others deny God in their works, so these say by their works, that they resolve to persevere in an evil life and corrupt morals, and so say, and so do, that is, continue in them to the end of their days. Which if they do, what needs any one wonder that their blasphemy should be unpardonable? Or who is it now, that cannot understand both that the Lord Jesus by that commination called the Jews to repentance, that he might grant them grace and peace by their believing on him: and also how it becomes impossible, that they should have pardon either in this world or the world to come, who resist this grace and peace, and after this manner speak the word of blasphemy against the Holy Ghost, that is, by a desperate and impious obstinacy of mind, persevere in their sins, and proudly resist God without any humility of confession or repentance?

This was St. Austin's constant and invariable sense of

this matter, out of which the Schoolmen, I know not how, have raised six several species of blasphemy against the Holy Ghost, viz. despair, presumption, final impenitency, obstinacy in sin, opposing and impugning the truth, which a man knows, and envious malice against the grace of the brethren: whereas nothing can be plainer, than that St. Austin resolves the whole matter into obstinacy in opposing the methods of divine grace, and continuing in this obduration finally without repentance. Other sins may lead the way to this blasphemy, in word or action, as infidelity or reviling the Spirit in Jews or heathens; or heresy, or schism, or an immoral life in Christians after baptism: but all this is only inchoative blasphemy, which does not render it absolutely unpardonable: for many of all these sorts have repented and obtained pardon: but when men continue obstinate in any of these sins, and finally die impenitent in them, then their sins become punishable in both worlds, and pardonable in neither; not for want of mercy in God or his Church, but for want of repentance and capacity in the subject.

And by this account it is easy now to determine what sort of punishments and ecclesiastical censures were inflicted on this crime, as well in the first rise and beginning, as in the progress and consummation of it. The same punishment, that was laid upon idolatry, or apostacy, or denying the Divinity of Christ, or the Holy Spirit, or lapsing into any great immorality, or other blasphemy after baptism, was laid upon this sin of blaspheming the Holy Ghost: because it usually began in some of these notorious misdemeanours; of which if men truly repented, the door of mercy was still open to them, and the Church was ready to receive them again to communion: but if they continued obdurate all their lives, and died in their impenitency; as this was esteemed the consummation of the great sin against the Holy Ghost, and properly the sin unto death; so it could have no forgiveness in this world, nor the world to come. They died excommunicate, and so had neither the solemnity of a Christian burial nor the suffrages of the Church after death; being struck out of her Diptychs, and no memorial ever after made of them, as of persons desperate, and entirely out of God's favour.

I have been the longer in explaining the sense of the Ancients upon this point, not only because it is not very commonly known, but also because it may be of use, both to caution ungodly men against the danger of final impenitency, which is the consummation of the blasphemy against the Holy Ghost; and likewise serve to comfort the pious, who need be in no concern about the commission of this sin, so long as they truly repent of all sin, and desire to please God in the constant tenour of an holy life. For this sin cannot consist with a true repentance: and though men have begun in any degree to commit it, yet according to the general sense of the Ancients, they are still capable of pardon, if they do not render it unpardonable by their own obstinacy and wilful impenitency to the hour of death, after which it can have no forgiveness in this world or the world to come.

SECT. 4.—Of profane Swearing. All Oaths not forbidden.

The next transgression of the third commandment, which they punished with ecclesiastical censure, was profane swearing, or reproaching and dishonouring the name of God by oaths and execrations. By which they did not mean all oaths in general, nor yet any single act of rash and hasty swearing, unless attended with some other aggravating crime or circumstance of apostacy, idolatry, perjury, or the like, but only the habit and custom of profane swearing. Chrysostom indeed, and some others, in their sharp invectives against common swearing seem sometimes to carry the matter so far, as to deny the lawfulness of all oaths to Christians in any case whatsoever.<sup>1</sup> But whatever private opinions some few might have of this matter, in which they were not constant or consistent with themselves, as learned men have observed:<sup>2</sup> it is certain there never was any public rule of the Church to forbid this, and much less to make it the subject of ecclesiastical censure. The generality of Christians always

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<sup>1</sup> Vid. Sixtum Senensem Bibliothec. lib. vi. annot. 26. where all such passages are collected.

<sup>2</sup> Cave. Prim. Christ. part. iii. cap. i.

esteemed the taking of an oath in necessary cases for confirmation of truth, to be a very lawful thing, as appears both from the laws themselves, ecclesiastical as well as civil, and from general practice. One of Constantine's laws is confirmed with a solemn oath in the very body of it, where he promises to encourage any one, that shall give just information against the corrupt practices of his ministers,<sup>1</sup> with this formal asseveration, "As the Most High God shall be merciful to me, and preserve me in safety, according to my desire, in the flourishing state of the commonwealth." Nothing was more usual than the taking of oaths for confirmation of contracts, as is evident from that famous law of Arcadius,<sup>2</sup> which inflicts many severe penalties upon all, that violate their contracts made in the name and confirmed by the authority of Almighty God: and also on such, as broke their contracts, which they confirmed by an oath taken in that peculiar form of swearing by the Emperor's safety. Which was an usual form of an oath among Christians, as ancient as Tertullian, who mentions it in answer to an objection made by the heathen against them, as if they were enemies to the government, and guilty of treason, because they refused to swear by the Emperor's genius: to this he replies,<sup>3</sup> "that though they did not swear by the Emperor's genius, yet they made no scruple to swear by the Emperor's safety, a thing more august than all the genii in the world. For the genii were nothing but devils. In the Emperors they acknowledged God's institution and authority, who set them over the nations: and therefore they desired their safety and preservation, as God's appointment, and made a great and solemn

<sup>1</sup> Cod. Theod. lib. ix. tit. i. de Accusation. leg. 4. Ita mihi summa divinitas semper propitia sit, et me incolumem præstet, ut cupio. felicissimâ et florente republicâ.

<sup>2</sup> Cod. Theod. lib. ii. tit. 9. de Pactis. leg. 6. Si quis adversus pacta putaverit esse veniendum, non implendo promissa ea quæ invocato nomine Dei Omnipotentis, eo Auctore solidaverit, inuratur infamia, &c. Eos etiam hujus liti vel jacturâ dignos jubemus esse vel inunere, qui nomina nostra placitis inserentes, salutem principum confirmationem initarum esse juraverint pactionum. <sup>3</sup> Tertul. Apol. cap. xxxii. Sed et juramus, sicut non per genios Cæsarium, ita per salutem eorum, quæ est augustior omnibus geniis, &c.

oath of that: but for the dæmons, or genii, they were used to abjure them, in order to cast them out of the bodies of men, not to swear by them, and thereby confer divine honour upon them." Athanasius mentions the same form as used in his time, both by the Catholics, and by Syrianus the prefect of Egypt, telling Constantius,<sup>1</sup> that he swore by his safety. And the like instances are given by Sozomen,<sup>2</sup> and Zosimus,<sup>3</sup> the heathen historian. In the collation of Carthage, Marcellinus, the Emperor's commissioner, who was appointed to hear the debate between the Catholics and the Donatists in the time of Honorius, at the entrance of the dispute promised both sides upon oath by the admirable mystery of the Trinity, and the sacrament or mystery of the divine incarnation,<sup>4</sup> and the safety of the Emperors, that he would judge truly according to the allegations of the parties. And the same form was observed in the military oath taken by the soldiers, when they entered upon the muster-roll, as we learn from Vegetius, who lived in the time of the younger Valentinian: he says,<sup>5</sup> they swore by God, by Christ, and the Holy Spirit, and the majesty of the Emperor, which next to God is to be loved and honoured by mankind. In many other cases the law required men to swear upon weighty concerns. Constantine required every witness to take an oath before he gave his testimony in any cause.<sup>6</sup> And Justinian not only confirmed this in his Code,<sup>7</sup> but added several other cases, in which not only witnesses, but also both the plaintiff and defendant, and the advocates were to take their several oaths upon the Gospels. And this was called, *Juramentum de calumniâ*, the oath of calumny,<sup>8</sup> where the plaintiff was particularly obliged before

<sup>1</sup> Athan. Epist. ad Monachos. tom. i. p. 866. Vide Athan. Apol. ad Constant. tom. i. p. 689.

<sup>2</sup> Sozom, lib. ix. cap. 7.

<sup>3</sup> Zosim. Hist. lib. v.

<sup>4</sup> Collat. Carth. die. i. cap. v. Per

admirabile mysterium Trinitatis, per incarnationis Dominicæ sacramentum, et per salutem principum, quod veri invenerit fides, judicaturum me esse promitto.

<sup>5</sup> Veget. de Re Militari, lib. i. cap. 5.

<sup>6</sup> Cod. Theod. lib. xi. tit. xxxix. leg. 3. Jurisjurandi religione testes prius quam perhibeant testimonium, jandudum artari præcipimus.

<sup>7</sup> Justin. Cod. lib. iv. tit. 20. de Testibus. leg. 9.

<sup>8</sup> Cod.

Justin. tit. 59. de Jurejurando propter Calumniam. leg. 1 and 2.

he could prosecute his action, to swear, that he did not bring his action against his adversary with any design to *calumniate* him, but because he thought he had a just and righteous cause: and the defendant was to take a like oath before he could give in his answer. They were likewise obliged by another law to swear,<sup>1</sup> that they had given no bribe to the judges or any other person, nor promised to give any, nor would hereafter give any. And it has been observed before,<sup>2</sup> that to prevent simony in elections to ecclesiastical preferments, the electors were obliged by the same laws of Justinian<sup>3</sup> to depose upon oath, that they did not chuse the party elected either for gift, promise, or friendship, or any other reason, but because they knew him to be in every respect well qualified for such a station. And the party ordained was likewise to take an oath,<sup>4</sup> upon the Holy Gospels, at the time of his ordination, that he had neither given by himself, or other, nor promised to give, nor would hereafter give to his ordainer, or to any of his electors, or any other persons any thing to procure him an ordination. And for any bishop to ordain another bishop without observing this rule, is deposition by the same law both for the ordained and his ordainer. Which shews also, that the injunction of taking necessary oaths did not only bind in secular and civil affairs but in ecclesiastical and sacred likewise. And here not to insist upon all that is said in private writers; as Athanasius requiring of Constantius,<sup>5</sup> that his accusers might be put to their oath; and Evagrius, archdeacon of Constantinople,<sup>6</sup> swearing upon the Holy Gospels; and what is said by St. Austin,<sup>7</sup> and many others in justification of this practice in necessary cases: I only observe that in some Councils oaths are expressly required by general and provincial Councils in many cases. The oath of fidelity to kings is required by the fifth Council of Toledo,<sup>8</sup>

<sup>1</sup> Justin. Novel. 121. cap. i.

<sup>2</sup> Chap. vi. sect. 28.

<sup>3</sup> Justin. Novel. 123. cap. i.

<sup>4</sup> Justin. Novel. 137. cap. ii.

<sup>5</sup> Athan. Apol. ad Constantium. tom. i. p. 678.

<sup>6</sup> Sozomen.

lib. vi. cap. 30.

<sup>7</sup> Aug. Ep. 154. ad Publicolan. Ser. xxx.

de Verbis Apostoli. lib. i. de Serm. Dom. cap. xxx. Greg. Naz. Ep. 219. ad Theodorem. Basil. in Psal. xiv. tom. i. p. 133. Hieron. in Mat. v.

<sup>8</sup> Con. Tolet. v. can. 2. Hoc quod divinis sacramentis spondimus, &c.

to be taken by all, both clergy and laity. And a reference is made to a former Council of all Spain, where the same oath was established. That is, the fourth Council of Toledo, where a complaint is made,<sup>1</sup> of many nations breaking the oath of fidelity taken to their kings: which, they rightly observe, destroys their credit with all nations in matters of leagues and treaties about peace and war. For what enemy can depend upon their promises, though given upon oath, who do not preserve the faith, which they swear to their own kings? Such violation of oaths and fidelity to their kings, is sacrilege: because it is not only a breach of compact against them, but against God, in whose name the promise is made. The same Council,<sup>2</sup> takes notice of kings promising upon oath to pardon criminals in some special cases. And the eighth Council of Toledo, mentions many cases, in which it was usual to confirm matters with a solemn oath;<sup>3</sup> as the making of leagues; the settling of lasting and inviolable friendship; the taking of the evidence and depositions of witnesses in law; and in want of such evidence, the allowing a man to clear his own innocence by an oath of purgation. And in the sixth general Council, held at Constantinople, Georgius Chartophylax is appointed several times to take his corporal oath by the Holy Scriptures and God, that speaks in them,<sup>4</sup> concerning certain things, the truth of which he was to attest before the Council. From all which it is evident, that the ancient Christians thought it a very lawful thing to ratify and confirm their faith by the formality of an oath, upon just and necessary occasions: and consequently, that there could be no rule to prohibit it, much less to make it a crime worthy of ecclesiastical censure.

<sup>1</sup> Con. Tolet. iv. can. 74. Quæ in hostibus jurata sponsio stabilis permanebit, quando nec ipsis propriis regibus juratam fidem conservant?—Sacrilegium quippe est, si violetur à gentibus regum suorum promissa fides: quia non solum in eos sit pacti transgressio, sed et in Deum, in cujus nomine pollicetur ipsa promissio, &c.

<sup>2</sup> Ibid. can. xxx. Jurejurando supplicii indulgentia promittitur.

<sup>3</sup> Con. Tolet. viii. can. ii. Omne quod in pacis fœdera venit, tunc solidius subsistit, cum juramenti hoc interpositio roborat, &c.

<sup>4</sup> Con. vi. C.P. act. xiii. p. 378. Edit. Græc. Georgius Chartophylax juravit hoc modo: Per has sanctas Scripturas, et Deum qui per eas locutus est, &c. It. Act. xiv. p. 382.

## SECT. 5.—But only the Custom of vain and common Swearing.

Neither was it every single act of vain and common swearing, that brought a man under public discipline. For though every such act was esteemed a crime, yet it was not like the single act of apostacy or idolatry, or murder or adultery, but it must be a custom or habit of this vice, that made a man liable to the severity of excommunication. Tertullian<sup>1</sup> says expressly, that every rash and vain oath did not bring a man under the discipline of public penance, but was reckoned among the sins of daily incursion, for which private repentance was appointed. And St. Chrysostom, who is most vehement and severe against this vice, does not threaten men with excommunication for every single act of it, but for obstinate continuance in the custom and practice of it after sufficient admonition. Having preached a whole Lent against swearing to the people of Antioch, he thus concludes his last discourse:<sup>2</sup> “The forty days of Lent are already past; if Easter passes likewise without reforming this wicked custom, I will thenceforward pardon no man, nor use any longer admonition, but commanding authority, and sharpness not to be despised. It is no just apology in this case to plead custom. For why may not the robber as well plead custom, and thereby excuse himself from punishment? and why may not the murderer and adulterer do the same? Therefore I protest and denounce beforehand, that if I apprehend any, who have not corrected this vice, I will inflict punishment upon them, and order them to be excluded from the participation of the holy mysteries.” So again, in another Homily,<sup>3</sup> to the people of Antioch: “For this sin we mourn and lament: but if I find any to persist in it, I will exclude them from entering the doors of the Church, and partaking of the heavenly mysteries. Nor let any one think to insult me by the help of his riches or power. Those things are no more to me than a mere fable, a shadow, or a

<sup>1</sup> Tertul. de Pudicit. cap. xix. See before, chap. iii. sect. 14.

<sup>2</sup> Chrys. Hom. xxii. ad Pop. Antioch. tom. i. p. 294.

Hom. xvii. in Mat. p. 182.

<sup>3</sup> Chrys.



dream. No rich man will be able to be my advocate, when I am accused before God's tribunal, that I did not with all my power and might assert and vindicate the laws of God, by punishing the transgressors of them."

SECT. 6.—And Swearing by the Creatures.

Another transgression of this command, was swearing by the creatures. The fourth Council of Carthage orders a clergyman,<sup>1</sup> that was found guilty of this crime, to be first sharply reprov'd, and if he persist in his fault, to be excommunicated. St. Jerom says,<sup>2</sup> our Saviour prohibited it in those words, "Thou shalt not swear by heaven, nor by earth, nor Jerusalem, nor by thy head." And there goes a decree under the name of Pope Pius I.<sup>3</sup> which forbids men not only to swear by the hair, or head of God, or any other such blasphemous oaths, but by the creature, under the penalty of excommunication.

But because this may seem to contradict what they said before, that a man might lawfully swear by the Emperor's safety; we are to consider, that in such oaths they did not properly swear by the creatures, invoking them as witnesses of the truth of what they said, but only naming them with some relation to God, by whom they swore. Which, as learned men observe,<sup>4</sup> may lawfully be done two ways.

1. In execratory oaths, when a man devotes any creature, in which he himself has some right and property, and as it were oppignorates it to the severe vengeance of God, the Judge, if he swear falsely. Thus a man may in a serious

<sup>1</sup> Con. Carth. iv. can. 61. Clericum per creaturas jurantem, acerrimè objurgandum. Si perstiterit in vitio, excommunicandum.

<sup>2</sup> Hieron. in Mat. v. Considera quod hic Salvator non per Deum jurare prohibuerit, sed per cælum, et terram, et Hierosolyman, et per caput tuum.

<sup>3</sup> Ap. Gratian. caus. xxii. quæst. i. cap. 16. Si quis per capillum Dei vel caput juraverit, vel alio modo blasphemiâ contra Deum usus fuerit; si ecclesiastico ordine est, deponatur; si laicus, anathematizetur. Et si quis per creaturam juraverit, acerrimè castigetur, &c.

<sup>4</sup> Vid. Rivet. in

Decalog. p. 126.

matter devote his head, his soul, his children, or any other thing belonging to him, if he knowingly forswear himself. Such examples of oaths we have in Scripture, which respect God always directly as witness and judge; and the creature only as something dear to us, which we are willing to pawn, to certify our neighbour thereby, that we intend not to deceive him, to the destruction of ourselves, or any things, that are highly valued by us. Thus David swears, Psal. vii. 5. "If I have I done any such thing, O Lord, my God, or if there be any wickedness in my hands, then let my enemy persecute my soul." So St. Paul, 2 Cor. i. 23. "I call God for a record upon my soul." And thus men were used to swear by their head, devoting it to a curse, if they wittingly falsified. This way of using the name of a creature in an oath is reputed lawful; because this is not properly the oath, but only an appendix of it.

2. The other way of mentioning the creatures in an oath, without swearing by them, is, when by a testification of the civil respect and affection they have for them, they likewise signify in the presence of God, the truth of what they say to men, that it is as certainly true, as they certainly and undoubtedly wish the wealth and prosperity of such a creature or person. Thus Joseph, when he swore by God, mentioned the life of Pharaoh, Gen. xlii. 15. which the Vulgar Latin renders, "*Per salutem Pharaonis*," from the Septuagint, "Νῆ τὴν ὑγιειαν Φαραῶν,—*by the safety of Pharaoh*:" which is the same form, that, as we have seen before, the primitive Christians used, when they inserted the words, "*Per salutem Imperatoris*," into their ordinary oaths conceived in the name of God only. For neither of these intended to swear by the creatures, but to testify in the presence of God, that what they asserted was as certainly true, as they wished the safety of Pharaoh, or the Emperor, or as certainly as they were in health and in being. For such forms may be taken either by way of prayer, or asseveration and protestation; where the protestation is plainly expressed, but that which is properly the oath in the name of God is covertly understood. And in this sense both the ancient Christians and Joseph are to be

understood. For as St. Basil observes,<sup>1</sup> there are some modes of expression, which seem to be oaths, but are not properly oaths, but only asseverations, to confirm the truth to men: he instances in that of Joseph, who swore, *Νῆ τὴν ὑγίειαν Φαραῶ,*—*by the safety of Pharaoh.*”

SECT. 7.—And by the Emperor’s Genius, and Saints and Angels.

But the case was otherwise when men swore directly by any creatures, as judges and revengers of their thoughts, if they were false and perfidious in their deposition. Therefore, though the Christians admitted the naming of the Emperor’s safety in their oaths, they would never swear by the Emperor’s genius, because this was idolatry, and in effect apostatising to heathenism, and renouncing the Christian religion. The persecutors required no more of them but this, as a testimony of their renunciation. In the Passion of Polycarp, recorded by Eusebius,<sup>2</sup> the proconsul required him frequently to swear by the Emperor’s genius: to which he constantly replied, “That he was a Christian.” So in the Acts of the Scyllitan Martyrs in Afric,<sup>3</sup> the judge bids them only swear by the Emperor’s genius, and that should pass for an acknowledgment of the gentile religion: but they answered, “We know nothing of the Emperor’s genius, but we worship and serve the God of heaven.” The like is said by Origen,<sup>4</sup> “We swear not by the Emperor’s fortune or genius: for whether fortune be only a casual thing, as some repute it, we swear not by that as a God, which is nothing in the world, lest we should apply the power of an oath to that, which we ought not; or whether fortune be one of the dæmons, as others say, we rather chuse to die, than swear by an impious and wicked devil.”

<sup>1</sup> Basil. in Psal. xiv. tom. i. p. 133.

<sup>2</sup> Euseb. lib. v. cap.

xv. p. 131. Ὁμοσον τὴν Καίσαρος τυχήν.

<sup>3</sup> Acta

Mart. Scyllitan. ap. Baron. an. 202. n. 2. Proconsul. dixit: Tantum jura per genium regis nostri. Speratus dixit, Ego imperatoris mundi genium nescio, sed cœlesti Deo meo servio.

<sup>4</sup> Orig. cont. Cels.

lib. viii. p. 421.

The like is said by Minucius,<sup>1</sup> “ That it was peculiar to the heathens to swear by the Emperor’s genius, that is, his dæmon; and that it was safer to forswear themselves by the genius of Jupiter, than the genius of the Emperor.” Tertullian says,<sup>2</sup> “ Christians absolutely refused to swear by this form, though they scrupled not to swear by the Emperor’s safety. But the heathen rebels were used to swear by the Emperor’s genius,<sup>3</sup> at the same time that they were plotting treason against him;” which he frequently retorts upon them, because they were used to charge Christians as traitors,<sup>4</sup> because they would not swear by the Emperor’s genius. The nature of this crime then, we see, was plainly idolatry, and apostacy, in giving divine honour to a dæmon, instead of God, and thereby renouncing at once the Christian religion. Whatever penalties therefore were imposed on idolaters and apostates, the same we may conclude to have been the punishment of those, who in times of persecution complied with the demands of the heathen, to swear by the Emperor’s genius or dæmon, which was to give divine honour to creatures, and the worst of creatures, the apostate angels, who were in professed rebellion against God.

To swear by good angels, or saints, or the Virgin Mary, or their images and relics, though it had a more specious pretencé, was not much short of the former vice. For all divine worship being appropriated to God by the doctrine of the Ancients; and the taking of an oath being one solemn act of that worship; they were no more disposed to swear by an angel or a saint than by the Emperor’s genius, or any other thing, that might reasonably be interpreted a conferring the honour of God upon the creature. Therefore Optatus objects it to the Donatists, as a great piece of inso-

<sup>1</sup> Minuc. p. 88. Genium, id est, dæmonem ejus implorant; et est eis tutius per Jovis genium pejerare quàm regis.

<sup>2</sup> Tertul. Apol. cap. xxxii.

<sup>3</sup> Ibid. cap. xxxv. Unde Cassii, et Nigri, et Albini? Omnes illi sub ipsâ usque impietatis eruptione et sacra faciebant pro salute imperatoris, et genium ejus dejerabant. It.

Lib. ad Scapulam. cap. li.

<sup>4</sup> Tertul. ad Na-

tiones. ib. i. cap. 17.

lence and impiety,<sup>1</sup> “ That whereas men ought to swear only by God alone, Donatus suffered those of his party to swear by himself as a God.” And his successors as greedily embraced this honour. For Optatus charges the same impiety upon them all in general:<sup>2</sup> “ The people swear by you, and are now commonly known to put your persons in the place of God. Men are used to name the name of God in oaths to confirm their faith or veracity: but while they swear by you, there is no mention of God or Christ among your party. If divine religion be transplanted from heaven to you, seeing men swear by your name, why do you not assume the power of preventing all diseases in yourselves, and those of your party? Let no one die: command the clouds: rain, if you can: that men may swear more perfectly by your name, and take no notice of God. ‘*O Sacrilegium Impietati commixtum,—O the sacrilege and impiety that concurs together in your actions,*’ whilst you willingly hear men swear by your names, and let not the name of God be once mentioned in your ears.” He says further,<sup>3</sup> “ That they were used to swear by their pretended martyrs, though they were men that suffered for their crimes, and not for the cause of religion, by which it is evident, that in the time of Optatus, to swear by the name of a man, whether living or dead, was reckoned no less a crime than sacrilege and impiety, as transferring the honour of God upon the creature. And consequently, the same punishment, that was due to sacrilege and impiety, must be supposed to be the punishment of this crime in all those, that were guilty of it; though weread of few besides these heretics in those days, that were disposed to run into it, till the worship of saints, and angels, and the Virgin Mary, began to creep into the Church; and then together with that corruption came in

<sup>1</sup> Optat. lib. iii. p. 65. Cùm per solum Deum soleant homines jurare, passus est homines per se sic jurare, tanquam per Deum.

<sup>2</sup> Lib. ii. p. 58. Populus vester per vos jurant, et personas vestras jam pro Deo habere noscuntur, &c.

<sup>3</sup> Optat. lib. iii. p. 69. Quos vos inter martyres ponitis, per quos, tanquam per unicam religionem, vestræ communionis homines jurant.

this other of joining the Virgin Mary, and the archangels Michael and Gabriel, in the same oath with God. The form of which sort of oaths, we have in one of Justinian's Novels,<sup>1</sup> which obliges every governor of a province to take an oath of allegiance, and an oath against bribery, or corrupt entrance into his office, in this form: I swear by God Almighty and his only begotten son our Lord Jesus Christ, and the Holy Ghost, and the most holy glorious mother of God, and ever Virgin Mary, and by the four Gospels, which I hold in my hand, and by the holy archangels Michael and Gabriel, that I will keep a pure conscience, and pay faithful and true allegiance to their most sacred majesties Justinian and Theodora his consort, who put me into this office. And I swear by the same oath, that I neither gave, nor will give, nor promised to give any thing to any one whatsoever for his patronage or assistance in procuring me this administration; but as I received it without bribery, so I will execute it with with purity, being content with the public salary, that is appointed me." The matter of this oath is exceeding good, but it must be confessed, the form of it is a deviation from the purity and simplicity of former ages, when oaths were only made in the name of God, as a speciality of divine worship peculiarly belonging to him. This is the first instance I remember of any oath of this kind allowed in the Church: and it serves to shew in how short a time corruptions may gain ground by authority; for that which was reputed sacrilege and impiety in the time of Optatus, was now become an instance of singular devotion to the archangels and the Virgin Mary. There are many other things might be noted concerning oaths; but here I only speak of such things, as relate to the discipline of the Church.

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<sup>1</sup> Justin Novel. ix. Juro ego per Deum Omnipotentem, et Filium ejus Unigenitum Dominum nostrum Jesum Christum, et Spiritum Sanctum, et per sanctam gloriosam Dei Genetricem et semper Virginem Mariam, et per quatuor evangelia, quæ in manibus meis teneo, et per sanctos archangelos Michaellem et Gabrielem, puram conscientiam, germanumque servitium me servaturum sacratissimis nostris dominis Justiniano et Theodoræ conjugii ejus, &c.

## SECT. 8.—Of Perjury, and its Punishment.

The next great crime, that might be committed against the name and majesty of God, was perjury; which might be committed either at the time of taking the oath, by swearing to a false thing, or swearing to do some wicked or unlawful thing; or else afterward, by not performing what a man lawfully might, when he was solemnly engaged upon oath to do it. He, that swore to do an unlawful thing, as suppose to live in perpetual enmity with another man, and never be reconciled to him, was by the Council of Lerida<sup>1</sup> to be east out of communion a whole year for his perjury, and obliged to repent of his unlawful oath, and be reconciled to his brother. For in this case, as the Fathers and Canons determine,<sup>2</sup> the unlawful oath was not to be kept, lest it should involve him, like Herod, in a double or triple sin; but he was to rescind his oath, and repent of his perjury, which was better than to add one sin to another, under pretence of piety and religion. In this case the penance was so much the shorter, because men were supposed by some hasty passion to be involved rashly in this guilt, and not by any settled consideration.

But in other cases, perjury in attesting a false thing, or not performing a lawful oath, was more severely treated. For Chrysostom reckons perjury in the same class with murder, fornication, and adultery.<sup>3</sup> And St. Basil imposes eleven years penance upon those, that were guilty of it:<sup>4</sup> the perjured person shall be a mourner two years, an hearer three, a prostrator four, a co-stander one. The first Coun-

<sup>1</sup> Con. Herdens. can. vii. Qui Sacramento se obligaverit, ut litigans cum quolibet, ad pacem nullo modo redeat, pro perjurio uno anno à communione sanguinis et corporis Domini segregatus, reatum suum fletibus, eleemosynis, et quantis protuerit jejuniis absolvat.

<sup>2</sup> Vid. Con. Tolet. viii. can. 2. Where the testimonies of St. Ambrose, St. Austin, Gregory and Isidore, are cited at large to this purpose. As also in Gratian. Caus. xxii. Quæst. 1.

<sup>3</sup> Chrys. Hom. xvii.

n Mat. p. 182. H. Hom. xxii. de Ira. tom. i. p. 291.

<sup>4</sup> Basil. can. lxiiv.

cil of Maseon orders those<sup>1</sup>, that drew others into false witness or perjury, to be cast out of communion to the hour of death; and those, that were so drawn in, to be for ever after incapable of giving testimony, and to be noted as infamous persons according to the laws: meaning probably, the laws of the state, as well as the laws of the Church. For, as Gothofred shews at large, the Civil Law under the old Romans, set the brand of infamy upon all such perjured persons; and Honorius added several other penalties to give new vigour to the ancient laws,<sup>2</sup> and make them more effectual. I cannot here omit the relation, which Eusebius gives of the divine vengeance pursuing three perjured villains, who combined together to swear to a false accusation, which they had plotted before hand against Narcissus, bishop of Jerusalem; because it shews, that when church discipline cannot take effect for want of evidence against the criminal, Providence is sometimes pleased to interpose, and revenge this crime by an immediate divine judgment. “Three men,” he says,<sup>3</sup> “who were afraid to be called in question by the bishop, and punished for their wicked lives, resolved to be beforehand with him, by contriving and bringing an heavy accusation against him. And to gain credit to their accusation before the Church, they each confirmed it with a solemn oath. One of them wished, that if he swore falsely, he might perish by fire; another, that his body might be consumed by some pestilential disease; and the third, that he might lose his eyes. The Church gave no credit to their oaths, as knowing the bishop to be of a clear and unblameable life: however, he being not able to bear the calumny, and being otherwise of a long time desirous of a retired life, he thereupon withdrew into the wilderness, leaving his Church, to live the life of an hermit. But the great eye of justice did not thus suffer the matter to

<sup>1</sup> Con. Maseon, i. can. 17. Si quis convictus fuerit alios ad falsum testimonium vel perjurium attraxisse, ipse quidem usque ad exitum non communicet: hi verò qui ei in perjurio consensusse probantur, post ab omni sunt testimonio prohibendi, et secundum legem infamiam notabuntur.

<sup>2</sup> Vid. Cod. Theod. lib. ii. tit. ix. de Pactis. leg. viii. Et Gothofred. in Locum.

<sup>3</sup> Euseb. lib. vi. cap. ix.



rest, but presently revenged the miscreants with the curses they had imprecated upon themselves. For the first by a little spark of fire, that casually happened in his house, and whereof no one could give any account, was in the night, himself, family, and house, universally burnt to ashes; the second was from the sole of the foot to the crown of his head over-run and consumed by the same pestilential disease which he had wished upon himself; and the third seeing what had befallen the other two, and fearing the inevitable vengeance of the all-seeing God, confessed the whole plot and contrivance of the calumny, which they had formed. And he testified his repentance with so deep a sorrow, that with the multitude of his tears he lost his sight. Thus these perjured wretches, were punished by the hand of God, when ecclesiastical censure, for want of evidence, could not touch them."

#### SECT. 9.—Of Breach of Vows.

The last transgression of this commandment, that was punished with ecclesiastical censure, was breach of vows, or promises solemnly made to God. And this was both in things and persons. If a man vowed to give his estate, or any part of it, to the service of God; it was a breach of vow, including sacrilege, to retract it. Ananias was severely censured for this, in such an extraordinary way by the apostolical rod and mouth of St. Peter, as, in St. Basil's judgment,<sup>1</sup> left him no room for repentance. The Church in after ages could not punish such delinquents in that extraordinary manner: but as every such breach of vow was a piece of sacrilege, as well as perfidiousness and perjury, we may be sure, the common penalties, that were inflicted on those two crimes singly, were no less carefully imposed on this crime, where they centered both in combination. There was also a breach of vow, which concerned the dedication of persons to God. The clergy were supposed

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<sup>1</sup> Basil. Hom. de Institut. Monach.

to be more peculiarly God's inheritance, dedicating themselves by a solemn act of their own voluntary choice to the ministry of his Church; and therefore none of this order were allowed to desert their station, and turn seculars, again upon the severest penalty of excommunication. As appears from the rules of the general Council of Chalcedon,<sup>1</sup> and the Council of Tours.<sup>2</sup> Which the laws of the state confirmed by proper sanctions of a civil nature,<sup>3</sup> ordering all such deserters to be delivered up to the *Curia* of their city, to serve there all their lives; and to forfeit all such estates as they were possessed of, to the Church or monastery, to which they belonged. For the same penalties were inflicted on monks and consecrated virgins and widows, who by any solemn vow had bid adieu to the world, and had betaken themselves to the ascetic life. If after this they married and returned to a secular life; though the Church did not annul their marriage, under the notion of being adulterous, which is now commonly done in the Romish communion, yet she imposed a certain penance upon them as guilty of perfidiousness and breach of vow. The Council of Chalcedon<sup>4</sup> orders both monks and virgins to be excommunicated, if they married after their solemn consecration and profession. St. Basil says,<sup>5</sup> they were to do the penance of fornicators and adulterers. Not that he reckoned their marriage fornication or adultery, but only to assign the term of their penance. For as we have shewn elsewhere,<sup>6</sup> out of St. Austin,<sup>7</sup> such marriages were never reputed adultery, but true marriages, and therefore not annulled by any rule of the ancient Church: though now by the authority of the Council of Trent the contrary practice prevails in the Romish Church, where all such marriages are reversed, and the parties obliged to separate from one another.

<sup>1</sup> Con. Chalced. can. vii.

<sup>2</sup> Con. Turon. can. v.

<sup>3</sup> Cod. Theod. lib. xvi. tit. ii. de Episc. leg. xxxix. Cod. Justin. lib. i. tit. iii. de Episc. leg. 55. Of which see more, Book vi. chap. iv. sect. 1.

<sup>4</sup> Con. Chalced. can. xvi. Vid. Con. Tolet. iv. can. 54. Leo. Ep. xcii. ad Rusticum. c. xii. Con. Ancyra. can. xix.

<sup>5</sup> Basil. can. lx.

<sup>6</sup> Book vii. chap. iii. sect. 23.

<sup>7</sup> Aug. de Bono Viduitatis. cap. x.

## CHAP. VIII.

*Of Sins against the Fourth Commandment, or Violations of the Law enjoining the Religious Observation of the Lord's Day.*

SECT. 1.—Absenting from Religious Assemblies on the Lord's Day, how punished by the Laws of the Church.

SOMETHING has already been noted concerning the religious observation of the Lord's day in a former Book,<sup>1</sup> and more will be said hereafter, when we come to speak of the festivals, of which this was always reckoned the principal in the Christian Church. Here therefore our present subject only requires us to remark such violations of the law enjoining the religious observation of the Lord's day, as made men liable to ecclesiastical censure.

And first, it being a rule, that men should meet together, to celebrate all divine offices in public on the Lord's day: the voluntary absenting from this service, either in whole, or in part, was ever reputed a crime worthy of ecclesiastical censure. To absent wholly, as heretics and schismatics did, by a chosen separation, though they met in private conventicles of their own, was esteemed such a violation of the law, as the Church thought fit to punish with the severest censure of Anathema: as appears from several canons of the Council of Gangra,<sup>2</sup> which having been related at length before,<sup>3</sup> I need not here repeat them.

Secondly, if men, who were otherwise orthodox, neglected for any considerable time to frequent the Church on the Lord's day, this was a misdemeanour deserving to be corrected by a judicial suspension from the communion. This

<sup>1</sup> Book xiii. chap. ix. sect. 1.

<sup>2</sup> Con. Gangrens. can. v. vi. vii. &c.

<sup>3</sup> Book xvi. chap. i. sect. 5.

may be seen in the Canons of Eliberis,<sup>1</sup> Sardica,<sup>2</sup> and the Council of Trullo,<sup>3</sup> which for the same reason I forbear to recite.

SECT. 2.—Of frequenting some Part of the Lord's Day Service, and neglecting the Rest.

Thirdly, to frequent some part of divine service on the Lord's day, and neglect or withdraw from the rest, was in those days a crime of a very high nature, and punishable with excommunication. This is evident from those called the Apostolical Canons, one of which orders,<sup>4</sup> "that all communicants, who came to Church to hear the sermon and the Scriptures read, but did not stay to join in the prayers and receive the eucharist, should be suspended, as authors of confusion and disorder in the Church." The same is decreed in the Council of Antioch in the same terms,<sup>5</sup> and under the same penalty. The Council of Eliberis forbids the bishop to receive the oblations of such as did not communicate.<sup>6</sup> Which was in effect to exclude them from the communion of the Church. And the first Council of Toledo orders such as come to Church,<sup>7</sup> but neglect to frequent the communion, to be admonished; and if upon admonition they amend not, then to put them under public penance, as great offenders. And another canon of the same Council adds,<sup>8</sup> "that if any present themselves to the communion, and take the eucharist at the hands of the priest, and yet forbear to eat it, they shall be driven out of the Church as sacrilegious persons." All these canons suppose, what we have fully evinced in a former book,<sup>9</sup> that the celebration of the eucharist was a standing part of divine service every Lord's day; and that every Christian communicant,

<sup>1</sup> Con. Eliber. can. xxi.

<sup>2</sup> Con. Sardie can. xi.

<sup>3</sup> Con. Trull. can. lxxx.

<sup>4</sup> Canon.

Apost. c. vii.

<sup>5</sup> Con. Antioch. can. ii.

<sup>6</sup> Con. Eliber. can. xxviii.

Episcopum, placuit, ab eo qui non communicat, munera accipere non debere.

<sup>7</sup> Con. Tolet. i. can. xliii. De his qui intrant in ecclesiam, et deprehenduntur nunquam communicare, admoneantur. Quod si non communicant, ad pœnitentiam accedant.

<sup>8</sup> Ibid. can. xiv. Si quis autem acceptam à sacerdote eucharistiam non sumpserit, velut sacrilegus propellatur.

<sup>9</sup> Book xv. chap. ix.

who was not under penance, was obliged to partake thereof to fulfil the duty he owed to God upon this day: and therefore all such as neglected this part of divine worship, were to be censured as transgressors, for contemning one principal part of the religious observation of the Lord's day. I cannot write this without lamenting the hard fate of many pious persons in the present age, whose disposition would incline them to be constant communicants every Lord's day, but they want opportunity in the present posture of affairs to execute their good designs. Such must content themselves with that of the Apostle, "if there be first a willing mind, it is accepted according to that a man hath, and not according to that he hath not;" and in the mean time pray to God to find out a method in his good providence to restore the ancient discipline and primitive fervour. But I proceed.

SECT. 3.—Fasting on the Lord's Day prohibited under Pain of Excommunication.

It was an ancient and general custom in the primitive Church, to keep the Lord's day as a festival, and day of rejoicing, in memory of our Saviour's resurrection; and never to fast on that day, no not even in the time of Lent. And therefore to fast perversely on this day was always reputed a crime deserving ecclesiastical censure. Tertullian says,<sup>1</sup> "they counted it a crime to fast on the Lord's day." And he remarks, "that even the Montanists, who were the most rigid in observing their times of fasting, omitted both Saturday and Sunday throughout the year.<sup>2</sup> For though they observed three lents, and two weeks of *Xerophagia*, or *dry meats*, besides, yet they excepted the Sabbath or Saturday, and the Lord's day from these laws of fasting." St. Ambrose likewise tells us,<sup>3</sup> "that the Catholics were used

<sup>1</sup> Tertul. de Coron. Mil. cap. iii. Die Dominico jejunare nefas ducimus.

<sup>2</sup> Id de Jejun. adversus Psychicos. cap. xv. Duas in anno hebdomadas xerophagiarum, nec totas, exceptis scilicet sabbatis et dominicis, Deo offerimus.

<sup>3</sup> Ambros. de Elia et Jejunio. cap. x. Quadragesime totis, præter sabbatum et dominicam, jejunatur diebus.

to except these two days in their Lent fasts. They never fasted on the Lord's day, but thought they had reason to condemn the Manichees for so doing:<sup>1</sup> for to appoint that day to be a fast day, was in effect to disbelieve the resurrection of Christ." Several other heretics besides the Manichees, were condemned for this practice by the first Council of Braga:<sup>2</sup> they particularly name the Cerdonians, Marcionites and Priscillianists, whom they anathematise upon this account, as fasting on the day of Christ's nativity and the Lord's day, because they did this in derogation to the truth of Christ's human nature. Pope Leo notes the Priscillianists<sup>3</sup> upon the same account.<sup>4</sup> And the fourth Council of Carthage censures them as no Catholics, who choose to fast upon this day. St. Austin not only says,<sup>5</sup> that it was the custom of the whole Catholic Church, to abstain from fasting on this day, but that no one could do otherwise without giving great scandal to the Church, because the impious Manichees had chosen this day particularly to fast upon in opposition to the Church.<sup>6</sup> Upon these grounds and reasons the canons are very severe in their censures of such transgressors. "If any one fast on the Lord's day," says the Council of Gangra,<sup>7</sup> "though it be under pretence of leading an ascetic life, let him be *anathema*." In like manner the Apostolical Canons,<sup>8</sup> "if any clergyman fast on the Lord's day, or sabbath, one only excepted, viz. the sabbath before Easter, let him be deposed. If he be a layman, let him be cast out of the communion of

<sup>1</sup> Ambr. Ep. lxxxiii. Dominicâ jejulare non possumus, quia Manichæos etiam ob istius diei jujunia jure damnamus. Hoc enim est in resurrectionem Christi non credere, si quis legem jejunii die resurrectionis indicat.

<sup>2</sup> Con. Bracar. i. can. 4. Si quis natale Christi secundum carnem non verè honoret, sed honorare se simulat, jejumans in eodem die et in dominico; quia Christum in verâ hominâ naturâ non credit, sicut Cerdon, Marcion, Manichæus, et Priscillianus, anathema sit.

<sup>3</sup> Leo. Ep. xciii. ad Turbium, cap. iv.

<sup>4</sup> Con. Carth. iv. can. 61.

Qui Dominico die studiosè jejumat, non credatur catholicus.

<sup>5</sup> Aug. Ep. 119. ad Januar. cap. xv.

<sup>6</sup> Aug. Ep. lxxxvi. ad Casulan.

<sup>7</sup> Con. Gangren. can. xviii. Ἐἴ τις ἐὰν νομιζομένην ἀσκήσῃ ἐν τῇ κυριακῇ ἡμέρῃ, ἀνάθεμα ἔστω.

<sup>8</sup> Canon. Apost. lxi.

the Church." And this is repeated in the Council of Trullo,<sup>1</sup> and other rules of the ancient Church.

SECT. 4.—Frequenting the Theatre and other Shows and Pastimes on this Day, how punished.

There were many other rules made by the Ancients for the decent observation of the Lord's day: as, that men should abstain from all unnecessary bodily labour; that all lawsuits and pleadings and prosecutions should cease upon this day; that divine service should be performed standing, in memory of our Saviour's resurrection: but as the transgressions of these rules are not usually mentioned with the same commination of ecclesiastical punishments, the consideration of them belongs not to this head, but shall be reserved for its proper place, under the title of festivals, where the observation of the Lord's day will come again more particularly to be considered. But there is one thing more that must not here be omitted: which is, that when men neglected the public service of God, to follow vain sports and pastimes on this day, this was thought a crime worthy to be corrected by the severest censures of the Church. The imperial laws forbid all public games and shows on this day. Theodosius the Great speaks of two laws made by himself to this purpose.<sup>2</sup> And Theodosius junior made another,<sup>3</sup> wherein he not only forbids the exhibiting of the shows on the Lord's day, but on the other great festivals, the Nativity, Epiphany, Easter, and Pentecost. But no penalties being annexed to these laws, there was still occasion for the laws of the

<sup>1</sup> Con. Trull. can. lv. Vid. Con. Caesar-august. c. ii.

<sup>2</sup> Cod. Theod. lib. xv. tit. 5. de Spectaculis. leg. ii. Illud etiam prænemus, ne quis in legem nostram, quam dudum tulimus, committat: nullis solis die populo spectaculum præbeat, nec divinam venerationem confectâ solennitate confundat.

<sup>3</sup> Ibid. leg. v. Dominico, qui septimanæ totius primus est dies, et natale, atque epiphaniarum Christi, Paschæ etiam et Quinquagesimæ diebus—omni theatrorum atque circensium voluptate populis denegatâ, totæ Christianorum ac fidelium mentes Dei cultibus occupantur, &c. Vid. Cod. Justin. lib. iii. tit. 12. de Feriis. leg. xi. Leonis et Anthemii.

Church to restrain men by ecclesiastical censures. And therefore the canons made this crime to be noted as an heinous offence, and punished the transgressors with excommunication. "If any one on a solemn day," says the fourth Council of Carthage,<sup>1</sup> "leave the solemn assembly of the Church, to go to the shows, let him be excommunicated." And another canon excommunicates those, who leave the Church, whilst the bishop is preaching.<sup>2</sup> The fifth Council of Carthage, as it is related in the African Code,<sup>3</sup> petitioned the Emperor Honorius to forbid all theatrical shows on the Lord's day and all the great festivals. St. Chrysostom calls them<sup>4</sup> "Σατανικὰ συνέδρια, *the conventions of satan,*" and tells his auditory, "he would no longer use gentle remedies, but styptics and caustics, to put a stop to the raging distemper. They that continued in this crime after this formal admonition, should be no longer endured, but feel the weight of the ecclesiastical laws, and learn thereby not to contemn the divine oracles." By which it is evident, that though the games and pastimes of the circus and the theatre were still allowed under the Christian emperors, yet they were precisely forbidden on the Lord's day: and to frequent them at that time, was one of those great transgressions, for which men felt the heaviest censures of the Church.

<sup>1</sup> Con. Carth iv. can. 88. Qui die solenni prætermisso solenni ecclesie conventu, ad spectacula vadit, excommunicetur.

<sup>2</sup> Ibid. can. xxiv. Sacerdote verbum faciente in ecclesiâ, qui de auditorio egressus fuerit, excommunicetur.

<sup>3</sup> Cod. Afric. cau. lxi.

<sup>4</sup> Chrys. Hom. vi. in Gen. tom. ii. p. 53.



## CHAP. IX.

*Of great Transgressions against the Fifth Commandment, Disobedience to Parents, and Masters; Treason and Rebellion against Princes; and Contempt of the Laws of the Church.*

SECT. I.—Children not to desert their Parents under Pretence of Religion. The Censure of such as taught otherwise.

UNDER the name of parents is commonly understood not only the natural parents, but also the political or civil, that is, magistrates and rulers; as also spiritual parents, that is, the governors of the Church; and œconomical parents, that is, masters of families; whose authority respectively over their children, subjects, people, and servants being very great, it was thought proper to secure it not only by the laws of the state, but also by the laws and spiritual censures of the Church.

Children by the old Roman law were esteemed so much the property and possession of their parents, that they had power of life and death over them;<sup>1</sup> and also might sell them to be slaves without redemption,<sup>2</sup> in cases of extreme necessity for their own maintenance, as appears from several laws in both the codes; and the complaints made by the Ancients of this hardship;<sup>3</sup> and the allusion, which our Saviour makes in the parable to the like custom among the Jews; Mat. xviii, where the Lord commands his debtor to

<sup>1</sup> Cod. Justin. lib. viii. tit. 47. de Patriâ Potestate. leg. x. Patribus jus vitæ in liberos necisque potestas olim erat permissa.

<sup>2</sup> Cod. Theod. lib. lib. iii. tit. 3. De Patribus qui filios distraxerunt. leg. i. et lib. v. tit. 8. De his qui sanguinolentos emptos acceperint. Et. lib. xi. tit. 27. De alimentis quæ inopes parentes de publico petere debent. leg. i. et ii. It. Valentin. Novel. xi.

<sup>3</sup> Vid. Basil. Hom. in Psal. xiv. tom. i.

p. 141.

be sold, and his wife and children and all that he had, and payment to be made. And though the laws of Christian emperors a little restrained this exorbitant power of parents; taking from them the power of life and death; and allowing children to be maintained out of the public revenue, to prevent being sold;<sup>1</sup> or to be redeemed again, if sold: yet still they left a considerable power in the hands of parents to dispose of their children, whilst they were minors or under age, only excepting the cases of slavery and death. For till the time of Justinian, children were not allowed to betake themselves to a monastic life without or against the consent of their parents. Which is evident from the rule of St. Basil,<sup>2</sup> which forbids children to be received into monasteries, unless they were offered by their parents, if their parents were alive. And the Council of Gangra lays an heavy penalty upon them:<sup>3</sup> “if any children under pretence of religion forsake their parents, and give them not the honor due unto them, let them be *Anathema*.” This doctrine was taught and propagated by the Eustathian heretics, who also taught, that women might leave their husbands, and parents desert their children, and take no further care of them, under the same pretence of betaking themselves to a monastic life. Against whom the same Council made several other canons,<sup>4</sup> imposing the like penalty upon them.

SECT. 2.—Children not to marry without Consent of their Parents.

Another branch of paternal power was the right, which parents had to dispose of their children in marriage: which right was so carefully guarded by the imperial laws, that we scarce find any crime so severely revenged, as the violation of it, when children, who were under their parents' power, married without, or against the consent of their parents, or such guardians and tutors as were in the room of them. Witness that famous law of Constantine in the

<sup>1</sup> Cod. Theod. lib. ix. tit. xv. De his qui parentes vel liberos occiderunt. Lege unicâ. Et lib. xi. tit. xxvii. leg. i. et ii. <sup>2</sup> Basil. Regul. Major. q. xv.

<sup>3</sup> Con. Gangren. can. xvi.

<sup>4</sup> Ibid. can. xiii. xiv. xv.

Theodosian Code,<sup>1</sup> which runs in these terms: “if any one, without first obtaining the consent of parents, steal a virgin against her will, or carry her off by her own consent, hoping that her consent will protect him; he shall have no benefit from such consent, as the ancient laws have determined; but the virgin herself shall be held guilty, as partaker in the crime. If any nurse be instrumental or accessory to the fact, by her persuasions, which often defeat the parents care, her detestable service shall be revenged by pouring molten lead into her mouth, that ministered such wicked counsels. If the virgin be detected to have given her consent, she shall be punished with the same severity as the raptor himself: seeing, she that is stolen away against her will, is not suffered to go unpunished; because she might have kept herself at home; or if she was taken by violence out of her father’s house, she should have cried out for help to the neighbourhood, and used all means possible to defend herself. But on such we impose only a lighter punishment, denying them the right of succeeding to their father’s inheritance. But the raptor himself, being clearly convicted, shall have no benefit of appeal. If parents who are chiefly concerned to prosecute this crime, connive at it, they shall be banished. All, who are partners or assistants to the raptor, shall be liable to the same punishment without distinction of sex. And if any such be slaves, they shall be burnt alive.” This law of Constantine’s is confirmed by another law of his son Constans: only with this difference,<sup>2</sup> that whereas Constantine’s law ordered the criminals to be burnt alive, or thrown to the wild beasts, as Gothofred interprets it; this of Constans so far moderated the punish-

<sup>1</sup> Cod. Theod. lib. ix. tit. xxiv. De raptu virginum et viduarum leg. i. Si quis nihil cum parentibus puellæ ante depectus, invitam eam rapuerit, vel volentem abduxerit—nihil ei secundum jus vetus profit puellæ responsio, sed ipsa puella potiùs societate criminis obligetur, &c.

<sup>2</sup> Cod. Theod. ibid. leg. ii. Quamvis legis prioris extet auctoritas, quæ inclitus paternoster contra raptores atrocissimè jusserat vindicari, tamen nos tantummodo capitalem pœnam constituimus; videlicet, ne sub specie atrocioris judicii aliqua in ulciscendo crimine dilatio nasceretur. In audaciam verò servilem dispari supplicio mensura legum impendenda est, ut perurendi subiciantur ignibus.

ment, as to let it be only a common death, that it might more duly be put in execution. Yet if any slaves were concerned in aiding the raptors in such attempts, they were still to be burnt alive, according to the tenor of the former law. By another law of Valentinian<sup>1</sup> and Gratian, widows are not allowed to marry a second time without the consent of their parents, if they were under the age of twenty-five years, although they were *sui juris*, and enjoyed the liberty of emancipation. And there are many other laws in both the codes,<sup>2</sup> to the same purpose. The ecclesiastical laws in this concur with the civil law. St. Austin says expressly,<sup>3</sup> “that mothers as well as fathers have this right in their children, to dispose of them in marriage, unless they be of that age, which gives them liberty to choose for themselves.” Tertullian says the same,<sup>4</sup> “that children cannot lawfully marry without the consent of their earthly parents.” St. Basil<sup>5</sup> in one of his Canons gives directions, that they, who stole virgins, should be treated as fornicators, that is, do four years penance; and when the virgins were restored to their guardians, it was at their discretion, whether they would give them in marriage to the raptors or not. In another Canon he says,<sup>6</sup> “If slaves marry without the consent of their masters, or children without the consent of their parents; it is not matrimony, but fornication, till they ratify it by their consent.” Again,<sup>7</sup> “If virgins, who are under the power of their parents, marry without their consent, they are to be treated as harlots. If their parents are afterwards reconciled to them, and give their consent, yet they shall do three years penance for their first transgression.” And again,<sup>8</sup>

<sup>1</sup> Cod. Theod. lib. iii. tit. 7. de Nuptiis. leg. i. Viduæ intra xxv. annum degentes, etiamsi emancipationis libertate gaudeant, tamen in secundas nuptias non sine patris sententiâ conveniant.

<sup>2</sup> Vid. Cod. Theod.

ibid. leg. iii. Cod. Justin. lib. v. tit. 4. de Nuptiis. leg. i, ii, vii, xx. Justin. Instit. lib. i. tit. x. de Nuptiis.

<sup>3</sup> Aug. Ep. 233. ad Benenatum.

Matris voluntatem in tradendâ filiâ omnibus, ut arbitrator, natura præponit, nisi eadem puella in eâ jam ætate fuerit, ut jure licentiori sibi ipsi eligat quid velit.

<sup>4</sup> Tertul. ad Uxor. lib. ii. cap. ix. Nam nec in terris filii sine consensu patrum rite et jure nubent.

<sup>5</sup> Basil. can. xxii.

<sup>6</sup> Ibid. can. xlii.

<sup>7</sup> Ibid. can. xxxviii. Et ap Mathæum Monach. Respons.

Matrimon. in Jure Gr. Rom. Leûnelavii. p. 509.

<sup>8</sup> Basil. can. xl.

“ If a slave marry without the consent of her master, she differs nothing from an harlot. For contracts, made without the consent of those, under whose power they are, have no validity, but are null. And therefore, though the master afterward give his consent, and make the marriage good, yet the first fault shall be punished as fornication.”

SECT. 3.—Nor Slaves without the Consent of their Masters.

It appears from two of these last mentioned canons, that slaves were as much under the power of their masters, as children were under their parents: and therefore it was equally a crime for a slave to marry without the consent of the master, as for a child to do it without consent of parents. And for the same reason a slave was not allowed either to enter himself into a monastery, or take orders, without the consent of his master, as has been shewn in other places,<sup>1</sup> because this was to deprive his master of his legal right of service, which by the original state and condition of slaves was his due: and the Church would not be necessary to such frauds and injustice, but rather discourage them by prohibitions and suitable penalties laid upon them.

SECT. 4.—The Punishment of Treason and Disrespect to Princes.

Another sort of parents, whose honour was intended to be secured by this command, were *the political parents, patres patriæ*, kings and emperors, whose authority and majesty was reputed sacred and supreme next under God. And therefore all disloyalty and disrespect shewed to them, either in word or action, was always severely chastised by the laws of the Church. I need not here suggest what civil penalties were inflicted by the laws of the state upon transgressors in this kind, because the ancient Civil Codes are full of them under several titles, which the learned reader may consult at his own leisure, such as speaking evil of dignities;<sup>2</sup> counterfeiting their letters;<sup>3</sup> corrupting or counter-

<sup>1</sup> Book. iv. chap. iv. sect. 3. Book vii. chap. iii. sect. 2.

<sup>2</sup> Cod. Theod. lib. ix. tit. 4. Si quis imperatori maledixerit. leg. i.

<sup>3</sup> Cod. Theod. lib. ix. tit. 19. ad Legem Corneliam de Falso. leg. iii.

feiting their coin;<sup>1</sup> consulting augurs or astrologers about the term of their life,<sup>2</sup> or using any curious arts to know who should be their successor; raising of tumults<sup>3</sup> to the disturbance of the public discipline; conspiring against their lives,<sup>4</sup> or government; bearing arms<sup>5</sup> without their authority; and the like crimes, which come under the general names of sedition, treason, conspiracy, and rebellion, which were always excepted in those general indulgences,<sup>6</sup> that the Emperors were wont to grant at Easter to other criminals. I need not say further, that the contempt of the imperial laws was usually reputed a sort of sacrilege by the laws themselves,<sup>7</sup> and punished under that title. That, which I am chiefly concerned to remark here, is the ecclesiastical punishment of disloyalty and treason, and all scandalous contempt of civil government; against which sort of crimes, whether in word or deed, the Ancients shewed great resentment. For the first three hundred years they gloried greatly over the Heathens in this, that though the emperors were Heathens, and some of them furious persecutors of the Christians, yet there were never any seditious or disloyal persons to be found among the persecuted Christians. “You defame us,” says Tertullian,<sup>8</sup> “with treason against the Emperor, and yet never could any Albinians, Nigrians, or Cassians, (persons that had taken arms against the Emperors,) be found among the Christians.—Such as those, are they that swear by the Emperor’s Genii, that have offered sacrifice for their safety, that have often

<sup>1</sup> Cod. Theod. lib. ix. tit. xxi. de Falsa Moneta. tit. xxii. Siquis solidi circulum inciderit, vel adulteratum subjecerit. tit. xxiii. Si quis pecunias confaverit, &c.

<sup>2</sup> Ibid. tit. 16. de Malefic. et. Mathemat. leg. viii.

<sup>3</sup> Ibid. tit. xxxiii. de iis qui plebem audent contra publicam colligere disciplinam.

<sup>4</sup> Ibid. tit. 5. ad Legem Juliam

Majestatis. tit. vi. Ne præter crimen majestatis servus dominum accuset. tit. xiv. ad legem Corneliam de sicariis. tit. xl. de Penis. leg. xv. xvi. xvii. lib. xv. tit. xiv. de Infrmandis his quæ sub tyrannis gesta sunt.

<sup>5</sup> Ibid. lib. xv. tit. 14. Ut armorum usus in seio principe interdictus sit.

<sup>6</sup> Ibid. lib. x. tit. 38. de Indulgentiis Criminum.

<sup>7</sup> Ibid. lib. vi. tit. v. leg. 2. Sit plane sacrilegii reus qui divina præcepta neglexerit. it. tit. 21. de Domesticis leg. iv. et et tit. 35. de Privilegiis Militum Palatinor. leg. 13. & passim alibi.

<sup>8</sup> Tertul. ad Scapul. cap. 2.

condemned Christians; these are the men, that are found enemies to the Emperors. A Christian is no man's enemy, much less the Emperor's; knowing him to be the ordinance of God, he cannot but love, revere, and honour him, and desire, that he and the whole Roman Empire may be in safety to the end of the world. We worship the Emperor as much as is either lawful or expedient, as one that is next to God; we sacrifice for his safety, but it is only to his and our God; and in such manner as he has commanded, only by holy prayer. For the great God needs no blood or sweet perfumes: these are the banquets and repast of devils, whom we not only reject, but expel at every turn." For this reason, during this interval, there was no need of ecclesiastical punishments to correct traitors against the civil government, because there were no such among Christians. But when the whole world was become Christian, there was occasion for such laws to be made against sedition and treason. And then we find several canons to prevent or correct it. The fourth Council of Carthage forbids the ordination of any seditious persons,<sup>1</sup> as those, that would be a scandal to the profession. And this is repeated in the same words by the Council of Agde.<sup>2</sup> The fourth Council of Toledo<sup>3</sup> orders all clergymen, that took arms in any sedition, to be degraded from their order, and to be confined to a monastery, to do penance there all their lives. The fifth Council of Toledo mentions an oath of allegiance,<sup>4</sup> which in a former general Council of all Spain, was appointed to be taken by all the subjects to the king and his heirs: and a most severe anathema is pronounced against all, that should violate any part of it. Particularly they excommunicate and anathema-

<sup>1</sup> Con. Carth. iv. can. 67. Seditiosos nunquam ordinandos clericos, sicut nec usurarios, nec injuriarum suarum ultores.

<sup>2</sup> Con. Agathen. c. lxxix.

<sup>3</sup> Con. Tolet. iv. can. 41. Clerici, qui in quacunque seditione arma volentes sumpserint, aut sumpserunt, reperti, amisso ordinis sui gradu, in monasterium contradantur pœnitentiæ.

<sup>4</sup> Con. Tolet. v. can. 2. Sit anathema in Christianorum omnium cœtu, atque superno condemnatur judicio: Sit exprobrabilis omnibus Catholicis, et abominabilis sanctis angelis in ministerio Dei constitutis: sit in hoc sæculo perditus, et in futuro condemnatus, qui tam rectæ provisioni reluit præbere consensum.

tize all that should pretend to usurp the throne,<sup>1</sup> without the consent of the nobility and the whole Gothic nation; all that should make any curious and unlawful inquiries about the fatal period of the life of the prince;<sup>2</sup> all that should speak evil of him: for it is written, “thou shalt not speak evil of the ruler of thy people.” If railers shall not inherit the kingdom of God,<sup>3</sup> how much rather ought such contemners of the divine law, to be cast out of the Church?—Finally, they made an order,<sup>4</sup> that in every Council held in Spain, this decree concerning allegiance due to princes should be read, when all other things were done, to the end that no one might be unmindful of his duty and obligations to the sovereign power. And accordingly, we find the same decree repeated and confirmed in several other Councils of that nation.<sup>5</sup>

SECT. 5.—Of Contemners of the Laws of the Church.

The last sort of parents, to whom honour and obedience is due, are the spiritual parents, or governors of the Church; the contempt of whose laws and rules made for the good government, order, and edification of the Church, was always thought a matter worthy of ecclesiastical censure. There are innumerable instances of this in the acts and canons of the ancient Councils: I shall content myself with relating two or three, which concern matters purely of ecclesiastical observation. The Council of Antioch excommunicates all those,<sup>6</sup> who pertinaciously oppose the rule made about Easter in the Council of Nice. The first Council of Carthage more generally censures all opposers of ecclesiastical orders:<sup>7</sup> “If any one viciously transgress or contemn the decrees of the Church; if he be a layman, let him be excommunicated; if a clergyman, let him be deprived of the honour of his order.” The Council of Epone in like manner concludes<sup>8</sup>

<sup>1</sup> Con. Tolet. v. can. iii.

<sup>2</sup> Ibid. can. iv.

<sup>3</sup> Ibid. can. v.

<sup>4</sup> Ibid. can. vii.

<sup>5</sup> Con. Tolet. vi. can. xvii., et xviii. Tolet. xii. can.

i. Tolet. x. can. ii.

<sup>6</sup> Con. Antioch. can. i.

<sup>7</sup> Con. Carth.

can. xiv. Si quis statuta supergressus corruerit, vel pro nibilo habenda pulaverit, si laicus est, communione: si clericus est, honore privetur.

<sup>8</sup> Con. Epauensis. can. xi. Si quis sanctorum antistitum qui statuta præsen-



her decrees with this sanction. "If any one disorderly transgress the rules and observations, which the holy bishops have made in this present Council, and confirmed with their subscriptions, let him know, that he shall be liable to the judgment both of God and the Church." The fourth Council of Toledo orders such,<sup>1</sup> as reject the use of the hymns and prayers appointed by the Church, to be punished with excommunication. And King Reccaredus in the third Council of Toledo,<sup>2</sup> besides excommunication, orders a civil penalty of confiscation and banishment to be inflicted on such as proudly contemned the rules then made in Council, and refused to yield obedience to them. And laws of the same import occur everywhere both in the civil and ecclesiastical Codes, so that I need not trouble the learned reader with any more of them, having suggested these few as a specimen of that obedience, which was required to be paid to the laws and authority of the Church under the penalty of excommunication.

## CHAP. X.

*Of great Transgressions against the sixth Commandment, Murder, Manslaughter, Parricide, Self-Murder, Dis-membering the Body, causing Abortion, &c.*

SECT. 1.—Murder ever reckoned a capital and unpardonable Crime by the Laws of the State.

WE are now come to the great sin of murder, which the civil laws always reckon among those called *Atrociosa Delicta*

tia subscriptionibus propriis firmaverunt, relictâ integritate, observationes excesserit, reum se divinitatis pariter et fraternitatis iudicio futurum esse cognoscat.

<sup>1</sup> Con. Tolet. iv. can. 12. Sicut orationes, ita et hymnos in laudem Dei compositos, nullus nostrum ulterius improbet, sed pari modo in Galliciâ Hispaniâque celebrent, excommunicatione plectendi, qui hymnos rejicere fuerint ausi.

<sup>2</sup> Edict Reccaredi ad calcem. Con. iii. Toletani.

and *Atrocissima Crimina*, those heinous and capital crimes, for which they neither allowed pardon nor appeal after clear conviction. This crime was always excepted in those indulgences or general pardons,<sup>1</sup> which the Emperors granted to criminals upon the account of their children's birth-days, or the annual returns of the Easter-festival, or any the like occasion. And whereas many other criminals were allowed the benefit of appealing, this was wholly denied to murderers;<sup>2</sup> nor might any such criminals anciently pretend to shelter themselves by taking sanctuary in the Church, which is expressly provided by a law of Justinian,<sup>3</sup> determining who may or may not take refuge in the Church; where among those, to whom this privilege is denied, murderers, adulterers, and ravishers of virgins are particularly recounted.

SECT. 2.—How punished by the Laws of the Church.

By the most ancient laws of some Churches, murderers seem to have been subjected to a perpetual penance all their lives, and by some denied communion even at the hour of death. Tertullian says plainly,<sup>4</sup> that neither idolaters nor murderers were admitted to the peace of the Church. And that he means not here, by the Church, his own sect of the Montanists, but the Catholic Churches, is concluded by learned men from hence,<sup>5</sup> that he is arguing with the Catholics, that they ought to deny adulterers the peace of the Church, by the same reason and rule, that they denied it to idolaters and murderers. Which implies at least, that some Catholic Churches in Afric refused to admit murderers to communion. Which is the more probable from what Cyprian says of some of his predecessors,<sup>6</sup> "That they were used to deny fornica-

<sup>1</sup> Cod. Theod. lib. ix. tit. 38. de Indulgentiis Criminum. leg. 1, 3, 4, 6, 7, 8.

<sup>2</sup> Cod. Th. lib. xi. tit. 36. Quorum appellaciones non recipiendæ. leg. i.—Cum homicidam, vel maleficum, vel veneficum (quæ atrocissima crimina sunt) confessio propria, &c. detexerit, provocaciones suscipi non oportet. It leg. 7. ibid.

<sup>3</sup> Justin. Novel. xvii. cap. 7.

<sup>4</sup> Tertul. de Pudicit.

cap. xii. Neque idololatria neque sanguini pax ab ecclesiis redditur.

<sup>5</sup> Vid. Albaspin. Observat. lib. ii. c. xv. p. 123.

<sup>6</sup> Cypr. Ep. lii.

al. 55. ad Antonian. p. 110. Apud antecessores nostros quidam de episcopis istic in provinciâ nostrâ dandam pacem inœchis non putaverunt. et in totum pœnitentiæ locum contra adulteria clauservat, &c.

tors and adulterers the peace of the Church, though they did not upon this break communion with others, that admitted them." Now murder, being as great a crime as adultery, it is likely they rejected murderers as well as adulterers utterly from their communion. In the following ages the term of their penance was a little moderated. For the Council of Ancyra obliges them only to do penance all their lives,<sup>1</sup> and allows them to be received at the hour of death. Other canons reduce their penance to a certain term of years. St. Basil appoints the wilful murderer twenty years penance;<sup>2</sup> four years as a mourner; five years as an hearer; seven years as a prostrator; four years as a co-stander only, to hear the prayers without receiving the communion.

SECT. 3.—The Heinousness of Murder when joined with other Crimes, such as Idolatry, Adultery, and magical Practices.

Yet in some cases the discipline continued still to be more severe against murder, when it happened to be complicated with other great crimes, such as idolatry, adultery, and the practice of magical and diabolical arts against the lives of men: because these were great aggravations to inflame the account of murder. Thus in the Council of Eliberis,<sup>3</sup> "If any Christian took upon him the office of an heathen *Flamen*, and therein sacrificed and committed adultery and murder; (which might be done either directly, by a personal commission of those crimes; or indirectly by exhibiting the games and shews, wherein adultery and murder were committed by their authority and concurrence; in such a case he was to be denied communion even at the hour of death, because he had doubled and tripled his crime, as the canon words it." So again,<sup>4</sup> "if any one used pharmacy or

<sup>1</sup> Con. Ancy. can. xxii. It. Con. Epaunens. can. xxxi.

<sup>2</sup> Basil

can. lvi.

<sup>3</sup> Con. Eliber. can. ii. *Flamines qui post fidem lavacri et regenerationis sacrificaverunt: Eo quod geminaverint scelera, accedente homicidio, vel triplicaverint facinus, cohærente mœchiâ, placuit eos nec in sine accipere communionem.*

<sup>4</sup> Con. Eliber. can. vi. *Si quis maleficiò interficiat alterum, eo quod sine idololatriâ perficere scelus non potuit, nec in sine impertiendam esse illi communionem.*

magical art to kill another, he was not to be received into communion even at the hour of death, because here was a conjunction of idolatry with murder." In like manner another canon of the same Council orders,<sup>1</sup> "that if a woman conceive by adultery, in the absence of her husband, and after that murder her child, she shall be rejected to the very last, because she has doubled her crime." But the Council of Ancyra is a little more favourable in the case of simple fornication joined with murder. For it is there observed,<sup>2</sup> that if a woman committed fornication, and murdered her infant, or caused abortion, she should only do ten years penance, though by former canons she was obliged to do penance all her life. The Council of Lerida appoints seven years penance for common murder ;<sup>3</sup> but if it be done by sorcery, then it was penance for the whole life.

SECT. 4.—Causing of Abortion condemned and punished as Murder.

And here we may observe, that causing of abortion was esteemed one species of murder, and accordingly punished as such, when wilfully procured. So it is determined not only in the fore-mentioned canon of Ancyra, but in the canons of St. Basil,<sup>4</sup> "Let her that procures abortion, undergo ten years penance, whether the embryo be perfectly formed or not," So again, "they are murderers, who take medicines to procure abortion." And so the Council of Trullo :<sup>5</sup> "they, who give medicines to cause abortion, and they, who take pernicious physic to destroy the embryo in the womb, are to undergo the penance of murderers." The Council of Lerida puts those, who destroy the conception in the womb by certain potions,<sup>6</sup> into the same class with those, that kill infants after,

<sup>1</sup> Con. Eliber. can. 63. Si qua per adulterum, absente marito, conceperit, idque post facinus occiderit, placuit neque in fine dandam esse communionem, eo quod genuerit scelus.

<sup>2</sup> Con. Ancyra. can. xxi.

<sup>3</sup> Con. Herden. can. ii. Ipsi autem veneficis in exitu tantum communico tribuatur.

<sup>4</sup> Basil. can. ii. and viii.

<sup>5</sup> Con. Trull. can. 91.

<sup>6</sup> Con. Herden. can. ii. Hi vero qui male conceptos ex adulterio fetus, vel editos necare studuerint, vel in uteris matrum potionibus aliquibus colliserint in utroque sexu adulteris, post septem annorum curricula communico tribuatur.

they are born; and appoints a course of seven years penance for both sorts, as joining murder to adultery. The private writers among the Ancients with one consent declare this to be murder. "In the prohibition of murder," says Tertullian,<sup>1</sup> "We are forbidden to destroy the conception in the womb, whilst the blood is in its first formation of an human body. To hinder that, which might be born, is but an anticipation or hastening of murder: and it is all one, whether a man destroy that life, which is already born, or disturb that, which is preparing to be born. He is a man, who is in a disposition to be a man, and all fruit is now in its seed or principle of existence." This he says in answer to the heathen objection, who charged the Christians with feasting upon the blood of an infant in their sacred mysteries. Minucius inverts the charge upon the heathen, telling them,<sup>2</sup> "it was their own practice by medicated potions to destroy man, that would be, in his first original, and for mothers to commit parricide before they brought forth." "But as for Christians," says Athenagoras, writing in their behalf, "How should they be guilty of murdering men, who declare, that mothers, who use medicines to cause abortion, are murderers, and must give account of their wickedness unto God." St. Jerom calls this crime in women,<sup>3</sup> "drinking of barrenness, and murdering of infants before they were born." And it was a crime, which the old Roman law punished with banishment,<sup>4</sup> and sometimes with

<sup>1</sup> Tertul. Apol. cap. ix. Nobis homicidio semel interdicto, etiam conceptum utero, dum adhuc sanguis in hominem delibatur, dissolvere non licet. Homicidii festinatio est, prohibere nasci: nec refert natam quis eripiat animam, an nascentem disturbet: homo est, et qui est futurus, et fructus omnis jam in semine est.

<sup>2</sup> Minuc. p. 91. Sunt quæ in ipsis visceribus medicaminibus epotis originem futuri nominis (leg. hominis) extinguant, et parricidium faciant, antequam pariant. Vid. Cypr. Ep. xlix. al. 52. ad Cornel. p. 97. de Parricidio Novati.

<sup>3</sup> Athenag. Legat. p. 38.

ad Eustoch. de Virginit. cap. v. Aliæ præbebunt sterilitatem, et necdum sati homicidium faciunt.

<sup>4</sup> Hieron. Ep. xxii. <sup>5</sup> Digest. lib. xlviii. tit. 8. ad Legem Corneliam de Sicariis. leg. 8. Si mulierem visceribus suis vim intulisse, quo partum abigeret, constiterit: Eam in exilium præses provinciæ exiget. It. lib. xlvii. tit. 11. de Extraordinar. Criminibus. leg. 4.

death:<sup>1</sup> as Tryphonius, the lawyer, observes out of Tully; though Tertullian complains, that these laws were very much neglected and contemned. However we see in the Christian Church this sort of murder was reckoned a very heinous crime by all writers, and punished with great severity by the canons against wilful murder in the Church.

SECT. 5.—The Punishment of Parricide.

Indeed, this sort of murder was one species of parricide, which included not only the murder of parents, but of children, and other relations, to whom men were bound by natural affection. And this had a noted and peculiar punishment among the old Romans, which was to tie up the parricide in a sack with a serpent, an ape, a cock, and a dog, and throw them all alive into the sea; of which Gothofred will furnish the curious reader with great variety of instances out of the old Roman laws and writers. The *Lex Pompeia* changed this punishment into that of the sword, or burning, or throwing to wild beasts. But Constantine reduced the ancient punishment; and from his law,<sup>2</sup> which I shall transcribe, we may take the account and description of it." If any one hasten the fate of his parent, or son, or any the like relation, which goes under the name of parricide, whether he attempt it privately or publicly, he shall not be punished with the sword, or with fire, or with any other common death, but be sewed up in a sack with serpents and other beasts, and be cast into the sea or a river, as the nature of the

<sup>1</sup> Digest. lib. xlviii. tit. xix. leg. xxxix. Cicero in Oratione pro Cluentio scripsit, mulierem quod ab heredibus secundis acceptâ pecuniâ partum sibi medicamentis ipsa abegisset, rei capitalis esse damnatam.

<sup>2</sup> Cod. Theod. lib. ix. tit. 15. de Parricidio. leg. i. Si quis in parentis, aut filii, aut omninò affectionis ejus, quæ nuncupatione paricidii continetur, fata properaverit, sive clam sive palam id fuerit enisus, neque gladio, neque ignibus, neque ullâ aliâ pœnâ solemnî subjugetur, sed insutus culleo, et inter ejus ferales angustias comprehensus, serpentum contuberniis misceatur: et ut regionis qualitas tulerit, vel in vicinum mare, vel in amnem projiciatur: ut omni elementorum usu vivus carere incipiat; ut ei cœlum superstiti, terra mortuo auferatur. Vjd. Gothofred. in loc.

place will admit: that he may be deprived of the use of all the elements as long as he remains in being; that he may have neither air to breath in whilst he lives, nor earth to receive him when he is dead." This was the punishment of such as slew father or mother, or son, or daughter, or any such relation in the direct line: but if it was any other relation, then only the common death of murderers was inflicted on them, as we learn from Justinian's Institutes<sup>1</sup> and his Code, where this matter is determined. Now the Church having no power of the sword, could make no such distinction; but punished both sorts in the same way, with the spiritual censure of excommunication.

SECT. 6.—Of Self-Murder.

And so she treated all those, who laid violent hands upon themselves, who were known by the common name of *Biothanati*, or *self-murderers*. Because this was a crime, that could have no penance imposed upon it, she shewed her just resentment of the fact, by denying the criminals the honour and solemnity of a Christian burial, and letting them lie excommunicate and deprived of all memorial in her prayers after death. "If any one," says the first Council of Braga,<sup>2</sup> "bring himself to a violent end, either by sword, or poison, or a precipice, or an halter, or any other way, no commemoration shall be made of him in the oblation, nor shall his body be carried to the grave with the usual psalmody. And they, who suffer death for their crimes, shall be treated after the same manner." The reason of treating both these sorts of men in this manner, was be-

<sup>1</sup> Justin. Institut. lib. iv. Tit. xviii. de Publicis Judiciis. Si quis autem alias cognatione vel adfinitate personas conjunctas necaverit, pœnam legis Corneliæ de sicariis sustinebit.      <sup>2</sup> Vid. Cod. Justin. lib. ix. tit. 17.

De his qui parentes vel liberos occiderunt. leg. 1.

<sup>3</sup> Con. Bracar. i. can. xxxiv. Placuit, ut hi qui aut per ferrum, aut per venenum, aut per præcipitium, aut suspendium, aut quolibet modo violentam sibi ipsis inferunt mortem, nulla pro illis in oblatione commemoratio fiat, neque cum psalmis ad sepulturam eorum corpora deducantur.——Similiter et de his placuit fieri, qui pro suis sceleribus puniuntur.

cause they were necessary to their own deaths; either directly by offering violence to their own lives; or indirectly, by committing such capital crimes as brought them in the course of justice to an untimely end. Both the Greeks and Latins style them *Biothanati*, or *Biathanati*, from offering violence to themselves, or coming to a violent death. And Cassian particularly notes the discipline of the Church<sup>1</sup> then used toward such after death, speaking of the case of one Hero, an Egyptian monk, whom Satan, under the disguise of a good angel, had tempted to throw himself into a deep well, upon presumption that no harm could befall him for the great merit of his labours and virtues: for which fact he says, Pafuntius the abbot could hardly be prevailed upon not to reckon him among the *Biothanati*, or *self-murderers*, and deny him the privilege of being mentioned in the oblation for those, that were at rest in the Lord. Which is sufficient to shew us the manner of treating such in the ancient discipline of the Church.

SECT. 7.—Of Dismembering the Body.

It was also reckoned a species or lower degree of this crime, for any one to disfigure his own body, by cutting off any member or part thereof, without just reason to engage him so to do. The Canons forbid any such to be ordained, as men who were in effect self-murderers,<sup>1</sup> and enemies of the workmanship of God, as has been shewn at large in another place.<sup>2</sup> What is further to be noted here is, that this discipline extended to laymen as well as clergymen. For one of the Apostolical Canons orders,<sup>3</sup> that a layman, who dismembers himself, shall be debarred the communion for three years, because he insidiously makes an at-

<sup>1</sup> Cassian. Collat. ii. cap. 5. Vix à presbytero Abate Pafuntio potuit obtineri, ut non inter biothanatos reputatus, etiam memoria et oblatione pauperum judicaretur indignus.

<sup>2</sup> Vid. Canon. Apost. c. xxi.

Con. Nic. can. i.

<sup>3</sup> Book iv. chap. iii. sect. 9.

<sup>4</sup> Canon. Apost. xxiii. al. 24. Ααϊκός έαυτόν άκρωστηριάσας, άφοριζέσθω έτη τρια. επίβαλλος γάρ έστιν της έαυτού ζωής.



tempt upon his own life. But if men were either born with a natural defect, or the barbarity of the persecutors, or the necessity of a disease deprived them of any member, in order to effect the cure of the body, and save the whole; in all these cases there was no crime, because the thing was involuntary; in which cases the law itself made an exception, and freed men from incurring the censures of the Church,<sup>1</sup> as may be seen in the Nicene canons, which particularly mention these as excepted cases. I only observe one thing further out of the laws of Constantine, that he had so great a regard to the face, as the image of the Divine Majesty in all human bodies whatsoever, that he would not suffer any mark of infamy to be set upon it, to stigmatize the greatest criminals. For whereas by the old Roman laws notorious criminals might be branded in the forehead, to make their offences more infamous and public: Constantine by one of his first laws cancelled and revoked this custom,<sup>2</sup> ordering, that whatever criminal was condemned either to fight with wild beasts, or dig in the mines, he should not be stigmatized in the face, but only in the hands or legs, that the face, which was formed after the image of the Divine Majesty and Beauty, might not be disfigured. Which certainly was intended piously by Constantine, as a just caution to restrain men from offering violence to their own bodies, which were created after the image and similitude of God in some measure, though that likeness was more visibly seen in the original perfections of the soul.

SECT. 8.—Of involuntary Murder by Chance, or Manslaughter.

All these cases respect such actions as have some tendency toward voluntary murder. Besides which the Church allotted sometimes a proportionable punishment to acciden-

<sup>1</sup> Con. Nicen. can. 1.

<sup>2</sup> Cod. Theod. lib. ix. tit. 40. De Pœnis. leg. ii. Si quis in ludum fuerit, vel in metallum, pro criminum deprehensorum qualitate, damnatus, minimè in ejus facie scribatur: dum et in manibus et in suris possit pœnâ damnationis unâ subscriptione comprehendi: Quo facies, quæ ad similitudinem pulchritudinis cœlestis est figurata, minimè maculetur.

tal and involuntary murder, though the Civil Law took little or no notice of it. For by the old Roman and Christian laws, a master was allowed to punish and correct his slave with great severity:<sup>1</sup> and if in that correction the slave chanced to die, no action of murder could be brought against the master, unless it appeared that he used some weapon, or fraud in his punishment, that tended directly to kill him. But notwithstanding this, the ecclesiastical law, having a more tender regard even to the life of slaves, took cognizance of such cruelties, and obliged the actors to a certain term of penance, though the murder was only casual, and not directly intended. To this purpose it is decreed in the Council of Eliberis,<sup>2</sup> that if any mistress in the heat of her anger so scourge her slave, that the slave die within three days; whereas it might be uncertain whether it was a voluntary, or a chance murder; if it was a voluntary murder, she was to do penance seven years: if casual, only five years: and all the favour, that was allowed in this case, was, that if sickness seized her, she might be admitted to communion sooner. We find a like decree in the discipline of the French Church, made by the Council of Epone, Anno 517,<sup>3</sup> that if any one put his slave to death without a legal trial before the judge, he should expiate his murder by excommunication for two years. And it is remarked of Cæsarius Arelatensis by the author of his life,<sup>4</sup> that he was used to protest to the prefects of the Church, who had then power to inflict corporal punishment, that if they scourged any one to an immoderate degree, so as that he died under his stripes, they should be held guilty of murder. Nay, so

<sup>1</sup> Vid. Cod. Theod. lib. ix. tit. 12. De Emendatione servorum. leg. i. and ii. Constantini.

<sup>2</sup> Con. Eliber. can. v. Si qua Domina furore zeli accensa, flagris verberaverit ancillam suam, ita ut intra tertium diem animam cum cruciatu effundat; eo quod incertum sit, voluntate, an casu occiderit; si voluntate, post septem annos; si casu, post quinquennii tempora, actâ legitimâ Pœnitentiâ ad communionem placuit admitti, &c.

<sup>3</sup> Con Epauenen. can. xxxiv. Si quis servum proprium sine conscientia judicis occiderit, excommunicatione biennii effusionem sanguinis expiabit.

<sup>4</sup> Cypr. Vit. Cæsar. Arelat. Contestabatur ecclesie prefectos, si quis juberet quempiam diutius flagellari, et illa verbera illi mortem afferent, ut is Homicidii reum se sciret.

tender was the Church in this point of shedding man's blood, that she would not ordinarily allow any soldier to be ordained to any sacred office of presbyter or deacon; nor suffer her bishops to sit as judges in capital causes, where they might be concerned to give sentence in cases of blood: as I have had occasion to shew more at large in their proper places,<sup>1</sup> to which I refer the reader. Among the Apostolical Canons, there is one that orders,<sup>2</sup> that if any clergyman in a brawl or scuffle smite another, so as to kill him, though it were by the first blow, he shall be deposed; if a layman, he shall be cast out of communion, and St. Basil's Canons impose eleven years penance upon all voluntary murderers whatsoever.<sup>3</sup>

SECT. 9.—False Witness against any Man's Life reputed Murder.

Neither was it only actual murder which they thus censured, but all actions that had any direct or immediate tendency towards it; as, bearing false witness against a man's life. For, as Lactantius, well expresses it,<sup>4</sup> "there is no difference between killing a man with the sword or with the tongue: It is murder still in either species, and a violation of God's law against invading the life of man, which admits of no exception." And therefore the civil law,<sup>5</sup> appointed the punishment of retaliation to be inflicted on every false accuser, that if any one called another man's credit, or fortune, or life, or blood, into question in judgment, and could not make out the crime alleged against him, he should suffer the same penalty, that he intended to bring upon the other. And no one could formally implead another at law, till he had bound himself to this

<sup>1</sup> Book iv. chap. iv. sect. 1. And Book ii. chap. vii. sect. 4.

<sup>2</sup> Canon. Apost. 66.

<sup>3</sup> Basil can. 57.

<sup>4</sup> Lact. lib. vi. cap. 20. Nihil distat, utrum ferro, an verbo potius occidas, quoniam occisio ipsa prohibetur, &c.

<sup>5</sup> Cod. Theod.

lib. ix. tit. 1. De Accusationibus. leg. xi. Qui alterius famam, fortunas, caput denique et sanguinem in judicium devocaverit, sciat sibi impendere congruam pœnam, si quod intenderit non probaverit. It. leg. xix. ibid. Nec impunitam fore noverit licentiam mentiendi, cum calumniantes ad vindictam poscat similitudo supplicii.

condition, which the law terms “*vinculum inscriptionis*,<sup>1</sup> the bond of inscription.” Now, though the ecclesiastical law could not inflict the punishment of retaliation for false-witness against any man’s life; yet all false testimony being a crime punishable with excommunication; as we shall see more fully under the punishment of sins against the ninth commandment; we may be sure, such false testimony as tended directly to deprive men of their lives, must be reputed by the Church among the highest species both of calumny and murder; and consequently bring them under all the penalties, that were due to those crimes in any degree whatsoever.<sup>2</sup>

SECT. 10.—Informers against the Brethren in Time of Persecution treated as Murderers.

Yea, a bare information, or discovery of the names of the brethren to the heathen magistrates, for as much as that in times of difficulty and persecution might endanger their lives, was justly reputed and censured as murder likewise. The first Council of Arles orders,<sup>3</sup> that if any such informers were found among the clergy, and convicted from the public acts, that they had betrayed either the Holy Scriptures, or the sacred utensils, or the names of their brethren to the heathen, they should be degraded from their orders. And the Council of Eliberis goes a little further,<sup>4</sup> and determines, “that if any Christian informed against his brethren, so as that any one was proscribed or slain upon his

<sup>1</sup> Ibid. leg. xiv. Non prius cujuscunque caput accusatione pulset, quam vinculo legis adstrictus, pari cœperit pœnæ conditione jurgare. &c.

Et leg. 19. Vinculum inscriptionis accipiat, &c. Vid. Leonis. Novel. lxxvii.

<sup>2</sup> Vid. Con. Eliber. can. 74.

<sup>3</sup> Con. Arelat. i. can. xiii. De his qui Scripturas sanctas tradidisse dicuntur, vel vasa dominica, vel nomina fratrum suorum, placuit nobis, ut quicumque eorum in actis publicis fuerit detectus, non verbis nudis, ab ordine cleri amoveatur.

<sup>4</sup> Con Eliber. can. 73. Delator si quis extiterit fidelis, et per delationem ejus aliquis fuerit proscrip-tus vel interfectus, placuit eum nec in fine (al. non nisi in fine) accipere communionem. It. can lxxiv. Falsus testis, prout crimen est, abstinebit: si tamen non fuerit mortis quod objecit, &c.

information, he should not be received into communion at the last, or not till his last hour, as different copies read it."

SECT. II.—Exposing of Infants reputed Murder.

Another sort of interpretative murder was the exposing of infants, against which the Ancients commonly declaim with great vehemency in the practice of the heathen. "You accuse us," says Tertullian, "of murdering infants; but let me turn to your people, and appeal to their consciences, and then how many may I find among those, that stand about us, and thirst after Christian blood; nay, among those just and severe judges that condemn us, who kill their children as soon as they are born, or else expose them to cold,<sup>1</sup> and famine, and dogs? You expose your children to the mercy of strangers and the next comers, that will take pity on them and adopt them more kindly for their own children." The same charge is brought against them by Minucius Felix,<sup>2</sup> that they exposed their children, as soon as they were born, to wild beasts and birds of prey. Athenagoras says expressly,<sup>3</sup> all such are parricides or murderers of their children. And Lactantius a little more largely inveighs against them upon the same foundation. They pretended, he says, by a sort of false piety, to expose them only to keep them from starving, because they were poor and not able to maintain them, but they cannot be deemed innocent, who cast their own bowels as a prey to dogs, and as much as in them lies, kill them more cruelly than if they strangled them. Who can question the impiety of him, who leaves no room for others to shew mercy; but admit that he attains his end, which he pretends, that his child is thereby nourished and brought up; yet doubtless he condemns his own blood either to slavery or the stews; of which there were many examples in both sexes. Therefore he concludes, that for men to expose their children, was the same base

<sup>1</sup> Tertul. Apol. cap. ix. Aut Frigori aut fami, aut canibus exponitis, &c. Vid. Tertul. ad Nationes. lib. i. cap. 16.

<sup>2</sup> Minuc. p. 90.

<sup>3</sup> Athen. Legat. pro Christian. p. 38.

<sup>4</sup> Lact. lib. vi.

cap. 20.

and villainous action as to kill them. And whereas men were apt to complain of their poverty, and pretend they were not able to bring up many children: he not only answers this from considerations of Providence, in whose power the fortunes and possessions of all men are, to make rich men poor, and poor men rich; but is also thought by his prudent advice to have induced Constantine to enact those two excellent and charitable laws, still extant in the Theodosian Code,<sup>1</sup> whereby it is provided by his great munificence in several parts of the Empire, that poor parents who had numerous families, which they could not maintain should have relief out of the public revenues of the empire; that they might be under no temptation either to expose or kill, or sell, or oppignorate and enslave their children; of which there had been so great complaints under the former reigns of heathenism. Constantine<sup>2</sup> and Honorius added two other laws to these, in favour of such as took care of exposed children, that parents should have no right to claim them again, nor accuse those of theft or plagiary, who shewed mercy on those, whom they exposed to death, and by their neglect suffered to perish; provided only that the collectors of such children made evidence before the bishop, that they were really exposed and deserted. And in this case the ecclesiastical laws concurred with the secular, adding the penalty of excommunication, to be inflicted on all parents, who thus proved themselves guilty of murdering their children. For so the Canons expressly word it. The Council of Vaison first prescribes the method of ascertaining such children to the right and possession of those, who became their foster-fathers, according to the tenour of the imperial laws; and then pronounces those, who exposed them, guilty of murder by their own confession. "A clamour,"<sup>3</sup> says the council, "is

<sup>1</sup> Cod. Th. lib. xi. tit. 27. de Alimentis, &c. leg. 1. and 2.

<sup>2</sup> Cod. Theod. lib. v. tit. vii. de Expositis, leg. 1 and 2.

<sup>3</sup> Con. Vasionen. i. can. 9. De Expositis (quia conelamatur ab omnibus) querela processit, eos non misericordie jam, sed canibus exponi, quos colligere calumniatorum metu, quamvis præceptis misericordie inflexa mens humana detrectet: id servandum visum est, ut secundum statuta fidelissemorum

made on all sides, and complaint brought before us concerning exposed children, that they are now no longer exposed to the mercy of Christians, but to be devoured by dogs, because every one refuses to take them up, for fear of prosecution from false accusers: we therefore decree, that according to the laws of pious emperors and princes, whoever takes up an exposed child, shall make testimony thereof unto the Church, and the minister on the Lord's day, shall publish it at the altar, that if any one owns it within ten days he may receive it again; giving a recompence to the finder for his charitable care for that term, or letting him keep it for ever as his own possession." But the next canon adds,<sup>1</sup> "that if any one, after this legal form of proceeding has been observed in the case, pretend to claim the exposed infant, or accuse the finder as a plagiarist or man-stealer, he himself shall be punished as a murderer by the censures of the Church." All which manifestly proves, that in the account of conscience and the ancient discipline, the parent, who deserts his infant and leaves it defenceless to the injuries of fortune, or want, or the weather, or wild beasts, is a real murderer, as doing that, in consequence of which, murder necessarily ensues, unless some favourable providence interposes to prevent it.

SECT. 12.—If a Virgin deflowered kills herself for Grief, the Corrupter is reputed guilty of the Murder.

For the same reason some canons appointed all accessories to murder to do the same penance as the murderers themselves. The Council of Ancyra puts a special case of this nature. A man, that is espoused to a woman, deflowers her sister, and afterward marries the other: she, that is so defiled, hangs herself for grief: the man, as accessory to

piissimorumque Augustorum et principum, quisquis expositum colligit, ecclesiam contestetur, &c.

<sup>1</sup> Con. Vasionen. i. can. 10. Si quis expositorum hoc ordine collectorum repetitor vel calumniator extiterit, ut homicida habendus est, et ecclesiasticâ districtione damnabitur. Vid. Con. Arelat. ii. can. 32. where the same things are repeated.

the murder,<sup>1</sup> is ordered to do ten years penance for his crime, before he is allowed to appear among the co-standers at the communion.

SECT. 13.—The *Lanistæ*, or *Fencing-Masters*. reputed Accessories to Murder, and their Calling condemned.

The case of the *Lanistæ*, or *Masters of Fencing*, was much of the same nature. Their art in preparing gladiators for the theatre, was always reputed a scandalous trade; being in effect no better than teaching men to murder and butcher one another. And therefore the Church would never allow it as a lawful profession. Tertullian says expressly,<sup>2</sup> “that the prohibition of murder shewed there was no place for fencers in the Church: for they were impleaded guilty of shedding that blood, which they taught others to shed.” The Author of the Constitutions puts gladiators in the number of those, who were to be rejected from baptism.<sup>3</sup> And Constantine prohibited the art itself as unchristian,<sup>4</sup> ordering such criminals, as were used to be condemned to fight for their lives upon the stage, rather to be sent to the mines, that they might suffer punishment without blood. For though in the beginning of his reign he allowed it to be used as a punishment for some crimes: as in the case of plagiary or man-stealing, which they that were guilty of were condemned to fight for their lives<sup>5</sup> with wild beasts, or one another: yet afterwards he seems to have revoked this also. And Valentinian absolutely forbid any Christian or any Palatine soldier to be condemned to this punishment.<sup>6</sup> Nay, some of the wiser hea-

<sup>1</sup> Con. Ancy. can. xxvi.

<sup>2</sup> Tertul. de Idol. cap. xi. Sic et homicidii interdictio ostendit mihi lanistam quoque ab ecclesiâ arceri: Nec per se non faciet, quod faciendum aliis subministrat.

<sup>3</sup> Constit. lib. viii. cap. 30.

<sup>4</sup> Cod. Theod. lib. xv. lit. 12. de Gladiatoribus. leg. 1. Cruenta spectacula in otio civili et domesticâ quiete non placent, &c.

<sup>5</sup> Cod. Theod. lib. ix. tit. xviii. ad Legem Fabiam de plagariis. leg. 1.

<sup>6</sup> Cod. Theod. lib. ix. tit. xl. de Pœnis. leg. 8, and 11.



thens always abhorred and declared against it. And therefore there was more reason to prohibit the whole art and practice of gladiators under the Christian institution, which Honorius the Emperor, quite abolished and destroyed.<sup>1</sup>

SECT. 14.—Spectators of the Murders committed on the Stage accounted Accessories to Murder also.

But the Christian laws and rules of the Church went a little further. They not only condemned the murders of the stage but forbid any one to be a spectator of them, under the penalty of being reputed accessory to the murder. Cyprian, describing the impiety and barbarity of these inhuman games, elegantly styles all spectators of them,<sup>2</sup> “*Oculus parricidas, men guilty of murder with their eyes:*” intimating, that no one could entertain himself with the pleasing sight of them without partaking in the guilt, and defiling his soul with the contagion of the murders committed in them. “There is little difference,”<sup>3</sup> says Athenagoras, “between seeing such murders, and committing them; and therefore we wholly abstain from the sight of them, lest any of their wickedness and defilement should cleave to us.” Laetantius, in his elegant and fluent way, declaims more copiously and vehemently against them. “He that accounts it a pleasure,” says he,<sup>4</sup> “to see a man killed before his eyes, though it be a criminal condemned for his villainies, pollutes his conscience, as much as if he were both a spectator and partaker of any secret murder. And yet they call these things only games and diversions, wherein human blood is shed. So far are men forsaken of humanity, that they count it but sport to destroy men’s lives or souls

<sup>1</sup> Vide Pagi. Crit. in Baron. t. ii. an. 404. n. v. ex Prudentio contra Symmach. lib. 2.

<sup>2</sup> Cypr. ad Donat. p. 5.

<sup>3</sup> Athen. Legat. pro Christian. p. 38.

<sup>4</sup> Lact. lib. vi. cap. 20. Qui hominem, quamvis ob merita damnatum, in conspectu suo pro voluptate jugulari computat, conscientiam suam polluit, tam scilicet quam si homicidii, quod fit occultè, spectator et particeps fiat, &c.

being really more wicked and injurious than those very criminals, whose blood they make their diversion." Upon this account, in the eye of the Church, to frequent these inhuman games was the same thing as to commit murder, and no man could associate with such company, and follow such diversions, but he was reputed to bid adieu to all humanity, piety, and justice, and to make himself partaker in all the guilt of those public murders.

SECT. 15.—Famishers of the Poor and Indigent reputed guilty of Murder.

The charge of murder was also brought against those, who denied the poor their necessary maintenance, and defrauded their indigent parents of their proper livelihood, suffering them to perish by famine or want, against the laws of piety, and natural affection. The fourth Council of Carthage,<sup>1</sup> upon this account, terms those, who defrauded the Church of the oblations of the dead, "*egentium necatores, murderers of the poor,*" and, as such, orders them to be prosecuted to excommunication. And Cyprian, speaking of the villanies of Novatus, says, among other instances of his being guilty of parricide and murder, (such as causing his wife to miscarry by a kick on the belly, when she was great with child,) he suffered his own father to starve and perish by famine, and left him unburied after death.<sup>2</sup> For which crimes he had certainly been expelled, not only from the presbytery, but from all communion with the Church, had not the difficult times of approaching persecution prevented the day of his trial, and given him opportunity to escape the condemnation, that was due to him by the just discipline and censures of the Church. All these were reckoned guilty of murder, indirectly at least, as accessories and partakers in the sin, though their hands were not actually and directly engaged in shedding of blood.

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<sup>1</sup> Con. Carth. iv. can. 95.  
lii. ad Cornel. p. 97.

<sup>2</sup> Cypr. Ep. xlix. al.

SECT. 13.—And all those, by whose Authority Murder was committed.

But none were reputed more guilty of murder than they, by whose authority it was committed. Though the inferior instruments were not acquitted, yet the crime was chiefly laid to the charge of the principal authors. Therefore, as David was charged by Nathan with the murder of Uriah, though he was slain through the treachery of Joab by the sword of the children of Ammon, so Theodosius, when by his orders and authority seven thousand men were slaughtered at Thessalonica, was charged by St. Ambrose as the principal author of the murder, and according to the rules of discipline denied the communion of the Church, till he had made a suitable and reasonable satisfaction; for though, as Cyprian complains to his friend Donatus,<sup>1</sup> under the Heathen Emperors public murder was esteemed a virtue, which in private men was punished as a great crime; yet it was not so under the Christian institution, but there was a power to bring even emperors and princes under discipline for such public offences, as appears from the case of Theodosius now mentioned. And the case of the *munerarii*, that is, such Christian magistrates as exhibited the *munera*, or inhuman games, where men murdered one another upon the stage, is a further evidence of this power and practice. For the canons of the Church order all such magistrates to be excommunicated,<sup>2</sup> as contributing by their authority, and expenses both to idolatry and murder. So that murder, in whatever species it appeared, or by whatever persons it was committed, was always reputed a crime of the first magnitude, exposing men to the utmost severity of ecclesiastical censure.

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<sup>1</sup> Cypr. ad Donat. p. 5. Homicidium cum admittunt singuli crimen est; virtus vocatur cum publicè geritur.

<sup>2</sup> See chap. iv. sect. 8.

SECT. 17.—Enmity and Strife and Contention, punished as lower Degrees of Murder.

And it must be added, that all open enmity and quarrelling, strife, envy, anger, and contention, professed malice and hatred, were punished with excommunication, as tendencies toward this great sin, and lower degrees of murder. St. John, says, “He that hateth his brother, is a murderer, and no murderer hath eternal life abiding in him.” Our Saviour also declares, “That he that is angry with his brother without a cause shall be in danger of the judgment; and whosoever shall say to his brother, Raca, shall be in danger of the council: but whosoever shall say, Thou Fool, shall be in danger of hell-fire.” Now agreeably to these instructions, the Church to prevent or correct all tendencies toward the great sin of murder, laid proper restraints and penalties upon the unruly passions of men, whenever they discovered themselves in any visible acts of malice or hatred, and strife or contention. The communion was the great symbol of love and charity, and the covenant of peace and unity, and the great uniter of men’s hearts and affections. Therefore all, who visibly wanted these necessary qualifications, were thought unworthy of that venerable mystery, and accordingly obliged by the discipline of the Church, till they were so qualified, to abstain from it. The fourth Council of Carthage made an order,<sup>1</sup> that the oblations of such as were at enmity or open variance with their brethren, should neither be received into the treasury of the Church nor at the altar: which was as much as to say, they should not communicate whilst they were in that condition. And the second Council of Arles removes those from the privilege of joining with the assemblies of the Church,<sup>2</sup> who

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<sup>1</sup> Con. Carth. iv. can. 93. Oblationes dissidentium fratrum, neque in sacrario, neque in Gazophylacio recipiantur. <sup>2</sup> Con. Arlat. ii. can. 31. Hi, qui publicis inter se odiis exardescunt, ab ecclesiasticis conventibus sunt removendi, donec ad pacem recurrant.

break forth into public hatreds and animosities, one against another, until they are reconciled, and return to peace again. They, that evil entreat their servants or slaves with stripes, famine, or hard bondage, are ordered to be refused communion by the rules of the Constitutions.<sup>1</sup> And Chrysostom often warns the clergy,<sup>2</sup> that they should admit no cruel or unmerciful man to the communion. For if they gave the eucharist wittingly to any such flagitious man, his blood would be required at their hands, “though it be a general, though it be a consul, though it be him that wears the crown, restrain him, if he comes unworthily: thou hast greater power than he.” But this was to be understood of great and enormous violations of charity, expressing themselves in open and professed acts of cruelty; not of every lower degree of anger, especially rash and sudden anger, which, as I shewed before,<sup>3</sup> was to be cured by other methods, and not by the highest remedies of severity in the exercise of ecclesiastical censure.

These were the rules of discipline, whereby the Church proceeded in censuring and punishing the great sin of murder, with all its species and appendages so far as it was either possible or proper to take notice of them: reserving the rest for the gentler methods of admonition and verbal correction, which, in ordinary cases and lighter transgressions of this kind, was sufficient for the amendment of the sinner.

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<sup>1</sup> Constit. lib. iv. cap. 6.  
Mat. p. 705.

<sup>2</sup> Chrys. Hom. 83. in  
<sup>3</sup> Chap. iii. sect. 14.

## CHAP. XI.

*Of Great Transgressions against the Seventh Commandment, Fornication, Adultery, Incest, &c.*

## SECT. I.—The Punishment of Fornication.

ANOTHER sort of great crimes, which always made men liable to the severities of ecclesiastical discipline, were the sins of uncleanness, or transgressions of the seventh commandment: such as fornication, adultery, ravishment, incest, polygamy, and all sorts of unnatural defilement with beasts or mankind, and all things leading or paving the way to such impurities, as rioting and intemperance, writing or reading lascivious books, acting or frequenting obscene stage-plays, allowing or maintaining harlots, or whatever of the like kind may be called making provision for the flesh to fulfil the lusts thereof.

To begin with simple fornication: the Heathen laws were so far from laying any effectual restraints upon it, that they not only allowed it with impunity, but many times encouraged it in the very sacred rites and mysteries of their gods, as the ancient Apologists often object against their religion: whereas the Christian religion laid great and severe penalties upon all such, as under the name of Christians were found guilty of it. The Apostolical Canons,<sup>1</sup> and those of Neocæsarea,<sup>2</sup> forbid such ever to be received into holy orders, or command them to be suspended, if unwittingly ordained. The Council of Eliberis suspends virgins,<sup>3</sup> who keep not their vir-

<sup>1</sup> Canon Apost. liii. al. 61.

<sup>2</sup> Con. Neocæsar. can.

ix.

<sup>3</sup> Con. Eliber. can. xiv. Virgines, quæ virginitatem suam non custodierint, si eosdem, qui eas viola verunt, duxerint et tenuerint maritos, eo quod solas nuptias violaverint (nempe non Deo dedicatæ, ul

ginity, a whole year from the communion; obliging them to marry those, that defiled them; otherwise they are to undergo five years solemn repentance, because if they are corrupted by others, they become guilty of adultery, which, as we shall presently see, had a more severe punishment than simple fornication.

SECT. 2.—Of Adultery.

For whereas St. Basil's Canons appoint seven years penance for fornication only, they prescribe fifteen for adultery,<sup>1</sup> and sometimes double the number.<sup>2</sup> The Council of Ancyra imposes seven years for adultery,<sup>3</sup> but makes no express mention of fornication. The Council of Eliberis appoints five years penance for a single act of adultery;<sup>4</sup> and ten years if repeated:<sup>5</sup> but if any continued in it all their lives, they were not to have the communion at their last hour. And in some of the African Churches before the time of St. Cyprian, this was the common punishment for all adultery. For he says,<sup>6</sup> some of his predecessors refused the peace of the Church to all adulterers, and shut the door of repentance entirely against them; though it was otherwise in his time, when adulterers had a certain term of penance appointed them, after which they might be restored to the peace of the Church.

can. xiii.) post annum sine pœnitentiâ reconciliari debebunt. Vel si alios cognoverint viros, eo quod mœchatae sint, placuit, per quinquennii tempora, actâ legitimâ pœnitentiâ, admitti eas ad communionem.

<sup>1</sup> Basil. can. 58, et 59.

<sup>2</sup> Ibid, can. vii.

<sup>3</sup> Con. Ancyra. can. 20.

<sup>4</sup> Con. Eliber. can. 69. Si

quis fortè habens uxorem, semel fuerit lapsus, placuit eum quinquennium agere de eâ re Pœnitentiam.

<sup>5</sup> Ibid, can. 64. Si qua mulier usque in finem mortis suæ cum alieno fuerit viro mœchata, placuit nec

in fine dandam ei esse communionem. Si verò eum reliquerit, post decem annos recipi ad communionem, actâ legitimâ pœnitentiâ.

<sup>6</sup> Cypr. Ep. lv. al. lii. ad Antonian. p. 109. Mœchis à nobis pœnitentiâ conceditur, et pax datur.—Et quidem apud antecessores nostros quidam de episcopis in provinciâ nostrâ dandam pacem mœchis non putaverunt, et in totum pœnitentiæ locum contra adulteria clauserunt; non tamen à coepiscoporum suorum collegio recesserunt.

Whence Bishop Pearson<sup>1</sup> rightly reproveth Albaspinæus for asserting, that adulterers were never received into communion before the time of Cyprian. For Cyprian says expressly, they were received to repentance in most Churches, though rejected by some. And it appears plainly from Tertullian, who lived before Cyprian, and wrote his book *De Pudicitia*, as a Montanist, against the Catholics, for receiving adulterers to their Communion. Yet in the case of the clergy, the law continued still a little more severe. For by a rule of the Council of Eliberis,<sup>2</sup> if a bishop, presbyter, or deacon was convicted of adultery, he was to be denied communion to the very last, as well for the greatness of the crime, as for the scandal he gave to the Church thereby. And by another Canon of the same Council,<sup>3</sup> every clergyman, who knew his wife to be guilty of committing adultery, and did not presently put her away, was also to be denied communion to the very last: that they, who ought to be examples of good conversation, might not by their practice seem to shew others the way to sin. And the Council of Neocæsarea has a decree of near affinity to this,<sup>4</sup> “that if a layman’s wife be convicted of adultery, it shall render him incapable of orders: or, if after his ordination she commits adultery, he must dismiss her; under pain of degradation from his ministerial office, if he retains her.” The civil law both under the Heathen and Christian Emperors made this crime capital, as Gothofred shews by various instances both out of the Code and Pandects.<sup>5</sup> And Constantine, the son of Constantine, in particular, appointed its punishment to be the same as that of parricide, which was burning alive, or drowning in a sack, with a serpent, an

<sup>1</sup> Pearson. *Vindic. Ignat.* lib. ii. cap. viii. p. 378.

<sup>2</sup> Con. Eliber. can. xviii. *Episcopi, presbyteri, diacones, si in ministerio positi, detecti fuerint quod sint mœchati, placuit et propter scandalum, et propter nefandum crimen, nec in fine eos communionem accipere debere.*

<sup>3</sup> *Ibid.* can. 65. *Si cujus clerici uxor fuerit mœchata, et sciat eam maritus suus mœchari, et eam non statim projecerit, nec in fine accipiat communionem: ne ab his qui exemplum bonæ conversationis esse debent, videantur magisteria scelerum procedere.*

<sup>4</sup> Con. Neocæsar. can. viii.

<sup>5</sup> Gothofr. in *Cod. Th.* lib. ix. tit. 36. *Quorum appellationes, &c. leg. iv.*



ape, a cock and dog tyed up with the criminals. When adultery, says he,<sup>1</sup> is proved by manifest evidence, no dilatory appeal shall be allowed: but the judge is obliged to punish those, who are guilty of the sacrilegious violation of marriage, as manifest parricides, either by drowning them in a *culleus*, or *sack*, or burning them alive. And this was one of those crimes, to which the Emperors at Easter would grant no indulgence,<sup>2</sup> nor allow any appeal to be made from the judge to themselves in favour of the criminals, as appears not only from this law of Constans, but several others.<sup>3</sup> It may not be amiss also to observe out of one of the laws of Theodosius,<sup>4</sup> that for a Christian, man or woman, to marry a Jew, was reputed the same thing as committing adultery, and made the offending party liable to the same punishment; because it was at least a spiritual adultery, and a sacrilegious prostitution of the members of Christ to the insolence and power of his greatest enemies. And indeed there is nothing that the Ancients more generally condemn than this of Christians joining in marriage with Jews, or Heathens, or Heretics, or any persons of a different religion;<sup>5</sup> not because it was strictly and properly adultery, but because it was against the rule of the Apostle, which orders women to “marry only in the Lord” and therefore dangerous to the faith, by running themselves into temptation of changing their religion, either by perverting

<sup>1</sup> Cod. Theod. ib. Manifestis probationibus adulterio probato frustratoria provocatio minime admittatur: cum pari similique ratione sacrilegos nuptiarum, tanquam manifestos parricidas, insuere culleo vivos, vel exurere, judicantem oporteat.

<sup>2</sup> Cod. Theod. lib. ix. tit. 38. De indulgentiis criminum. leg. 3, 4, 6, 7, 8.

<sup>3</sup> Cod. Th. lib. ix. tit. 36. Quorum appellationes non recipiantur. leg. 1, 4, 7.

<sup>4</sup> Cod. Th. lib. ix. tit. ix. ad legem Juliam de adulteriis. leg. 5. Ne quis Christianam mulierem in matrimonium Judæus accipiat, neque Judææ Christianus conjugium sortiatur. Nam si quis aliquid hujusmodi admisit, adulterii vicem commissi hujus crimen obtinebit.

<sup>5</sup> Ambros. de Abrahamo. lib. i. cap. ix. Cave, Christiane, gentili aut Judæo filiam tuam tradere: cave, inquam, gentilem aut Judæam, atque alienigenam, hoc est, hæreticam, et omnem alienam à fide tuâ uxorem accersas tibi. Vid. Aug. Ep. 234. ad Rusticum. Con. Eliberit. can. xvi. Con. Laodic. can. 10, and 31.

and corrupting the faith, or wholly deserting and apostatizing from it.

SECT. 3.—Of Incest.

Another sort of uncleanness was committed by incestuous marriages, that is, when persons of near alliance, either by consanguinity or affinity, made marriages one with another, within the degrees prohibited by God in Scripture. As if a man married his father's wife, or his wife's daughter, or his brother's wife, or his wife's sister; which are cases in affinity, particularly mentioned in the Council of Auxerre as prohibited cases.<sup>1</sup> St. Basil says,<sup>2</sup> incest with a sister was to be punished with the same penance as murder; and all incestuous conjunction, as adultery.<sup>3</sup> He, that committed incest with an half-sister,<sup>4</sup> was to do eleven years penance; and he, who committed incest with his son's wife,<sup>5</sup> was to do the same. He, who successively married two sisters,<sup>6</sup> was to do the penance of an adulterer, which was fifteen years. And about all cases of this nature, the Ancients were perfectly agreed. Herein especially the Christian morals exceeded the heathen. Among the Persians, it was allowed by law for the father to marry his own daughter, or a son his own mother or sister, as is observed by Origen;<sup>7</sup> Minucius says<sup>8</sup> the same of the Egyptians and Athenians; and Theodosius, speaking particularly of the Persians in his own time,<sup>9</sup> says, it was then a mark of honour and religion for their princes to marry their own mothers, or sisters, or daughters. And Gothofred gives many instances among the Romans of men marrying their sister's daughters,<sup>10</sup> and their brother's daughters, the latter of which was never forbidden by any of their

<sup>1</sup> Con. Antissidor, can. xxvii, xxviii, xxix, xxx.

<sup>2</sup> Basil, can.

lxvii.

<sup>3</sup> Id. can. lxviii.

<sup>4</sup> Ibid. can. lxxv.

<sup>5</sup> Ibid.

can. lxxvi.

<sup>6</sup> Ibid. can. lxxviii.

<sup>7</sup> Orig. cont. Cels. lib. v.

p. 248. Aug. de Civ. Dei. lib. xv. cap. 16.

<sup>8</sup> Minuc.

Octav. p. 92. Jus est apud Persas misceri cum matribus: Ægyptiis et Athenis cum sororibus legitima connubia.

<sup>9</sup> Theod. Com. in Levit.

xviii. S.

<sup>10</sup> Gothofred. in Cod. Theod. lib. iii. Tit. xii. de Incestis Nuptiis. Leg. i. ex Tacito. Lib. xii. Annal. Sucton. Vit. Claudii cap. xxvi. Vit. Domitiani, cap. xxii.

laws, though the former had sometimes a restraint laid upon it. But Constantius made it a capital crime for any one to marry his brother's or sister's daughter, which was abominable.<sup>1</sup> He equally condemned the marrying of two sisters,<sup>2</sup> or a brother's wife (though the Jewish law allowed the latter in a certain case) under the penalty of having their children illegitimate, and accounted spurious. And Theodosius Junior thought it proper to repeat the same law,<sup>3</sup> though Honorius himself had made a stretch upon it, by marrying two sisters, the daughters of Stilicho, successively the one after the other. The ecclesiastical law dissolved all such marriages as incestuous, and obliged the parties to do penance for their lewdness. The Council of Eliberis requires five years penance,<sup>4</sup> unless some intervening danger of death require the time to be shortened. The Council of Neocæsaria orders the woman,<sup>5</sup> that is married to two brothers, to remain excommunicate to the day of her death, and then only to be reconciled by receiving the sacrament in extremity, upon condition, that if she recovers, she shall dissolve the marriage, and submit to a course of solemn repentance. St. Basil argues at large for the nullity and dissolution of all such marriages,<sup>6</sup> in an Epistle to Diodorus Tarsensis, under whose name there went a feigned treatise in defence of them. And among the Apostolical Canons there is one that orders;<sup>7</sup> "That whoever marries two sisters, or his brother's daughter, shall never be admitted among the clergy."

<sup>1</sup> Cod. Theod. Ibid. Si quis filiam fratris, sororisve, faciendum crediderit abominantur uxorem, aut in ejus amplexum, non ut patruus aut avunculus, convolaverit, capitalis sententiæ pœnâ teneatur.

<sup>2</sup> Cod. Theod. lib. iii. tit. 12. de Incestis Nuptiis. leg. ii. Etsi licitum veteris crediderunt nuptiis fratris solutis, ducere fratrum uxorem; licitum etiam post mortem mulieris vel divortium, contrahere cum ejusdem sorore conjugium: abstineant hujusmodi nuptiis universi, nec æstiment posse legitimos liberos ex hoc consortio procreari: nam spurios esse convenit, qui nascentur.

<sup>3</sup> Ibid. leg. iv.

<sup>4</sup> Con. Eliber. can. lxi. Si quis post obitum uxoris suæ, sororem ejus duxerit, quinquennium à communione placuit abstinere, nisi forte dari pacem velocius necessitas coegerit infirmitatis.

<sup>5</sup> Con. Neocæsar. can. ii.

<sup>6</sup> Basil. Ep. 197. ad. Diodor. Tarsens.

<sup>7</sup> Can. Apost. xix.

SECT. 4.—Whether the Marriage of Cousin-Germans was reckoned Incest.

But they are not so clear and unanimous in the question about the marriage of cousin-germans. Till the time of St. Ambrose and Theodosius there was no law against it, but Theodosius by an express law absolutely forbid it. This law is not extant now in either of the codes, but there is reference made to it by many ancient writers. Honorius in one of his laws makes mention of it,<sup>1</sup> confirming the prohibition, though under a different penalty. For whereas Theodosius made the penalty to be confiscation and burning, he moderated the punishment into confiscation of the parties' goods, illegitimation of their children. And Arcadius by another law took off confiscation also,<sup>2</sup> but made all such still guilty of incestuous marriage, and rendered them intestate, and their children illegitimate, and incapable of succeeding to any inheritance, as being only a spurious off-spring. Gothofred has observed likewise,<sup>3</sup> that there is mention made of this law of Theodosius in the writings of Libanius,<sup>4</sup> who speaks of it as a new law made by him, to forbid the marriage ἀνέψυοι, that is *cousin-germans*. The like is said by St. Ambrose,<sup>5</sup> who takes notice of the severe punishment which the Emperor laid upon all those, that married in contradiction to the law. And it is thought that St. Ambrose was the Emperor's adviser in the case, being of opinion himself that such marriages were incestuous and prohibited

<sup>1</sup> Cod. Theod. lib. iii. tit. 10. Si nuptiæ ex rescripto petantur. leg. i. Exceptis his, quos consobrinorum, hoc est quarti gradûs conjunctionem, lex triumphalis memoriæ patris nostri exemplo indultorum supplicare non vetavit, &c.

<sup>2</sup> Cod. Th. lib. iii. tit. 12. de Incestis Nuptiis. leg. 3. Manente circa eos sententiâ, qui post factam dudum legem quoquo modo absoluti sunt aut puniti, si quis incestis posthâc consobrinæ suæ, vel sororis aut fratris filiæ, uxorisve——sese nuptiis fuerint designato quidem lege supplicio, hoc est, ignium et proscriptionis, careat, proprias etiam quamdiu vixerit teneat facultatis: sed neque uxorem neque filios ex eâ editos habere credatur, ut nihil prorsus predictis, ne per interpositam quidem personam, vel donet superstes, vel mortuus derelinquat.

<sup>3</sup> Gothofred. in Cod. Th. lib. iii. tit. 10. leg. 1.

<sup>4</sup> Liban. Orat. pro. Agricolis. de Angariis.

<sup>5</sup> Ambrose Ep. lxxvi. ed Paternum. Theodosius Imperator etiam patruales fratres et consobrinos vetuit inter se conjugii convenire nomine, et severissimam pœnam statuit si quis temerare ausus esse: fratrum pia pig-nora, &c.

in Scripture. St. Austin was of a different judgment from St. Ambrose, yet he mentions the Emperor's law, and advises men to refrain from such marriages;<sup>1</sup> because though neither the divine law, nor any human law before that of Theodosius, had prohibited them, yet most men were scrupulous about them, and such marriages were very rarely made, because men thought they bordered very near upon unlawful; whilst the marrying a cousin-german was almost deemed the same thing as marrying a sister, and the propinquity of blood gave men a sort of natural aversion to such engagements with their near kindred. It appears from this, that there was no human law before that of Theodosius to prohibit this sort of marriages; and in St. Austin's opinion there was nothing to hinder them in the law of God. Athanasius was of the same judgment;<sup>2</sup> for he says expressly, that by the rule of God's commands the conjunction of cousin-germans, or brother's and sister's children in matrimony, was lawful marriage. And afterwards Arcadius revoked all former laws that he himself or others had made in derogation of such marriages declaring them legal,<sup>3</sup> and that no action or false accusation should lie against them, but that if cousin-germans married together, whether they were the children of two brothers, or two sisters, or a sister and a brother, their matrimony should be lawful, and their children legitimate. Justinian made this the standing law of the empire, not only by inserting it into his Code, but by declaring the same thing in his Institutions.<sup>4</sup> Where Contius<sup>5</sup>

<sup>1</sup> Aug. de Civ. Dei. lib. xv. cap. 16. *Experti sumus in connubiis consobrinorum etiam nostris temporibus, propter gradum propinquitatis fraterno gradui proximum, quàm rarò per mores fiebat, quod fieri per leges licebat, quia id nec divina prohibuit, et nondum prohibuerat lex humana: veruntamen factum etiam licitum propter vicinitatem horrebatur illiciti, et quod fiebat cum consobrinâ, penè cum sorore fieri videbatur, &c.*

<sup>2</sup> Athan. Synops. Scriptur. Lib. Numeror. tom. ii. p. 70. *Νόμιμον εἶναι γαμον τῆν πρός ἀνεψιὸς συζυγίαν,*

<sup>3</sup> Cod. Justin. lib. v. tit. 4. de Nuptiis, leg. xix. *Celebrandis inter consobrinos matrimoniis licentia legis hujus salubritate indulta est; ut revocati prisce juris auctoritate, restinctisque calumniarum fomentis, matrimonium inter consobrinos habeatur legitimum, sive ex duobus fratribus, sive ex duabus sororibus, sive ex fratre et sorore nati sunt, &c.*

<sup>4</sup> Justin. Instit. lib. i. tit. 10. *Duorum fratrum vel sororum liberi, vel fratris et sororis conjungi possunt.*

<sup>5</sup> Contius in locum.

rightly observes, that though some copies and some ancient writers, as Theophilus and others, read it negatively, "*Conjungi non possunt*:" yet the other is certainly the true reading, both because it is agreeable to the law of Arcadius in the Code, and because Gregory the Great so alleges it in his answer to Austin the Monk upon this question, saying,<sup>1</sup> "the civil law of the Roman Empire allows the marriage of cousin-germans, but the sacred law forbids it." And this was now the known difference between the civil and ecclesiastical law. For though Zepper<sup>2</sup> alleges the Council of Epone and the second of Tours, as allowing such marriages, yet he plainly mistakes in both. For the Council of Epone expressly styles them incest and adultery,<sup>3</sup> ranking them with marriages contracted with a sister, or the relict of a brother, or a father's wife. And the Council of Tours is as plain in the matter,<sup>4</sup> quoting the foresaid canon of Epone, and another of the Council of Arvern or Clermont against them. Gregory II. made a like decree in a Council at Rome,<sup>5</sup> Anno 721, and in the following ages the prohibition extended to the sixth or seventh<sup>6</sup> generation. The short of the whole matter is this: before the time of Theodosius there was no law, ecclesiastical or civil, to prohibit the marriage of cousin-germans: under the reign of Theodosius they were forbidden, but allowed again in the next reign, and under Justinian, who fixed the allowance in the body of his laws. But still the canons continued the prohibition, and extended it to a greater degree. But as this was not the original constitution, nor the practice of the

<sup>1</sup> Greg. lib. xii. Ep. 31. et ap. Bedam. lib. i. cap. xxvii. Quædam terrena lex in Romanâ republicâ permittit, ut sive frater et soror (leg. fratris et sororis) seu duorum fratrum germanorum, vel duarum sororum filius et filia misceantur. Sed sacra lex prohibet, &c. <sup>2</sup> Zepper. Legum Mosaicarum Forensium Explanat. lib. iv. cap. 19, p. 506. <sup>3</sup> Con. Epauenen.

can. xxx. Incestis junctionibus nihil prorsus veniæ reservamus, nisi cum adulterium separatione sanaveriat; —si quis novercam duxerit, si quis consobrinæ se societ. <sup>4</sup> Con. Turon. ii. can. 22. Quisquis aut sororem, aut filiam, aut certè gradu consobrinam, aut fratris uxorem, sceleratis sibi nuptiis juxerit, huic pœnæ subjaceat, &c. <sup>5</sup> Con. Roman. can. 8. Si quis consobrinam duxerit in conjugium, anathema sit. <sup>6</sup> Vid. Gratian

Caus. 35. Quæst. 5.

Church for some ages, to bring such marriages under penitential discipline, as incestuous or simply unlawful; so I have not here laid this load upon them, but given the fair account of men's sentiments on both sides, and the different practices both of Church and state in several ages; acting the part of an historian, but not inducing the reader to condemn what was once allowed by the general vote of the Catholic Church, however differently represented in later ages.

SECT. 5.—Of Polygamy, and Concubinage.

The next question may be about polygamy, which denotes either having many wives at once, or many successively one after another. As to the former,<sup>1</sup> Socrates tells a very strange story of the Emperor Valentinian, that by the advice of his wife Severa he married a second wife, whilst she was living; and upon that made a law to grant liberty to all that would, to have two wives at the same time. The author of the book, called, *Polygamia Triumphatrix*, makes a great stir with this pretended law in favour of polygamy; which in all probability is a mere fabulous story, which Socrates too hastily took up from the relation of some crafty impostor. For there is no footstep of any such law in either of the Codes, but much to the contrary. For even the Heathen law forbid it to the old Romans,<sup>2</sup> as is evident from an edict of Diocletian in the Justinian Code, where he says, “no Roman was allowed to have two wives at once, but was liable to be punished before a competent judge.” And the Christian law forbid the Jews also to have two wives at once,<sup>3</sup> according to the allowance of their own law. Salust<sup>4</sup> says the Romans were used to deride polygamy in the barbarians. And though Julius Cæsar<sup>5</sup> attempted to have a law pass in favour of it, he could not

<sup>1</sup> Socrat. lib. iv. cap. 31.

<sup>2</sup> Cod. Justin. lib. v. tit. 5. de Incestis Nuptiis. leg. ii. Neminem, qui sub ditione sit Romani nominis, binas uxores habere posse vulgò patet, &c.

<sup>3</sup> Ibid. lib. i. tit. 9. de Judæis. leg. 7. Nemo Judæorum morem suum in conjunctionibus retineat, nec juxta legem suam nuptias sortiatur, nec in diversa sub uno tempore conjugia conveniat.

<sup>4</sup> Salust. de Bello Jugurth.

<sup>5</sup> Sueton. Vit. Julii Cæs. cap. lii

effect it. And Plutarch remarks<sup>1</sup>, that Mark Antony was the first, that had two wives among the Romans. But that, which is most decisive, is, that neither Zosinus, nor Ammianus Marcellinus, the heathen historians, object any such thing to Valentinian; which they would not have failed to have done, had he taken or granted any such liberty contrary to the laws of the Romans before him; but on the other hand Ammianus Marcellinus says expressly of him,<sup>2</sup> “that he was remarkable for his chastity both at home and abroad, and had no contagion of obscenity upon his conscience; by which means he was able to bridle the petulancy of the imperial court, and keep it in good order.” And Zosimus rather intimates,<sup>3</sup> that he did not marry his second wife, Justina, till Severa his first was dead. Whence Baronius<sup>4</sup> and Valesius<sup>5</sup> rightly conclude, that this story in Socrates must needs be a mere groundless fiction, and that there never was any law to authorise polygamy in the Roman Empire. As to the laws of the Church, St. Basil observes,<sup>6</sup> that the Fathers said little or nothing of polygamy, as being a brutish vice, to which mankind had no very great propensity. But he determines it to be a greater sin than fornication, and consequently it ought to have a longer course of penance assigned it: for fornication was to have seven years punishment by St. Basil’s rules, and yet the term of penance for polygamy in this canon is only four years: which makes learned men suspect, that this part of the canon is corrupted by the negligence of transcribers, and that St. Basil originally assigned a longer term of penance for this sin, than appears from any copies now extant, which only re-

<sup>1</sup> Plutarch. Vit. Anton.

<sup>2</sup> Ammian. Hist. lib. xxx. p. 462. Om-

ni pudicitiae cultu domi castus et foris, nullo conscientiae contagio violatus obscenae; hancque ob causam tanquam retinaculis petulantiam aulae regalis frenarat, quod custodire facile potuit.

<sup>3</sup> Zosim. Hist. lib. iv.

<sup>4</sup> Baron. an. 370. tom. iv. p. 2721. Vedel. de Prudent Vet. Eccl. p. 229. is against Baronius, but Mele. Ziedler de Polygamia. p. 117. defends Baronius’s arguments. Vid. Fabric. Bibl. Antiq. p. 588. where he discourses of Luther’s allowing Philip, Prince of Hesse, to have a second wife, and Honorius iii. dispenses with Polygamy in the Earl of Gleichen out of Seck. and Bale and Tentzel.

<sup>5</sup> Vales. in Socrat. lib. iv. c. 31.

<sup>6</sup> Basil. can. 80.



quires one years penance in the quality of mourners, and three years in the class of co-standers, without any mention of their being hearers or prostrators, which are usually specified in most other canons of this author. In the first Council of Toledo,<sup>1</sup> there is also a rule, which accounts it the same thing as polygamy for a man to have a wife and a concubine together: for such an one may not communicate. But if he have no wife, but only a concubine instead of a wife, he may not be repelled from the communion, provided he be content to be joined to one woman only, whether wife or concubine, as he pleases. The difficulty, which seems to be in the latter part of this canon, I have been at some pains to explain in a former Book,<sup>2</sup> where I shew, that in the sense of the ecclesiastical law, a concubine differs nothing from a wife; though the civil law made a greater distinction between them; calling her only a concubine, who was married against any of the rules, which the laws of the state prescribed, and denying her the privileges, rights, and honours, which belonged to a legal wife: for she could claim no right from her husband's estate, nor her children succeed to his inheritance: yet she was not reputed guilty of fornication, nor the husband accounted an adulterer in the eye of the Church, because they kept themselves faithfully and entirely to each other by an exact performance of the mutual contract made between them. Which was the reason why the Church allowed such a man to communicate, who was united to a concubine, in the foresaid sense, instead of a wife; but reckoned him guilty of polygamy, who kept a concubine and a wife together.

SECT. 6.—Of Marrying after unlawful Divorce.

Another sort of polygamy was, the marrying of a second wife after the unlawful divorcement of a former. For this in effect was reputed the same as having two wives at once.

<sup>1</sup> Con. Tolet. i. can. 17. Si quis habens uxorem fidelis, concubinam habeat, non communicet. Cæterum is, qui non habet uxorem, et pro uxore concubinam habeat, à communione non repellatur, tantùm ut unius mulieris, aut uxoris concubinæ, ut ei placuerit, sit conjunctione contentus.

<sup>2</sup> Book. xi. chap. v. sect. 11.

There were some cases, in which a man might lawfully put away his wife, without any transgression against the rules of Church or State, or violation of any law human or divine. The civil law allowed it in many cases. Constantine specifies three cases,<sup>1</sup> in which a man was at liberty to put away his wife, or a woman her husband. A woman might not divorce herself from her husband at pleasure for any ordinary cause, as, because he was a drunkard, or a gamester, or given to women; but only for these three crimes, if he was a murderer, or a poisoner, or a robber of graves; if otherwise, she was to forfeit all her title to his substance, and be sent into banishment. In like manner, the husband was not to put away his wife, but only for the three crimes of adultery, poisoning, and the practice of bawdry. If otherwise, the woman might claim her own portion, and the man was incapacitated to marry again. The following Emperors allowed many other causes of lawful divorce,<sup>2</sup> as, if an husband was an adulterer, or a murderer, or a poisoner, or guilty of treason against his prince, or a perjured person, or a plunderer of graves, or robber of churches, or an high-way man, or harbourer of such, a stealer of cattle, or a man-stealer, or one frequenting the company of lewd women, which extremely exasperates a chaste wife; if he attempt-

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<sup>1</sup> Cod. Theod. lib. iii. tit. 16. de Repudiis. leg. 1. Placet, mulieri non licere propter suas pravas cupiditates marito repudium mittere exquisitâ causâ velut ebrioso, aut alcatori, aut muliereulario: nec vero maritis per quascunque occasiones uxores suas dimittere. Sed in repudio mittendo à feminâ hæc sola crimina inquiri, si homicidam, vel medicamentarium, vel sepulchrorum dissolutorum maritum suum esse probaverit, &c. In masculis etiam, si repudium mittant, hæc tria crimina inquiri conveniet, si mœcham, vel medicamentarium, vel conciliatricem repudiare voluerit, &c.

<sup>2</sup> Cod, Justin. lib. v. tit. 17. leg. 8. Theod. Junior. Si qua maritum suum adulterum, aut homicidam, aut veneficum, vel certè contra nostrum imperium aliquid molientem, vel falsitatis crimine condemnatum invenerit, si sepulchrorum dissolutorum, si sacris ædibus aliquid subtrahentem, si latronem, vel latronum susceptorem, vel actorem, aut plagiarium, vel ad contemptum sui domûsve suæ, ipsâ inspiciente, cum impudicis mulieribus (quod maximè etiam castas exasperat) cætum ineuntem; si suæ vitæ veneno, aut gladio, aut alio simili modo insidiantem; si se verberibus (quæ ingenuis aliena sunt) afficientem probaverit: tunc repudii auxilio uti necessario ei permittimus libertatem, et causas dissidii legibus comprobare, &c. See also Justin. Novel. xxii. cap. 3. Novel. cxvii. cap. 8. et Cod. de Repudiis leg. 10. et 11.

ted her life by poison, or the sword, or any the like means; if he beat her as a slave, contrary to the rules of using free-born women: in any of these cases she had liberty to use the necessary help of a divorce, making proof of the cause before a competent judge. And the same liberty was allowed the man against his wife upon these and the like reasons. But the ecclesiastical laws were much stricter, and admitted of divorces only in case of adultery, and malicious desertion. In the case of adultery, women as well as men were allowed to divorce themselves from the offending party, as appears from the case related by Justin Martyr,<sup>1</sup> and out of him by Eusebius,<sup>2</sup> and several places of St. Austin.<sup>3</sup> And some canons oblige the clergy to dismiss their adulterous wives,<sup>4</sup> under pain of ecclesiastical censure, whilst St. Austin pleads with the laity,<sup>5</sup> rather to be reconciled to an adulterous wife upon her repentance, than dismiss her entirely, because of many great inconveniencies that might attend it. One of which was, that he thought the Scripture forbad both man and woman to marry again, even after a lawful divorce, till one of the parties was dead. But he does not so dogmatically assert this, as to make marrying after such a lawful divorce, to be a crime worthy of excommunication. For in another Book, where he treats of the qualifications of baptism, he says,<sup>6</sup> “ A man who puts away his wife for adultery, and marries another, is not to be ranked with those, who put away their wives without cause, and marry again. For the question is so obscurely resolved in Scripture, whether he, who putting away his

<sup>1</sup> Justin. Apol. i. p. 42.

<sup>2</sup> Euseb. lib. iv. cap. 17.

<sup>3</sup> Aug. de Adulterinis Conjugiis. lib. vii. cap. 6. &c. It. de Bono Conjugali. cap. vii.

<sup>4</sup> Con. Neocæsar. can. 8

<sup>5</sup> Aug. de Adult. Conjug. lib. ii. per totum.

<sup>6</sup> Aug. de Fid. et Oper. cap. xix. Quisquis uxorem in adulterio deprehensam dimiserit, et aliam duxerit, non videtur æquandus eis, qui exceptâ causâ adulterii dimittunt et ducunt. Et in ipsis divinis sententiis ita obscurum est, utrum et iste cui quidem sine dubio adulteram licet dimittere, adulter tamen habeatur si alteram duxerit, ut quantum existimo venialiter ibi quisque fallatur. Quamobrem quæ manifesta sunt impudicitiae crimina, omnimodo à baptismo prohibenda sunt, nisi mutatione voluntatis et pænitentia corrigantur: quæ autem dubia, omnimodo conandum est ne fiant tales conjunctiones. Quid enim opus est in tantum discrimen ambiguitatis caput immittere? Si autem factæ fuerint, nescio utrum ii qui fecerint, similiter ad baptismum non debere videatur admitti.

wife for adultery marries again, be upon that score an adulterer, that a man may be supposed to err venially in the matter. Therefore those crimes of uncleanness, which are manifestly so, ought to debar a man from baptism, unless he change his mind, and correct his crimes by repentance: but for those, which are dubious, all that is to be done, is to endeavour to persuade men not to engage in such marriages. For what need is there for men to run their heads into such dangerous ambiguities? But if they are already done, I am not sure, that they, who do them, ought therefore to be denied baptism." By this it appears, that though St. Austin in his own opinion was persuaded, that marrying after a lawful divorce was forbidden in Scripture; yet it was not so clearly forbidden, as to render a man incapable of baptism; nor consequently of the communion: these being of the same account in Christianity, and a man, that is incapable of the one, is incapable of the other. The first Council of Arles seems to have acted upon the same sentiments. The Fathers there declare it unlawful for men,<sup>1</sup> who put away their wives for adultery, to marry others: but they do not order, that the great censure of excommunication shall be inflicted on them, but only, that they shall be dealt with and advised not to marry a second wife, while the other, who was divorced for adultery, was living. The author, under the name of St. Ambrose,<sup>2</sup> makes a difference between the man and the woman: he says "The man was allowed to marry a second wife, after he put away a first for fornication, but the Apostle did not allow the same privilege to the woman." In which opinion he seems to be singular. For Epiphanius, speaking of the same matter,<sup>3</sup> says, "That as the Scripture allows men to marry a second wife after the death of the first: so if a separation is made upon the account of fornication, or adultery, or any such cause, it does not

<sup>1</sup> Con. Arlat. i. can. 10. De his qui conjuges suas in adulterio deprehendunt, et iidem sunt adolescentes fideles, et prohibentur nubere; placuit, ut in quantum potest, consilium eis detur, ne viventibus uxoribus suis, licet adulteris, alias accipiant.

<sup>2</sup> Ambros. in 1. Cor. vii. II. tom. v. p. 262.

Non permittitur mulieri ut nubat, si virum suum causâ fornicationis dimiserit. — Viro licet ducere uxorem, si uxorem dimiserit peccantem.

<sup>3</sup> Epiphani. Hær. 59. Catharor. u. 4.

condemn either the man, that marries a second wife, or the woman, that marries a second husband, nor deny them the privilege of Church-communion or eternal life, but bears with them for their infirmity." And Origen,<sup>1</sup> though he himself was against the thing, plainly declares, that there were some bishops in his time, who allowed women as well as men to marry after such divorces, whilst the separate party was still living: which he reckons indeed to be against those rules of the Apostle, "A woman is bound as long as her husband liveth:" and, "She shall be called an adulteress, if as long as her husband liveth, she be married to another man:" Yet he thinks they might have reasons for permitting it: because perhaps they had regard to the infirmity of such as could not contain, and only permitted an evil against the original rule to avoid a greater sin. Yet some Councils forbade such marriages under the penalty of excommunication to those, that were of the number of the faithful;<sup>2</sup> only making some allowance to those, that were mere catechumens.<sup>3</sup> To this purpose there are two canons in the Council of Eliberis, and one in the Council of Milevis,<sup>4</sup> which orders, that according to the evangelical and apostolical discipline, neither the man, that is divorced from his wife, nor the woman divorced from her husband, shall marry others, but either abide so, or be reconciled: and they, that contemn this order, are to be subjected to public penance; and withal a petition

<sup>1</sup> Orig. Tract. 7. in Mat. tom. ii. p.67. Scio enim quosdam qui præsunt Ecclesiis, extra Scripturam permisissè aliquam nubere, viro priori vivente: Et contra Scripturam quidem fecerunt, dicentem, "Mulier ligata est quanto tempore vivit vir ejus." Item, "Vivente viro, adultera vocabitur, si facta fuerit alteri viro." Non tamen omninò sine causâ hoc permisserunt: forsitan enim propter hujusmodi infirmitatem incontinentium hominum, pejorum comparatione, quæ mala sunt permis. runt, adversus ea quæ ab initio fuerant scripta.

<sup>2</sup> Con. Eliber. can. ix. Fidelis fœmina, quæ adulterum maritum reliquerit fidelem et alterum duxerit, prohibeatur ne ducat. Si autem duxerit, non prius accipiat communionem, quàm is quem reliquit, de seculo exierit, nisi necessitas infirmitatis dare compulerit.

<sup>3</sup> Ibid. can. 10. Si ea, quam catechumenus reliquerit, duxerit maritum, potest ad fontem lavari admitti. Hoc et circa fœminas catechumenas erit observandum.

<sup>4</sup> Conc. Milevit. can. xvii. Placuit ut secundùm evangelicam et apostolicam disciplinam, neque dimissus ab uxore, neque dimissa à marito, alteri conjungantur: sed ita maneat, aut sibi reconcilientur. Quod si contempserint, ad pœnitentiam redigantur. In quâ causâ legem imperialem petendam promulgari. Vid. Cod. Afric. can. cv.

should be presented to the Emperor to desire him to confirm this rule by an imperial sanction. From all which we may easily perceive, that this was always reckoned a difficult question, whether persons after a lawful divorce might marry again in the life-time of the relinquished party? The imperial laws allowed it; many of the ancient Fathers also approved it; some condemned it, but suffered it to pass without any public punishment; and others required a certain penance to be done for it in the Church. Of all which different practices the learned reader, that is more curious, may find an ample account in Cotelierius's notes upon *Hermes Pastor*.<sup>1</sup> But though they differed upon this point, there was no disagreement upon the other, that to marry a second wife after an unlawful divorce, whilst the former was living, was professed adultery, and as such to be punished by the sharpest censures of the Church. The Apostolical Canons order every one to be excommunicated,<sup>2</sup> who either puts away his wife and marries again, or marries one, that is put away by another. And all canons generally agree to debar such from entering into holy orders, as marry a wife, that is put away by another man. The Council of Eliberis goes further,<sup>3</sup> and orders such women, as forsake their husbands without cause, and marry others, "to be refused communion even at their last hour." And such as marry men,<sup>4</sup> who have put away their wives unjustly, if they do it knowingly, "are not to be received till the last moment of their days," or as other copies read it, "no, not at their last hour."

SECT. 7.—Of Second, Third, and Fourth Marriages.

Some canons also press hard upon second, third, and fourth marriages, by which they seem not to understand

<sup>1</sup> Cotelier. Patres. Apostol. tom. i. p. 88.  
Apost. xlviii. Vid. Basil. can. xlviii.

<sup>2</sup> Canon.

<sup>3</sup> Con. Eliber. can. viii. Fœminæ quæ nullâ præcedente causâ reliquerunt viros suos, et alteris se copulaverunt, nec in fine accipient communionem.

<sup>4</sup> Ibid. can. x. Si fuerit fidelis, quæ ducitur ab eo, qui uxorem inculpata[m] reliquerit, et eum scierit illum habere uxorem, quam sine causâ reliquit, placuit hujusmodi in fine dari communionem al. nec in fine dare communionem.

either simultaneous polygamy, or marrying after divorce, whilst the former wife was living; but marrying two or three wives successively after the death of the former. For though they did not account these downright adultery, nor with the Montanists and Novatians condemn them as simply unlawful; yet some of the Ancients were willing to discourage them, and therefore they imposed a certain term of penance upon them. The Council of Neocæsarea in one canon says,<sup>1</sup> “ They, that marry often, have a time of penance allotted them:” and in another,<sup>2</sup> “ No presbyter shall be present at the marriage-feast of those, that marry twice: for a digamist requires penance. How then shall a presbyter by his presence at such feasts give consent to such marriages?” There are many other harsh expressions in Athenagoras, Irenæus, Origen, Gregory Nazianzen, Chrysostom, Jerom and others concerning second and third marriages, which the learned reader may find collected by Cotelerius,<sup>3</sup> in his Notes upon Hermes Pastor and the Constitutions. The latter of which writers declares also against second and third marriages, as transgressions of the law, and brands fourth marriages with the hard name of “ *προφανής πορνεία*, manifest fornication.” But Hermes Pastor is more candid: for in answer to the question, whether men or women may marry after the death of a first consort? He says,<sup>4</sup> “ He that marries sins not: but if he continues as he is, he shall obtain great honour of the Lord.” He neither condemns second marriage, nor gives it any hard name, nor lays any penalty upon it; but only makes it matter of counsel and advice to refrain under the prospect of a great reward. And St. Austin answers the question after the same manner,<sup>5</sup> that he dares not condemn any marriages for the number of them, whether they be second, or third, or any other.

<sup>1</sup> Con. Neocæsar. can. iii.

<sup>2</sup> Ibid. can. vii.

<sup>3</sup> Coteler.

Not. in Herm. Past. Mandat. iv. lib. ii. et in Constit. lib. iii. cap. 2.

<sup>4</sup> Herm. Pastor. lib. ii. Mandat. iv. n. 4. Si vir vel mulier alicujus decesserit, et nupserit aliquis eorum, numquid peccat? Qui nubit, non peccat: Sed si per se manserit, magnum sibi conquirat honorem apud Dominum.

<sup>5</sup> Aug. de Bono Viduitatis. cap. xii. Nec ullas nuptias audeo damnare, nec eis vericundiam numerositatis auferre, &c.

“ I dare not be wise above what is written. Who am I, that I should define what the Apostle has not defined? ‘ The woman is bound,’ says the Apostle, ‘ As long as her husband liveth.’ He said not, the first husband, or the second, or the third, or the fourth; but ‘ The woman is bound as long as her husband liveth: but if her husband be dead, she is at liberty to be married to whom she will; only in the Lord. But she is happier, if she so abide.’ I see not what can be added to, or taken from this sentence. Our Lord himself did not condemn the woman, that had had seven husbands. And therefore I dare not, out of my own heart, without the authority of Scripture, condemn any number of marriages whatsoever. But what I say to the widow, that has been the wife of one man, the same I say to every widow, thou art happier, if thou so abidest.” Epiphanius had occasion to dispute the matter both against the Montanists and Novatians, where he says,<sup>1</sup> “ The Montanists were of the number of those, who forbid men to marry, rejecting all such as were twice married, and compelling them not to take a second wife; whereas the Church imposed no necessity on men, but only counselled and exhorted those, that were able, laying no necessity upon the weak, nor rejecting them from hopes of eternal life.” In like manner he blames the Novatians,<sup>2</sup> for making the rule, which was given to the clergy, to be the husband of one wife, extend to all: whereas it was lawful for the people, after the death of a first wife, to marry a second. For though he, who was content with one wife, was had in more honour and esteem by the Church; yet the Scripture did not condemn him, who married a second after the death of the first, or after a divorce made for fornication or adultery or any such cause; neither did it reject him from the privilege of Church-communion or eternal life. And it is certain the great Council of Nice thus determined the matter against the Novatians,<sup>3</sup> requiring them upon their return to the Church, to make

<sup>1</sup> Ep. Hær. xviii. n. 9.  
Nicen. can. viii.

<sup>2</sup> Id. Hær. lix. n. 4.

<sup>3</sup> Con.



profession in writing, that they would submit to the decrees of the Catholic Church, particularly in this, that they would “*ἐγγάμοις κοινωνεῖν, communicate with digamists,*” or those, that were *twice married*. So that whatever private opinion some might entertain in this matter, or whatever private rules of discipline there might be in some particular Churches in relation to digamists; it is evident the general rule and practice of the Church was not to bring such under discipline, as guilty of any crime, which at most was only an imperfection in the opinion of many of those, who passed an heavier censure on it. As for such as plainly condemned second, third, or fourth marriages, as fornication or adultery, I see not how they can be justified, or reconciled to the practice of the Catholic Church: and therefore I leave them to stand or fall by themselves, and go on with the more uncontested discipline of the Church against some other practices of uncleanness.

#### SECT. 8.—Of Ravishment.

Among which they set a peculiar mark upon ravishment, that is, using force and violence to virgins and matrons to compel them to commit uncleanness. Constantine, in one of his laws,<sup>1</sup> condemns all sorts of raptors to the flames, as well those, that ravished virgins against their wills, as those, that stole them with their own consent against the will of their parents. And though Constantius a little moderated the punishment, yet he still made it a capital crime, to be punished with death:<sup>2</sup> and in case a slave was concerned in it, he was left to the severity of the former law, to be burned alive. Jovian also made it a capital crime,<sup>3</sup> for any one not only to commit a rape upon a consecrated virgin, but to solicit her to marry either willingly or unwillingly against the rules of her profession. The laws of the Church could

<sup>1</sup> Cod. Th. lib. ix. tit. 24. de Raptu Virginum. leg. 1.  
leg. ii.

<sup>2</sup> Ibid.  
<sup>3</sup> Cod. Theod. lib. ix. tit. 25. de Raptu vel Matrimonio Sanctimonialium. Leg. 2. Si quis, non dicam rapere, sed vel adtemptare matrimonii jungendi causâ sacratas Virgines, vel invitas, ausus fuerit, capitali sententiâ ferietur. See also Justin. Novel. 14. Ne sint lenones.

inflict no such punishment, but, when there was occasion, they drew the spiritual sword against them. “If any one offers violence to a virgin not espoused to him, let him be excommunicated,” say the Apostolical Canons:<sup>1</sup> “neither shall he take any other wife, but her, whom he has so detained, although she be poor.” St. Basil condemns those,<sup>2</sup> who are guilty of committing rapes upon virgins, to four years penance, as fornicators. Where by a rape he means the lowest degree of it, that is, stealing a virgin espoused to another man, and detaining her against her father’s consent. In which he also orders,<sup>3</sup> not only the rapitor to be excommunicated, but also his family, and the place or village, where he dwelt, if they were accomplices, or aiding and assisting to him in his usurpation. From whence we may infer, that if stealing and detaining a virgin with her own consent was thus punishable; the defiling of her by violence was a more heinous crime, and censured with greater severity in the discipline of the Church.

SECT. 9.—Of unnatural Impurities.

What has hitherto been said, relates to the violation of the laws of chastity in the ordinary course of nature. Beyond which there were some monstrous impurities, consisting in the several species of unnatural uncleanness; such as the defilement of men with brutes, commonly called bestiality; and the defilement of men with men, working that which is unseemly, after the manner of Sodom; and the defilement of men’s own bodies with themselves by voluntary self-pollution. Tertullian calls all these,<sup>4</sup> impious furies of lust, which make men change the natural use of the sex, into that, which is against nature; on which the Church laid an uncommon and singular punishment, ex-

<sup>1</sup> Canon. Apost. lxvii.  
Epist. 244.

<sup>2</sup> Basil. can. xxii.

<sup>3</sup> Basil.

<sup>4</sup> Tertul. de Pudicit. cap. iv. Reliquas autem libidinum furias impias et in corpora, et in sexus ultra jura naturæ, non modo limine, verum omni ecclesiæ tecto submovenus, quia non sunt delicta, sed monstra.

cluding them not only from all parts of the Church, but from the very first entrance of it; because they were not ordinary crimes, but monsters. The council of Ancyra has two canons relating to these crimes, the first of which orders, that they, who are guilty of bestial lusts before they are twenty years old,<sup>1</sup> be prostrators fifteen years, and after that communicate in prayers only for five years; but if they exceed that age, and be married when they fall into this sin, they are to be prostrators twenty-five years, and five years after communicate in prayers only; if they are above fifty years old, and be married, they are to do penance all their lives, and only communicate at the point of death. The next canon orders,<sup>2</sup> that they, who are guilty of bestial lusts, and are leprous, that is, to infect others by tempting and teaching them to commit the same sin, should pray “*εἰς τὰς χειμαζομένους, inter hyemantes,*” that is, either among the demoniacs, or those, that were exposed to the weather without the walls of the church. Suicerus thinks this canon is to be understood of those,<sup>3</sup> that were infected with the corporal disease of leprosy, who by the old law were removed without the camp; but it is more probable it means the spiritual leprosy of those, who infected others with the contagion of the same beastly sins, and taught or tempted them to commit the same uncleanness. For otherwise, leprosy under the Gospel, would not deserve the extremity of punishment, but commiseration and mercy. St. Basil imposes the penance of adulterers,<sup>4</sup> that is, twenty years penance, both upon those, that abuse themselves with beasts, and those, that abuse themselves with mankind. And sometimes he lengthens the term to thirty years,<sup>5</sup> comparing these sins with murder, idolatry, witchcraft and adultery; which, he says, all deserve the same punishment.

<sup>1</sup> Con. Ancy. can. xvi.

<sup>2</sup> Ibid. can. xvii. Τὰς ἀλογευσμένους

ἐλεπρὸς ὄντας, ἢ τοὺς λεπρῶσαντας, τέτταρες προέταξεν ἡ ἀγία σύνοδος εἰς τὰς χειμαζομένους εὐχισθᾶι.

tom. ii. p. 226.

<sup>3</sup> Suicer. Thesaur. Eccles. Voce *Λεπρὸς*,  
<sup>4</sup> Basil. can. 62, et 63.

<sup>5</sup> Ibid. can. vii.

Vid. Greg. Nyssen. can. iv.

The Council of Eliberis imposes a severer punishment upon those, that so abuse boys to satisfy their lusts.<sup>1</sup> For such are denied communion even at their last hour. The laws of the old Romans had provided no sufficient remedy for these corruptions. There was an old law, called, the *Lex Scantinia*, mentioned by Juvenal<sup>2</sup> and some others: but it lay dormant for many ages, till the Christian Emperors came to revive it. The frequent complaints, that are made by the Christian writers of the three first ages, Clemens Alexandrinus,<sup>3</sup> Justin Martyr,<sup>4</sup> Tatian,<sup>5</sup> Minucius Felix,<sup>6</sup> Tertullian,<sup>7</sup> Cyprian,<sup>8</sup> and Lactantius,<sup>9</sup> sufficiently shew, that these vices were practised with impunity among the Heathen. The law made against them was only a pecuniary mulct;<sup>10</sup> and that was very rarely put in execution against them. Suetonius says,<sup>11</sup> Domitian in the first and good part of his reign condemned some few offenders by this law: but the distemper grew so raging and inveterate afterwards, that Alexander Severus, a much better prince, durst not effectually set about the cure of it, as Lampridius<sup>12</sup> testifies in his life. After him Philip the Emperor, who by some is called a Christian, made a new law to forbid it; but the main business devolved at last upon those, that were more undoubtedly Christians. Among whom Constantius,<sup>13</sup> by one of his laws extant in both the Codes, made it a

<sup>1</sup> Con. Eliber. can. lxxi. Stupratoribus puerorum nec in fine dandum esse communionem.

<sup>2</sup> Juvenal. Sat. ii. vers. 44. Valer. Maxim.

Hist. lib. vi. cap. 1.

<sup>3</sup> Clem. Pædagog. lib. i. c. 3.

<sup>4</sup> Justin. Apol. ii. p. 50, et 67.

<sup>5</sup> Tatian. Orat. ad Græcos.

p. 165. ad calcem Justinii.

<sup>6</sup> Minuc. Octav. p. 68.

<sup>7</sup> Tertul. de Monogam. cap. xii. lib. i. ad Nation. c. xvi.

<sup>8</sup> Cypr. ad Donat. p. 6.

<sup>9</sup> Lactant. lib. v. cap. 9.

<sup>10</sup> Vid. Quintilian. Instit. lib. iv. cap. 2. p. 187. Decem millia, quæ pœna stupratori constituta est, &c.

<sup>11</sup> Sueton. Vit. Domit. cap. viii.

Quosdam ex utroque ordine lege Scantiniâ condemnavit.

<sup>12</sup> Lamprid.

Vit. Alex. Severi. p. 350. Habuit in animo ut exoletos vetaret, quod postea Philippus fecit; sed veritus est, ne prohibens publicum dedecus in privatas cupiditates converteret; cùm homines illicita magis poscant, prohibitaque furore persequantur.

<sup>13</sup> Cod. Theod. lib. ix. tit. vii. ad Legem Julian de Adulteris. Leg. iiii. Cùm vir nubit in feminam—ubi venus mutatur in alteram formam—jubemus insurgere leges, armari jura gladio ultore, ut exquisitis pœnis subdantur infames.

capital crime, and ordered it to be punished with death by the sword. Theodosius added to the penalty by a severer sanction,<sup>1</sup> ordering, that such, as were found guilty of this unnatural vice, should be burnt alive in the presence of all the people. Thus the civil and ecclesiastical laws combined together to exterminate all sorts of uncleanness; deterring men from such acts of impurity, as were a scandal to the Christian profession, by such penalties, temporal and spiritual, as were thought most proper to be inflicted in order to restrain them.

SECT. 10.—Of maintaining and allowing Harlots.

Neither was it only the direct and immediate acts of uncleanness they thus censured and punished, but all other acts, that opened, and prepared the way to them. Of which kind, the maintaining or encouraging of harlots, publicly or privately, was reckoned a most infamous practice. Great complaints have been made by writers,<sup>2</sup> of divers kind, of the licentiousness of many modern popes in granting tolerations at Rome to such lewd and wicked practices, and receiving annual pensions for the toleration of them. But the ancient laws, both civil and ecclesiastical, were far from such abuses. Heathen Rome, in this respect, was more chaste and modest than the modern papacy. For even there, we find a law,<sup>3</sup> recorded out of Papinian in the Pandects, that whoever wittingly let his house be the place to commit fornication or adultery with another man's wife, or any defilement with mankind, or made any gain of the adultery of his

<sup>1</sup> Cod. Theod. Leg. vi. Hujusmodi scelus expectante populo flammis vindicibus expiabant.

<sup>2</sup> Vid. Zepper. Legum Mosaicarum Explana-

nat. lib. iv. cap. 18. p. 457.

Agrippa de Vanit. Scientiar. cap. 64.

Mornæi Myster. Iniquit. p. 1310.

Wesselus Gronigens. de Indulgentiis Papalibus, ap. Mornæ. ibid.

<sup>3</sup> Pandect. lib. xlviii. tit. 5, ad Legem Juliam de Adulteris. leg. 8. Qui domum suam, ut stuprum adulteriumve cum alienâ matre familias, vel masculino fieret, sciens præbuerit, vel quæstum ex adulterio uxoris suæ fecerit, cujuscunque sit conditionis, quasi adulter punitur.

own wife, should be punished as an adulterer, of whatever condition he was. And it is remarkable in the laws of Constantine,<sup>1</sup> that a man was allowed to put away his wife, not only if she was an adulteress herself, but if she was a conciliatrix, a pander or procurer of adultery in others. By the laws of Theodosius Junior,<sup>2</sup> if any parent or master prostituted his daughter or his maid slave, they were to forfeit all right of dominion over them: the parties so compelled, might appeal to the bishop of the place, or the judge, or the defensor, and require their assistance or protection; and if after that, their superiors, master, or father, would go on as panders still to compel them, their goods were to be confiscated, and their persons banished and sent to the mines. Socrates<sup>3</sup> commends Theodosius the Great for another good law, whereby he demolished the infamous houses, commonly called *Sistra*, at Rome. For till his time a very evil custom prevailed there, that when any woman was taken in adultery, she was condemned by way of punishment to be a common prostitute in the public stews: which kind of punishment, as Socrates truly remarks, did no ways contribute towards her amendment, but only compelled her to add sin to sin. Therefore, Theodosius in his zeal for the piety and purity of the Christian religion, abolished this impudent and scandalous punishment; providing other penalties for adultery, and destroying these infamous houses out of Rome. Theodosius Junior did the same good service at Constantinople, by a new law, ordering all panders,<sup>4</sup> who kept infamous houses, to be publicly whipped and expelled the city, and that all their slaves, whom they kept for such vile purposes, should be set at liberty. And whereas hitherto these

<sup>1</sup> Cod. Theod. lib. iii. tit. 16. de Repudiis. leg. 1. In masculis etiam, si repudium mittant, hæc tria crimina inquiri conveniet, si mœcham, vel medicamentarium, vel conciliatricem repudiare voluerit.

<sup>2</sup> Cod. Justin. lib. xi. tit. 40. de Spectaculis et Scenicis et Lenonibus. leg. 6. Lenones patres et dominos, qui suis filiabus vel ancillis peccandi necessitatem imponunt, nec jure frui domini, nec tanti criminis patimur libertate gaudere. &c. Vid. Cod. Theod. tit. 8. de Lenonibus. leg. 2.

<sup>3</sup> Socrat. lib. v. cap. 18.

<sup>4</sup> Theodos. Novel. 18. de Lenonibus. ad calcem. Cod. Theod.

wretches had kept up their trade in spite of former laws, under pretence of paying a certain annual tax to the government out of their infamous gain; Theodosius abrogated this tax; and in lieu of it, one Florentius, a nobleman, by whose pious advice the Emperor did this, gave an equivalent out of his own estate to the exchequer, that there might be no deficiency or damage accruing to the public revenue, which might afterwards be used as a plea to grant these miscreants a new toleration. Thus these pious emperors laboured to extirpate this abominable vice out of their two great capitals. And when some remainders of it continued, notwithstanding all their endeavours, Justinian resumed the matter, reviving and confirming all the preceding laws by a new edict of his own,<sup>1</sup> and augmenting the punishments specified in them, to root out this abominable way of making provision for lewdness, throughout his whole empire. As to the ecclesiastical laws, there is no crime they punished more severely than this. As may be easily collected from the canons of the Council of Eliberis; one of which orders,<sup>2</sup> “That if a father or a mother or any Christian exercise the trade of a pander, forasmuch as they set to sale the body of another, or rather their own, they shall not be received to communion, no not at their last hour.” And another<sup>3</sup> decrees, “That if a woman commit adultery by the consent of her husband, they shall be rejected even to the last.” The reason of this is grounded upon what Tertullian observes of the law prohibiting fornication,<sup>4</sup> that it equally forbids any one to be aiding or assisting or conscious to another in the practice of it. “For what I may not do myself, I may not be instrumental to have it done by others. And

<sup>1</sup> Justin. Novel. 14.

<sup>2</sup> Con. Eliber. can. xii. Mater vel parens vel quælibet Fidelis, si lenocinium exercuerit; eo quod alienum venderit corpus, vel potiùs suum, placuit eas nec in fine accipere communionem.

<sup>3</sup> Ibid. can. 70. Si conscio marito fuerit mechata uxor, placuit nec in fine dandem ei esse communionem.

<sup>4</sup> Tertul. de Idololat. cap. xi. Nam quòd mihi de stupro interdictum sit, aliis ad eam rem nihil aut operæ aut conscientie exhibeo. Nam quod ipsam carnem meam à lupanaribus segregavi, agnosco me neque lenocinium neque id genus lucrum alterius causâ exercere posse.

“ therefore by the same reason, that I keep my own body  
 “ from the common stews, I own myself obliged, neither to  
 “ promote that infamous trade, nor raise any gain by or for  
 “ others by such vile practices.” Albaspiny rightly observes  
 from the forementioned canons, that this crime was esteemed  
 greater than fornication and adultery itself: because adulter-  
 ers were received to the peace of the Church after a  
 certain term of penance, but this crime was denied commu-  
 nion to the very last.

SECT. 11.—Of writing and reading lascivious Books.

Another way of promoting uncleanness was the writing  
 or reading lascivious or obscene books and plays, than which  
 there is no greater incentive or provocation to impurity.  
 And therefore as the Ancients burned and abolished all sorts  
 of heretical books, that they might not corrupt the faith; so  
 they equally forbid the writing or reading all other pernici-  
 ous books, which tended to debauch the morals of Christi-  
 ans, and severely censured the authors of them, if any such  
 were composed by Christian writers. Socrates says,<sup>1</sup> Helio-  
 dorus, a Thessalian bishop, when he was a young man, wrote  
 a lascivious romance, called his Ethiopics; which, others<sup>2</sup>  
 tell us, occasioned a censure to be passed upon him, when  
 he was bishop, and he was deprived of his bishopric be-  
 cause he would not recant it. For the same reason they  
 utterly discouraged the reading of such heathen books, as  
 were stuffed with impurities; and some canons were made  
 to prohibit the clergy especially from conversing with such  
 writers, of which I have given a more ample account in a  
 former book.<sup>3</sup>

SECT. 12.—Frequenting of the Theatre and Stage-plays forbidden upon  
 this Account.

They are equally severe in their invectives against all fre-  
 quenters of the theatre and public stage-plays upon the  
 same account: because these were the great nurseries of

<sup>1</sup> Socrat. lib. v. cap. 22.

<sup>2</sup> Nicephor. Hist. lib. xii. cap. 34.

<sup>3</sup> Book vi. chap. iii. sect. 4.



impurity, where incest and adultery were represented with abominable obscenity, and in a manner acted over again, to corrupt the spectators by their contagion and example. Here, as Cyprian says,<sup>1</sup> "adultery was learned by seeing it acted; provocations to vice were so much the stronger, because they were recommended by the authority of great examples; the matron, which perhaps came chaste to the theatre, returned back with a contrary disposition. The very gestures of the actors were enough to corrupt men's morals, being fomenters of vice, and purveyors of nutriment for corrupt distempers. Venus they represented in all her lewd behaviour; Mars, as an adulterer; and their Jupiter, no less a prince in his vices, than in his kingdom, burning with his thunderbolts in earthly amours, sometimes shining in the plumes of a swan, sometimes descending in a golden shower, and sometimes sending out his eagles to fetch him a beautiful Ganymede. Consider now whether a spectator can be innocent and chaste in viewing such sights as these. Men imitate the gods, which they worship, and by this means become more wretched, because their very vices are consecrated into religion." He speaks this against the heathen spectators, but the main of his arguments will equally hold against the Christian. "For the theatres by reason of their impurities were places of unavoidable temptation; the devil's own ground, his own property and possession;" as Tertullian says,<sup>2</sup> the devil once called them, when being asked by a Christian exorcist, in the case of a woman, who was seized by him at the theatre, how he durst presume to possess a Christian, he answered confidently, I had a right to do it, for I found her upon my own ground. Tertullian<sup>3</sup> says further, "that the theatre is properly the temple of Venus upon a double account, both because it was the school of lasciviousness, and because when Pompey built his famous theatre, he was forced to set the temple of Venus upon it, for fear the Roman Censors should demolish it, as they had done some others, in their concern for the morals

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<sup>1</sup> Cypr. ad Donat. p. 6.  
cap. x.

<sup>2</sup> Tertul. de Spectac. cap. xxvi.

<sup>3</sup> Ibid.

of the people, which they were sensible were corrupted by the poison and infection of the theatres, which were nothing else (in the opinion of the more grave and sober Romans) but the citadel and fortress of all impure and lascivious practices." For this reason, therefore, as well as because they were accompanied with idolatrous rites, Tertullian and all the Ancients declaim against them, and forbid Christians to frequent them, under pain of being deemed guilty of all the impurities of the place, and partakers of all the lewdness committed in them. As this was one part of their baptismal renunciation, where the impurities of the stage were virtually renounced in renouncing the pomps of Satan:<sup>1</sup> so it was necessary for a Christian to abstain from them as a spectator, for fear of losing his title to Christian communion, and being accounted a renegado to his first profession. It is certain it was so in the time of Tertullian, and when the Author of the Constitutions drew up his collections.<sup>2</sup> But in after ages, because the civil law allowed the interludes of the theatre for the diversion of the people, when they were purged from idolatry, but not from lewdness; the Fathers contented themselves to declaim against them with sharp invectives, and correct that reigning humour by serious admonitions, which the iniquity of the times would not suffer them to do by the more exact and primitive discipline of the Church. Any one, that will consult St. Chrysostom's,<sup>3</sup> or Cyril's Catechisms,<sup>4</sup> or Salvian,<sup>5</sup> may find this observation true, that though the canons did not now make it peremptory excommunication for a man to frequent the theatre, yet the Fathers inveighed as sharply as ever against it, for the impurity and corruption of morals, that were the natural consequences of it. There was anciently a famous sight or play, called *Maiuma*, a considerable part of which diversion was, to see infamous strumpets swim naked in the water. Whence learned men observe, it

<sup>1</sup> See Book xi. chap. vii. sect. 2.  
cap. 32.

<sup>2</sup> Vid. Constit. lib. viii.

<sup>3</sup> Chrys. Hom. vi. in Mat. Hom. lxxiii. de S. Barlaam. tom. i. p. 893. Hom. xv. ad Pop. Antioch. ibid. p. 190.

<sup>4</sup> Cyril. Cat. Myst. i. n. 4.  
p. 197.

<sup>5</sup> Salvian. de Provid. lib. vi.

had its name: for *Maiuma*, in the Syriac tongue, signifies *Water*. Gothofred observes,<sup>1</sup> and Pagi after him,<sup>2</sup> that the people were so eagerly bent and inclined to this obscene diversion, that though there were good reasons for abolishing it, yet the imperial laws, from Constantine to Arcadius, varied eight times about it; sometimes allowing, and sometimes restraining it; till at last Arcadius, who had at first permitted it, revoked his licence, and finally abolished it; allowing other sports for the diversion of the people, but denying them this, as a base and unseemly spectacle.<sup>3</sup> And under that character, St. Chrysostom<sup>4</sup> and others, with their utmost force and vehemence, declaim against it.

SECT. 13.—As also all Excess of Riot and Intemperance for the same Reason.

For the same reason they made sharp invectives against luxury, and riot, and intemperance, not only as they were crimes in themselves, but as they were the avenues and inlets to the greater sins of uncleanness. And therefore, though they did not punish every single act of drunkenness and excess with excommunication, yet they thought it proper to bring habits and customs of such sins under public discipline and censure. It is an observation of Tertullian,<sup>5</sup> and a very true one, “That drunkenness and lust are two devils, combining and conspiring together. Bacchus and Venus are nearly allied, and too well agreed.” “Drunkenness,” says one of the ancient canons,<sup>6</sup> “is the foment and nurse of all vices.” And therefore it was ordered, that if any clergyman, of the lowest degree, was found guilty of

<sup>1</sup> Gothofr. com. in Cod. Theod. lib. xv. tit. 6. de Maiuma. leg. ii.

<sup>2</sup> Pagi. Critic. in Baron. vol. ii. an. 399. n. 5.

<sup>3</sup> Cod. Th. lib. xv. tit. 6. de Maiuma. leg. ii. Maiumam fædum atque indecorum spectaculum denegamus.

<sup>4</sup> Chrys. Hom. vii. in Mat. p. 71.

<sup>5</sup> Tertul. de Spectac. cap. x. Veneri et libero convenit. Duo ista dæmonia conspirata et conjurata inter se sunt, ebrietatis et libidinis.

<sup>6</sup> Con. Veuetic. can. xiii. Ebrietas omnium vitiorum fomes ac nutrix est.—Itaque clericum quem ebrium esse constiterit, aut trigiuta dierum spatio à communione statuimus submovendum, aut corporali subdendum esse supplicio. Vid. Con. Agathen. can. xli. iisdem verbis.

any single act of it, he should either be suspended from communion for thirty days, or be subject to corporal punishment for his offence. This we find decreed in the Councils of Agde and Vannes, as a standing rule in the French Church. And there goes a decree, under the name of Pope Eutychian,<sup>1</sup> which makes the habit of drunkenness matter of excommunication to a layman also, till he break off the custom, by reformation and amendment. But it must be owned, this vice was sometimes so general and epidemical, that the numbers of transgressors made the exactness of discipline impracticable. St. Austin complains and laments,<sup>2</sup> that it was so in Afric in his time. Though the Apostle had condemned three great and detestable vices in one place, viz. rioting and drunkenness, chambering and wantonness, strife and envying: yet matters were come to that pass with men, that two of the three, drunkenness and strife, were thought tolerable things, whilst wantonness only was esteemed worthy of excommunication; and there was some danger, that in a little time the other two might be reputed no vices at all. For rioting and drunkenness was esteemed so harmless and allowable a thing, that men not only practised it in their own houses every day, but in the memorials of the holy Martyrs on solemn festivals, and that in pretended honour to the Martyrs also; which was a thing, that every one must needs lament, who did not look with carnal eyes upon it. It is plain, St. Austin thought an habitual course of rioting and drunkenness a crime deserving excommunication, as well as fornication and adultery; but yet in regard to the great numbers, that were given to this sin, his advice to Aurelius the metropolitan of Afric is,<sup>3</sup> “ that it should be cured not with asperity and roughness, nor in the imperious way, but by teaching, rather than commanding, and by

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<sup>1</sup> Eutychian. Decret. ap. Crab. T. 1. p. 180. Qui ebrietatem vitare noluerit, excommunicandum esse decrevimus usque ad congruam emendationem. Vid. Can. Apostol. 42, and 43.

<sup>2</sup> Aug. Ep. 64. ad Aurelium.  
<sup>3</sup> Ang. ibid. Non ergo aspere, quantum existimo, non duriter, non modo imperioso ista tolluntur, magis docendo quàm jubendo, magis monendo quàm minando. Sic enim agendum est cum Multitudine; severitas autem exercenda est in peccata paucorum.

admonition, rather than commination. For so we must deal with a multitude; but the severity of discipline is only to be exercised upon sins, when the number of sinners is not very great." So that we may conclude, that rioting and drunkenness was one of those great crimes, for which men were put to do public penance in the Church, except when the multitude and combination of sinners made it not feasible, and obliged the Church to take other measures to correct it.

SECT. 14.—And promiscuous Bathing of Men and Women together.

It must also be noted upon this head, that as a preservative of modesty and chastity, both the canon and civil law prohibited men and women to go promiscuously into the same baths together. "Let not a woman go to wash in the same bath with men," says the Author of the Constitutions.<sup>1</sup> And the Council of Laodicea,<sup>2</sup> "neither clergyman, nor ascetic, nor layman, shall wash in the same bath with women: for this is extremely scandalous, and culpable even among the Gentiles." The Council of Trullo repeats this canon word for word,<sup>3</sup> and then adds in the close, "If any clergyman be found guilty of this practice, he shall be deposed; if a layman, let him be excommunicated." The observation made in these canons, "that this was a scandalous crime even among the Heathens," is confirmed out of the old Roman laws and writers. Varro says,<sup>4</sup> the ancient baths were divided into two distinct buildings or apartments, one for the men, and the other for the women to wash in. And the same account is given by Vitruvius,<sup>5</sup> and Charisius, and other writers. And when the degeneracy of the following ages began to confound this distinction, Spartian says,<sup>6</sup> Adrian made a law against promiscuous bathing. And

<sup>1</sup> Constit. lib. i. cap. 9. Ἀνδρόγυνον πισήγυνή μὴ λείσθω. <sup>2</sup> Con. Laodic. can. xxx. <sup>3</sup> Con. Trull. can. lxxvii. <sup>4</sup> Varro de Linguâ Latin. lib. 8. p. 115. Publicè bina conjuncta ædificia lavandi causa; unum ubi viri, alterum ubi mulieres lavarentur. <sup>5</sup> Vitruvius de Architect. lib. v. cap. 20. Charisius Grammat. lib. i. ap. Savaro. Not. in Sidonium. lib. ii. Ep. 2. Et Dempster Paralipomena ad Rosini Antiq. Rom. lib. i. c. 14. <sup>6</sup> Spartian. Vit. Adrian. p. 25. Lavacra pro sexibus separavit.

Julius Capitolinus<sup>1</sup> says the same of Antoninus Philosophus. Nay, the old Romans were so careful to preserve modesty in this matter, that Tully says,<sup>2</sup> "They did not allow a son to bath with his father, nor a son-in-law with his father-in-law: nature itself teaching men, that there was a decency to be observed in making such distinctions." And the same thing is related by Valerius Maximus,<sup>3</sup> and much commended by St. Ambrose.<sup>4</sup> Now the case standing thus even among the Heathens, it would have been extremely scandalous for the Christians to have permitted promiscuous bathing; and therefore they prohibited it by their ecclesiastical laws under the severe penalty of excommunication. And the imperial laws of Justinian carried the matter a little further.<sup>5</sup> For among other lawful causes of divorce, authorizing a man to put away his wife, he allows this to be one, if a woman be so intemperate and luxurious as to go into a common bath with men. Private writers declaim much against it. Epiphanius condemns it in the Jews;<sup>6</sup> and Cyprian, not only censures this,<sup>7</sup> but many other acts of inmodesty in virgins, as painting, and over-nice dressing, and appearing unveiled, against which also Tertullian has a whole discourse,<sup>8</sup> with some other indications of a loose and unguarded mind, which need not here be particularly mentioned or further pursued. I purposely also pass over the scandalous practice of some, who entertained their *Agapetæ*, or *lovesisters*, as they called them, with professions of the strictest innocence and virtue; because I have formerly had occasion to shew, with what severity the ancient rules condemned this as a most suspicious and intolerable practice,<sup>9</sup>

<sup>1</sup> Capitol. Vit. Antonin. p. 90. Lavana mixta submovit.      <sup>2</sup> Cicero. de Offic. lib. i. n. 129. Nostro quidem more cum parentibus puberes filii, cum soceris generi non lavantur. Retinenda est igitur hujus generis verecundia, præsertim naturâ ipsâ magistrâ et duce.      <sup>3</sup> Valer. Max. lib. ii. cap. i. n. 7.      <sup>4</sup> Ambros. de Offic. lib. i. cap. 18.      <sup>5</sup> Cod. Justin. lib. v. tit. 17. de Repudiis, Leg. 11. Inter culpas viri et uxoris constitutionibus enumeratas, et has adjicimus, si forte uxor ita luxuriosa est, ut commune lavacrum cum viris libidinis causâ habere audeat. Vid. Novel. 22. c. xvi.      <sup>6</sup> Epiph. Hæc. 30. Hebionit. n. 7.      <sup>7</sup> Cypr. de Habitu Virginum. p. 100, &c.      <sup>8</sup> Tertul. de Veland. Virgin.      <sup>9</sup> Book vi. chap. ii. sect. 13.

and perfectly against the laws of the Gospel, which oblige men not only to regard the preservation of their innocence, but their good-name; “to mind things that are honest,” that is, becoming and honourable, “and of good report;” “to provide for honest things not only in the sight of God, but also in the sight of men;” and “to abstain from all appearance of evil.” In regard to which precepts, the ancient rules not only censured open fornication and adultery, but all such indecent actions, as had any tendency towards them, or were justly liable to suspicion, and gave occasion to the adversary to speak reproachfully of that holy religion, the honour of which Christians were obliged to maintain in all purity, as well in word, as outward conversation; avoiding this, that no one should blame them, and managing their whole deportment with innocence and prudence, to answer those great precepts of the Gospel,” Give no offence, neither to the Jew, nor to the Gentile, nor to the Church of God: and, “so let your light shine before men, that they may see your good works, and glorify your Father, which is in Heaven.”

SECT. 15.—And promiscuous and lascivious Dancing, wanton Songs, &c.

For the same reason they prohibited all promiscuous and lascivious dancing of men and women together. The Council of Laodicea forbids it under the name of *Βαλλίζειν*,<sup>1</sup> which some interpret playing on cymbals or other musical instruments, but more commonly it is understood by learned<sup>2</sup> men as a prohibition of wanton dancing at marriage feasts, against which there are several other canons of the ancient Councils, and severe invectives of the Fathers. The third Council of Toledo forbids it under the name of *Ballimathix*,<sup>3</sup> which they interpret wanton dances, joining them with lascivious songs, the use of which they complain of as an<sup>4</sup>

<sup>1</sup> Con. Laodic. can. liii.

<sup>2</sup> Suicer. Thesaur. Eccles. Voce *Βαλλίζειν*.

Rivet. in Decalog. p. 338. Stuckius. Antiquit. Convival. lib. iii. cap. 21.

<sup>3</sup> Con. Tolet. iii. in Edicto Regis Reccaredi. Quod ballimathix et turpia cantica prohibenda sunt à sanctorum solenniis.

<sup>4</sup> Ibid. can. 23. Irreligiosa consuetudo est, quam vulgus per sanctorum solennitates agere consue-

irreligious custom prevailing in Spain, among the common people on the solemn festivals; which they order to be corrected both by the ecclesiastical and secular judges. The Council of Agde forbids the clergy to be present at such marriages,<sup>1</sup> where obscene love-songs were sung, or obscene motions of the body were used in dancing. And by another canon,<sup>2</sup> “if they use any scurrility or filthy jesting themselves, they are to be removed from their office.” The like canons occur in the Council of Lerida<sup>3</sup> and some others, forbidding to sing or dance at marriages, but feast with modesty and gravity, as becomes Christians. St. Ambrose excellently describes the immodesty of this sort of dancing used by drunken women:<sup>4</sup> “They lead up dances,” says he, “in the streets unbecoming men in the sight of intemperate youths, tossing their hair, dragging their garments flying open, with their arms uncovered, clapping their hands, dancing with their feet, loud and clamorous in their voices, irritating and provoking youthful lusts by their theatrical motions, their petulant eyes, and unseemly antics and fooleries. Meanwhile a crowd of youth stands gazing upon them, and so it is a miserable spectacle indeed.”

St. Chrysostom has abundance to the same purpose,<sup>5</sup> particularly in one of his Homilies he declaims against it,<sup>6</sup> as one of those pomps of Satan, which men renounced in their baptism. He says, “the devil is present at such a time,

vit. Populi qui debent officia divina attendere, saltationibus turpibus invigilant: cantica non solum mala canentes, sed et religiosorum officiiis perstreptentes. Hoc etenim ut ab omni Hispaniâ depellatur sacerdotum et judicium à concilio sancto curæ committitur. <sup>1</sup> Con. Agathen. can. 39. Nec his cætibis misceantur, ubi amatoria cantantur et turpia, aut obscæni motus corporis choreis et saltationibus efferuntur, &c.

<sup>2</sup> Ibid. can. 70. Clericum scurrilem et verbis turpibus joeculatorem ab officio retrahendum. <sup>3</sup> Con. Herdens. ap. Crab. tom. i. p. 1031. Quod non oporteat Christianos euntes ad nuptias plaudere vel saltare, &c.

<sup>4</sup> Ambros. de Elia et Jejunii. cap. xviii. Illæ in plateis inverecundos viris sub conspectu adolescentulorum intemperantium choros ducunt, jactantes comam, trahentes tunicas, scissæ amictus, nudæ lacertos, plaudentes manibus, saltantes pedibus, personantes vocibus, &c. <sup>5</sup> Chrys. Hom. 48. in Gen. p. 680. Hom. 56. in Gen. p. 746. Hom. 49. in Mat. p. 436. Hom. 12. in Colos. p. 1403, &c. Hom. 18. de Scortat. tom. v. p. 272.

<sup>6</sup> Chrys. Hom. 47. in Julian. Mart. tom. i. p. 613. Hom. 21. de Noviluniis. tom. i. p. 206.



being called thither by the songs of harlots, and obscene words, and diabolical pomps used upon such occasions." And in another Homily, speaking of the dancing of Herodias's daughter, he says, "Christians now do not deliver up half a kingdom, nor another man's head, but their own souls to inevitable destruction. By which it appears, that these danings were causes of great corruption, being mixed with ribaldry and lascivious songs and wanton gestures, which are incentives to impurity, and wholly unhinge the frame of the Christian temper: for which reason the Ancients are so frequent and copious and severe in their invectives against them."

SECT. 16.—Also promiscuous Clothing.

Some canons also severely condemn the promiscuous use of habits, or men and women interchanging their apparel, peculiarly appropriated to their different sex. Eustathius taught his she-disciples to wear the habit of men, under pretence of religion; and cut off their hair upon the like superstitious reason. But the Council of Gangra condemned both these practices, as great irregularities, confounding the order of nature, and laid the heavy censure of *anathema* upon them. "If any woman," says one canon,<sup>1</sup> "under pretence of leading an ascetic life, change her apparel, and instead of the accustomed habit of women take that of men, let her be *anathema*." And another,<sup>2</sup> "if any woman upon the account of an ascetic life cut off her hair, which God has given her as a memorial of subjection, let her be *anathema*, as one that annuls the decree of subjection." The foundation of this canon was the order given by St. Paul, 1 Cor. xi. "That a woman should not be shorn or shaven." And the foundation of the former canon was the rule given by God to the Jews, Deut. xxii. 5. "The woman shall not wear that, which appertaineth to a man, neither shall a man put on a woman's garment: for all, that do so, are abomination to the Lord thy God." Which the

<sup>1</sup> Con. Gangren. can. xiii.

<sup>2</sup> Ibid. can. xvii.

ancient writers, Cyprian,<sup>1</sup> Tertullian,<sup>2</sup> and many others<sup>3</sup> understand simply and universally of men and women interchanging habits, as was usually done in stage plays, which they condemned for this reason as for many others. Some modern interpreters,<sup>4</sup> after Lyra<sup>5</sup> and Maimonides,<sup>6</sup> think there was a further design in this precept, to prohibit the idolatry of the ancient Zabii, in whose magical books it was commanded, that men should put on the women's painted garments, when they stood to worship before the star of Venus; and that women should put on the men's warlike habit and instruments, when they appeared before the star of Mars. But as the ancient Christian writers were not acquainted with this interpretation, we have reason to believe they took the rule in the common and vulgar sense, as an universal prohibition of men and women interchanging habits in all cases whatsoever: it being a thing against the light of nature and the laws of reason, as Diogenes Laertius<sup>7</sup> words it in the life of Plato, for any one to walk naked in public, or for a man to wear the woman's clothing. And for this reason the Ancients prohibited it, as an indecent and shameful thing, and as ministering occasion to uncleanness, even when it was used under pretence of greater strictness in religion.

SECT. 17.—And suspected Vigils, or Pernoctations of Women in Churches, under Pretence of Devotion.

And for the same reason the ancient Council of Eliberis forbad women to keep private vigils, or night-watches in the dormitories, or churches; because often under pretence of prayer and colour of devotion, secret wickedness had been committed by them.<sup>8</sup> This seems to be the most

<sup>1</sup> Cypr. Ep. lxii. al. ii. ad Eucratium.

<sup>2</sup> Tertul. de

Spectac. cap. xxiii.

<sup>3</sup> Vid. Prin. Histriomastix.

<sup>4</sup> Spencer. de Legib. Hebr. lib. ii. cap. 17. n. 1.  
in Deut. xxii.

<sup>5</sup> Lyra

<sup>6</sup> Maimon. More Nevoch, part iii. cap. 37.

<sup>7</sup> Diogen. Laert. lib. iii. Vita Platon. p. 131.

<sup>8</sup> Con. Eliber.

can. xxxv. Placuit prohiberi, ne fœminæ in cœmeterio pervigilent; eo quod sæpe sub obtentu orationis latenter scelera committant.

rational account, that can be given of the meaning and reason of this canon, that it was intended to cut off the occasion of lewdness and uncleanness, however artfully disguised under the mask of greater strictness in religion; there being nothing, that could reflect more dishonour on the Christian name, than the allowing such opportunities of sin under the feigned pretence of piety and devotion in their Churches.

## CHAP. XII.

*Of great Transgressions of the Eighth Commandment, Theft, Oppression, Usury, Perverting of Justice, Fraud and Deceit in Trust and Traffic, &c.*

SECT. 1.—Of those, who taught the Doctrine of Renunciation, or having all Things common.

THE design of the eighth commandment is to secure men in the quiet possession of their own rights and properties, or whatever they have a just title to by the laws of God and the community where they dwell. And therefore as many ways as these rights may be invaded or impaired, so many ways there are of committing robbery and transgressing this command. There were in the ancient Church some heretics, who, under pretence of greater heights in religion, would allow no men to possess any thing as their own right and property in this world; but obliged all men to renounce their title to every thing, and to have all things in common; pronouncing a peremptory sentence against all rich men, that unless they gave up their possessions, and forsook all, that they enjoyed, they could not enter into the kingdom of heaven. These men called themselves *Apotactici*, from renouncing the world; and *Apostolici*, from their pretended imitation of the *Apostles*; and *Encratitæ*, from their ostentation of *temperance* and *abstinence* above other men. St. Austin<sup>1</sup>

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<sup>1</sup> Aug. de Hær. cap. xl. Apostolici, qui se isto nomine arrogantissimè

says, they would receive none into their communion, that lived in the conjugal state, or that possessed any thing as their property in this world; they separated from the Church upon this account, and would allow no man to have any hope of salvation, that did not practice as they did; and therefore the Church condemned them as heretics for laying such a doctrinal necessity upon these things, which were left to every man's liberty in practice. The Eustathians maintained the same doctrine, but the Council of Gangra<sup>1</sup> condemned it as heretical, and anathematised the authors and defenders of it. So that this was a general sort of invasion of the rights and properties of mankind, robbing them of every thing in an unusual and extraordinary way, not by any open violence or secret stealth, but by turning religion into an art, and inducing men to rob themselves of every thing under pretence of piety and greater heights of devotion. The factors and agents in this cause seem not to have had any design to enrich themselves, but to make all men poor, and bring them to a level, and lay all things common: which was such a scandalous representation of the Christian religion in the eyes of the Heathen, that the Fathers thought they could not be too severe upon it, however it was coloured over with the varnish and disguise of holiness, pretending a great contempt of the world, and a divine and heavenly temper. As therefore they condemned the doctrine for heretical, so they never failed to pursue the abettors of it with the utmost severity of ecclesiastical censure. And the imperial laws concurred with them,<sup>2</sup> subjecting these *Apotactites*, or *Renouncers*, to all the civil penalties, that were imposed upon heretics in all other cases, except that of confiscation of goods, which signified nothing to those, whose very crime consisted in a perverse way of

vocaverunt, eo quod in suam communionem non reciperent utentes conjugibus, et res proprias possidentes.—Sed ideò isti hæretici sunt, quoniam se ab ecclesiâ separantes, nullam spem putant eos habere qui utuntur his rebus, quibus ipsi carent. Eueratitii isti similes sunt, nam et apotactitæ appellantur. Vid. Epiphani. Hæret. lxi. Apostolicor. n. 4.

<sup>1</sup> Con. Gangren. in Prefat.

<sup>2</sup> Vid. Cod. Theod. lib. xvi. tit. v.

de Hæret. leg. 7 et 11.

renunciation of all things, which left them nothing to forfeit.

SECT. 2.—Of Plagiary or Man-stealing.

Next to this general sort of robbery, the laws set a particular mark upon that, which is commonly called plagiary, or manstealing. The old Roman Law condemned such as were guilty of it, either in a pecuniary mulct, or sent them to the mines. But Constantine thought this was not a sufficient punishment for the crime, and therefore he added to it, and made it capital,<sup>1</sup> ordering every such criminal to be thrown to the wild beasts in the theatre, and if they were likely to escape with their lives thence, to be put to death with the sword. The ecclesiastical laws appoint no particular punishment for this crime: but it being of the same nature with murder in the law of God, it may be supposed, that the penance of murderers was inflicted on those, that were found guilty of it.

SECT. 3.—Of malicious Injustice.

I take no notice here of sacrilege, because though that be a species of theft, yet the punishment of that has been considered under another title.<sup>2</sup> The remaining sorts of injustice may be summed up under these four heads:—1. Malicious injustice. 2. Simple theft. 3. Open violence and oppression. 4. Fraud and deceit.

Malicious injustice is doing hurt and prejudice to our neighbour in his goods out of pure hatred and ill-will, when we can do ourselves no benefit or kindness by it. As when men set houses or stacks of corn on fire out of malice and revenge to their neighbours, or poison or kill their cattle, or do them any the like injury in their goods, without reaping any advantage from it, but only gratifying a spiteful and revengeful temper. The old Roman Law adjudges all such to be guilty of capital crimes, and par-

<sup>1</sup> Cod. Theod. lib. ix. tit. xviii. ad Legem Fabiam de Plagiariis. leg. i. Bestiis primo quoque munere objiciatur, &c. <sup>2</sup> Chap. vi. sect. 22, &c.

ticularly those, whom they term incendiaries,<sup>1</sup> who set towns on fire, either out of enmity, or to make plunder and prey of them: which sort of criminals were by way of just retaliation often sentenced to be burnt alive. The Ecclesiastical Code of the ancient Church has no particular laws against such;<sup>2</sup> but as their crimes were often a complication of many great sins; enmity and malice, and theft and murder commonly concurring in incendiaries; so it may be presumed their punishment and penance was assigned according to the nature and quality of the several offences, which made up this compound vice, than which few can be conceived more heinous, because it has in it so much of the pure malicious and diabolical temper.

SECT. 4.—Of simple Theft.

Simple theft was reckoned among the great crimes, which brought men under public penance, and therefore there is the more reason to conclude it of those complicated crimes. St. Austin frequently, in distinguishing between great and small sins,<sup>3</sup> puts theft into the first class of heinous crimes, for which men were to do a more formal penance in the Church. And among St. Basil's Canons,<sup>4</sup> there is one, that particularly specifies the time of penance: "the thief, if he discover himself, shall do one year's penance; if he be discovered by others, two: half the time he shall be a prostrator, the other half a co-stander." Only St. Austin intimates,<sup>5</sup> there were some circumstances, in which they were forced to bear with this as well as other sins: he means, when some insuperable difficulties or danger made

<sup>1</sup> Digest. lib. xlviii. tit. xix. de Pœnis. leg. xxix. Incendiarii capite puniuntur, qui ob inimicitias, vel prædæ causâ incenderint intra oppidum, et plerumque vivi exuruntur.

<sup>2</sup> The first ecclesiastical laws against incendiaries, I have met with, are the Decrees of Eugenius II. an. 824. cap. ix. tom. vii. p. 1542. And Pope Gregory's Decretals. Lib. v. tit. 17. de Raptoribus et Incendiariis.

<sup>3</sup> Aug. Tract. xii. in Joan. p. 47. Hom. xxvii. ex l. tom. x. p. 177. Tract. xli. in Joan. p. 126.

<sup>4</sup> Basil. can. lxi.

<sup>5</sup> Aug. Ep. liv. ad Macedon. p. 95. Aliquando etiam, si res magis curanda non impedit, sancti altaris communione privamus.

it either impossible, or unadvisable, to put the discipline of the Church strictly in execution against them.

SECT. 5.—Of detaining lost Goods from the true Owner.

Under this head they reckoned such as detained any lost goods, which they found, from the true proprietor, when he could lay a just claim to them. St. Austin expressly condemns this as manifest robbery,<sup>1</sup> “if thou hast found any thing, and not restored it, thou art guilty of robbing the true owner. He, that denies what he finds of another man’s, would take it from him if he could. In this case God examines the heart, and not the hands.” Origen says the same,<sup>2</sup> “that not to restore what a man finds, is equal to robbery; however some had the vanity to think there was no sin in it, and were ready to ask, to whom should I restore it, seeing God has put it into my hands?” The old Roman laws were much more equitable than the conscience of such. For they reckon it theft to detain what a man finds, even when they know not who is the true owner of it. In which case they direct him to put up a libel of inquiry after the proprietor,<sup>3</sup> and when he is found, to take of him what they call *Εὐρετρα*, and *Μήνυτρα*, and *Σῶτρα*, a reward for finding and saving what was lost: though this they rather account a dishonourable and scandalous demand, if precisely exacted. St. Austin gives a very remarkable instance of this sort of generosity in refusing the reward of finding lost goods, in one, who was a poor Christian usher to an heathen schoolmaster at Milan. He found a bag of money about the value of two hundred shillings, and not knowing who was the owner, according to law, he put up a libel

<sup>1</sup> Aug. Hom. xix. de Verbis Apost. tom. x. p. 138. Quod invenisti, et non reddidisti, rapuisti. Quantum potuisti, fecisti: quia plus non potuisti, ideò plus non fecisti. Qui alienum negat, si posset, et tolleret.—Deus cor interrogat, non manum.

<sup>2</sup> Orig. Hom. iv. in Levit. p. 119. Peccatum hoc esse simile rapinæ, si quis inventa non reddat, &c.

<sup>3</sup> Digest. lib. xlvii. tit. ii. de Furtis. leg. xliiii. n. 9. ex Ulpiano. Quid ergo si εὐρετρα, quæ dicunt, petat? Non hic videtur furtum facere, etsi non probè petat aliquid.

publicly to inquire after him.<sup>1</sup> For he was sensible he ought to return it, though he knew not as yet to whom. The man, who had lost the money, upon notice given in the libel, comes to him, and tells the marks, the condition of the bag, the seal, and the sum, and receives his own again. And with great joy, thankfulness, and gratitude, offers him the tithe, twenty shillings, as his requital and reward; but he would not accept it. He offers him ten; but he would not accept it. He intreats him, however, at least, to take five; but he refused. Upon which, the man in anger cast down his bag, and said, I have lost nothing: if thou wilt receive nothing of me, I have lost nothing. What a brave contention, says St. Austin,<sup>2</sup> what a prize, what a strife and noble conflict was this, where the whole world was the theatre, and God the spectator! at last the man is subdued by mere importunity, and prevailed upon to accept what was offered him; but he immediately gave it all to the poor, and would not carry one shilling of it home with him to lay up for his own private use. By this relation we may judge, how great a crime it was reckoned to conceal or detain what was lost from the right owner, since even the exacting any reward for finding it was reputed dishonourable and scandalous, and some ancient canons set a particular mark of infamy upon it, as a species of filthy lucre. “Men ought not,” says Gregory Thaumaturgus,<sup>3</sup> “to exact a reward for saving or discovering, or finding any thing, that was lost, but to live without filthy lucre.”

SECT. 6.—Of refusing to pay just Debts.

They put into the same class all such, as refused to pay their just debts, especially such, as used any base and sinister arts to excuse themselves from the payment of them.

<sup>1</sup> Aug. de Verbis Apost. Serm. xix. p. 138. Memor legis proposuit pitacium publicè Reddendum enim sciebat, sed cui redderet ignorabat, &c.

<sup>2</sup> Ibid. Quale certamen, fratres mei, quale certamen, qualis pugna, qualis conflictus: theatrum mundus, spectator Deus.

<sup>3</sup> Greg. Thaum. can. x. ap. Bevereg. Pandect. tom. ii. p. 34. Μήτε μόνυρα, ἢ σῶρα, ἢ ἕτερα ἀπαιτῶντες, &c.



It was usual with many Jews to pretend to become converts to Christianity, only to shelter themselves from their creditors, and the justice of the law in many criminal cases also, by claiming the privilege of sanctuary in the church. To correct which abuse, Arcadius made a law,<sup>1</sup> that no such practice should be allowed: but that they should be repelled from the church, and not be received till they had faithfully discharged all their debts, and demonstrated their innocence in other respects, as a necessary qualification for their admission. In some cases indeed, when men were unable to pay their debts, the Church in charity was inclined to protect them: but then, in that case, she was also obliged to pay their debts, as appears from several laws made in that behalf;<sup>2</sup> and from the instance, which St. Austin<sup>3</sup> gives of his own Church paying the debts of one Fastius, who fled from his creditors to her protection: and this case of necessity was very different from that fraudulent and criminal refusal of paying debts when men lay under no such straits and difficulties. As therefore the one was matter of commiseration, and made men objects of pity and compassion: so the other made them odious and abominable, as deceitful villains, and rendered them fit objects of legal severity, and ecclesiastical censure.

SECT. 7.—And what Men are bound to by the Obligation of Promise and Contract.

Among just debts they always reckoned those, which men contracted by the obligation of promise and mutual engagements to each other: and therefore all breach of faith in such cases, came under the denomination of theft, and was accordingly punished as a species of that transgression.

<sup>1</sup> Cod. Theod. lib. ix. tit. 45. De his qui ad ecclesias confugiunt. leg. ii. Judæi, qui reatu aliquo, vel debitis fatigati, simulant se Christianæ legi velle conjungi, ut ad ecclesias confugientes vitare possint crimina, vel pondera debitorum, arceantur; nec ante suscipiantur, quàm debita universa reddiderint, vel fuerint innocentiam demonstratâ purgati.

<sup>2</sup> Ibid. leg. i. Publicos debitores, si confugiendum ad ecclesias crediderint, aut illic extrahi de latebris oportebit, aut pro his ipsos qui eos occultare probantur episcopus exigi. Vid. leg. iii. ibid.

<sup>3</sup> Aug. Ep. 215.

The Council of Eliberis applies this particularly to such parents as break the espousals or ante-nuptial contracts, to which they have agreed in behalf of their children:<sup>1</sup> for which offence they are obliged to abstain three years from the communion. This in effect was a robbery committed both upon persons and things, depriving the man of his wife, and the woman of her husband, and each of them of all those rights and benefits, that might have accrued to them by such matrimonial contracts. For which reason it was ranked among those more heinous thefts, and perfidious injuries offered to men's rights, which were thought to deserve a public censure.

SECT. 8.—Of removing Bounds and Landmarks.

And among these, the removing or defacing ancient bounds and land-marks, was accounted no small crime. Even among the old Romans it was punished as a capital offence. Numa Pompilius divided the Roman fields by certain marks erected of *stone*, which they called "*Lapides Sacri*," because they were *consecrated* to Jupiter; and the covering or transferring these was reckoned such an offence, that any one, who was taken in it, might lawfully be slain,<sup>2</sup> as a sacrilegious person. The law of God lays a curse upon it, Deut. xxvii. 17, "Cursed be he that removeth his neighbour's land-mark." Constantine reckons it among those criminal actions, which were to be punished in an extraordinary way,<sup>3</sup> as Pithæus and Gothofred have observed from an old remark made upon the sentences of the famous lawyer Paulus, which says, "*In eum qui per vim terminos dejecerit, vel amoverit, extra ordinem animadvertitur*:" upon which the annotator says, that the same thing was determined by Constantine in the Theodosian Code. Which makes Gothofred conclude, that either that law is wanting

<sup>1</sup> Con. Eliber. can. liv. Si qui parentes fidem frugerint sponsaliorum, trien-  
nii tempore abstineant se à communione, &c.

<sup>2</sup> Vide Calvin. Lexicon Jurid. Voce, Fines.

<sup>3</sup> Pithæus Annot. in  
Collat. Legum Mosaicar. et Roman. tit. xiv. Gothofred. Paratit. in Cod. Th.  
lib. ii. de Finibus Regundis. tit. xxvi.

now in the Theodosian Code, or else that it refers to Constantine's first law under that title, which says, "*Invasor ille pœnæ teneatur addictus,—such an invader shall be liable to punishment,*" though the particular manner of punishment be not expressed. However, it was a crime of that nature, as to require a peremptory punishment without appeal, as appears from another law of Constantine's in the same Code.<sup>1</sup> The ecclesiastical law always condemned this as a cursed crime from the law of God: "Cursed be he that removeth his neighbour's land-mark." And, "Remove not the ancient land-mark, which thy fathers have set." Under this title they also censured all such ambitious bishops, as not content with the limits of their own dioceses, invaded the territory of others, and endeavoured to bring places out of their district under their jurisdiction. Pope Innocent,<sup>2</sup> writing to a bishop upon such an occasion, reminds him of what the Scripture has so often said, "That we ought not to remove the bounds, which our fathers have set," and therefore admonishes him to quit his pretensions, unless he was minded to feel the severity of ecclesiastical censure.

#### SECT. 9.—Of Oppression.

This sort of robbery may also be reckoned under another species of theft, which the law calls compound theft, because it joins something of violence or oppression to the robbery. Such as hostile invasion, robbing with arms upon the highway, breaking houses in the night, piracy at sea, cruel exactions of judges, and other public officers, above what the law allows, perverting of justice by bribery or rigorous interpretations of the law, together with extortion and unjust usury. All which the law condemns under the general name of oppression, and the ancient canons make it matter of excommunication. The fourth Council of Carthage has<sup>3</sup> one canon forbidding the priests to receive any oblations

<sup>1</sup> Cod. Theod. lib. ix. tit. 1. de Accusation. lib. i. Qui fines aliquos invaserit, publicis legibus subjugetur, neque super ejus nomine ad scientiam nostram referatur.

<sup>2</sup> Innoc. Ep. viii. ad Florentium.

<sup>3</sup> Con. Carth. iv. can. 94. Eorum, qui pauperes opprimunt, dona à sacerdotibus refutanda.

from those, that oppress the poor: and another, appointing<sup>1</sup> such as denied to the Church the oblations of the dead, or refused to pay them without difficulty and trouble, to be excommunicated, as murderers of the poor. Agreeable to which is that of St. Chrysostom,<sup>2</sup> directing his clergy not to admit any cruel or unmerciful man to the Lord's table: "although it be a general, although it be a governor or consul, although it be he, that wears the crown, prohibit him: thou in this case hast greater power than he." And again, inveighing against oppressors, who offered alms out of what they had violently taken from others, he says elegantly,<sup>3</sup> "that God will not have his altar covered with tears; Christ will not be fed with robbery; such sort of sustenance is most ungrateful to him: it is an affront to the Lord, to offer unclean things to him: He had rather be neglected, and perish by famine, in his poor members, than live by such oblations. The one is cruelty, but the other is both cruelty, and an affront likewise. It is better to give nothing, than to give that, which of right belongs to other men." After the same manner St. Austin answers the plausible apologies of spoilers and oppressors. "Their plea was, I make<sup>4</sup> feasts of charity, I send meat to them, that are bound in prison, I clothe the naked, I entertain strangers. Do you imagine this is properly giving? Do not take from others, and then you may be said to give. He, to whom you give, rejoices; but he, from whom you take, laments; which of the two will God hear? You say to him, to whom you give, give thanks, because you have received. But he, on the other hand, from whom you have taken it, says, I mourn: you keep almost the whole, and give a small portion to the other. If, therefore, you give to the poor what you take from others, God is not pleased with such works. God says to thee, Thou fool, I commanded thee to give, but not that, which is another man's.

<sup>1</sup> Con. Carth. iv. can. 95. Qui oblationes defunctorum aut negant ecclesiis, aut cum difficultate reddunt, tanquam egentium necatores excommunicantur.

<sup>2</sup> Chrys. Hom. lxxxii. al. 83. in Mat. p. 705.

<sup>3</sup> Id. Hom. lxxxvi. al.

lxxxvii. in Mat. p. 722.

<sup>4</sup> Aug. Hom. xix. ex. 50. tom. x. p. 137. Agapes facio, vinctis in carcere victum mitto, nudos vestio, peregrinos suscipio. Dare te putas? &c.

If thou hast ought, give of that, which is thine own: if thou hast not of thine own to give, it is better thou shouldst not give, than spoil some to give to others." He says in another place,<sup>1</sup> some were so vain as to think, that a little alms before they died would effectually expiate all their sins, however wicked and rapacious they had been all their lives before: against whom he disputes accurately and sharply in several Books<sup>2</sup>, which it would be needless here to cite at large. I only add, that agreeable to those rules the Author of the Constitutions under the name of the Apostles, giving directions to bishops about the persons, from whom they were to receive oblations at the altar, or refuse them, among many other criminals, orders them to reject those, who afflict the widow, and oppress the fatherless by their power,<sup>3</sup> and fill the prisons with innocent persons, and evil intreat their servants with stripes, famine or hard bondage; and lay waste whole cities; all lawyers, that plead for injustice or unrighteous causes; all unrighteous judges; all wicked publicans, and usurers, and soldiers, that are false accusers, and not content with their wages, but oppress the poor.

SECT. 10.—Of the Exactions and Bribery of Judges.

And that this was agreeable to the common discipline of the Church, will appear by examining the particulars. To begin with that, which was the most flagitious and intolerable, the oppression committed by judges in their office, partly by cruel exactions partly by feigned accusations, and partly by perversion of justice for the sake of bribery and filthy lucre: which sorts of oppression the law commonly terms, *Crimen Repetundarum, et Peculatus*. For though *Peculatus* often signifies robbing the public by private stealth, yet it sometimes also denotes the oppressions and injuries done by magistrates to the subject. In which case the censures of the Church were often

<sup>1</sup> Aug. de Civ. Dei. lib. xxi. cap. 22.

<sup>2</sup> Ibid. lib. xxi. cap. 27.

Et in Enchirid. cap. lxxv. et lxxvi. Serm. xxxv. de Verbis Domini. Cont. Julian. Pelag. lib. v. cap. 10. Vid. plura ap Gratian. Caus. xiv. Quæst. 5, et 6.

<sup>3</sup> Constit. lib. iv. cap. 6.

inflicted upon oppressing governors. As we have a famous instance of Synesius<sup>1</sup> excommunicating Andronicus, the governor of Ptolemais, for his violent oppression of the people. The imperial laws were also very numerous, and very severe in this case, to secure the rights and properties of the people from such violent invasion. They did not indeed allow the subject, for some time, to accuse the magistrate during the year of his administration: but Theodosius took off even that restraint,<sup>2</sup> and not only gave men liberty, but invited and encouraged men of all orders to bring informations against corrupt judges, if they had either suffered any violence from them themselves, or knew them to be guilty of bribery, or setting justice to sale, or any the like improbity: and that as well in the time of their administration as afterward; promising a reward to any, that should make good such charges against them. The like encouragement was given by Constantine<sup>3</sup> and Valentinian Junior,<sup>4</sup> as appears by their laws now extant in the Theodosian Code. And whereas the punishment of such corruption in the magistrate was only a pecuniary mulct before Theodosius, by a new law made it death<sup>5</sup>, as thinking no punishment too great for such an offence. At Carthage they had a peculiar good custom, which tended much to discourage all such rapacious practices in their magistrates. For Prosper tells us,<sup>6</sup> that every year the new pro-consul

<sup>1</sup> Synes. Ep. 57. p. 172.

<sup>2</sup> Cod. Theod. lib. ix. tit. 27. ad Legem

Juliam Repetundarum. leg. 6. Jubemus, hortamur, ut si quis à Judice fuerit aliquâ ratione concussus; si quis scit venalem de jure fuisse sententiam; si quis pœnam vel pretio remissam, vel vitio cupiditatis ingestam; si quis postremo quâcunque de causâ improbum Judicem poterit adprobare; is vel administrante eo, vel post administrationem depositam, in publicum prodeat, crimen deferat, delatum adprobet: cum probaverit, et victoriam reportaturus et gloriam.

<sup>3</sup> Cod. Theod. lib. 9. lit. i. de Accusationibus.

leg. 4.

<sup>4</sup> Cod. Th. lib. ix. tit. 27, ad Legem Juliam Repetundarum

leg. 7. <sup>5</sup> Cod. Th. lib. ix. tit. 28. de Crimine Peculatus. leg. i. Pridem fuerat constitutum, ut hi judices, qui peculatu provincias quassavissent, multæ dispendio subjacerent; sed quoniam nec condigna crimini ultio est, nec par pœna peccato, placuit—capitale hoc esse, atque animadversione severissimâ coerceri.

<sup>6</sup> Prosper. de Promissionibus Dei, sive Gloria Sanctorum in Peroratione. In calculis eberneis nomina pro consulum conscripta Carthagine in foro coràm populo à præsentî judice sub certis vocabulis citabantur, et erat solennis dies, Albi Citatio. Hi, qui

was used upon a certain day, which they called, *Albi Citatio*, to read over a list of the governors, that had been before him: and then they, that had been just in their administration, and gone through their office without covetousness, or rapaciousness, or any such flagrant crimes, were honoured in their absence by the applauses of the people: but on the other hand, they whom covetousness had driven into scandalous measures of robbery and violence, were noted with marks of infamy by general hissings and reproaches.

SECT. II.—Of the Exactions of Publicans, and Collectors of the Public Revenues, and other Officers of the Roman Empire.

The laws were equally severe against all super-exactors, as they are called, of the public revenues. The common burden of tribute and taxes was generally hard enough, even as settled by law, in the Roman government:<sup>1</sup> but the illegal exactions of the publicans and collectors made it a much more intolerable burden. Therefore the laws were forced to restrain and chastise their oppressions with great severity. Constantine made several laws to this purpose,<sup>2</sup> condemning this crime as a capital offence, according to Gothofred's interpretation of severe punishment. Valentinian and Valens, obliged the exactor to make restitution fourfold to the injured party,<sup>3</sup> and condemned the judge in the same quadruple sum, if he refused upon complaint to do him justice. But Arcadius, finding that this law of Valentinian did not effectually put a stop to these exorbitant demands, made it death for any exactor to go beyond his bounds.<sup>4</sup> And Honorius, some years after, joined both pu-

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avaritiam superantes, rempublicam fideliter egerant absque flagitiis facinoribusque, etiam absentes honorabantur: eos verò quos rapacitas vicerat, populus convitiis sibilisque notabat.

<sup>1</sup> Vid. Lipsium de Magnitudine Romanâ. lib. ii. cap. 1, 2, &c. <sup>2</sup> Cod. Theod. lib. viii. tit. 10. de Concussionibus Advocatorum. leg. i. Item. lib. xi. tit. 1. de Annonâ et Tributis. leg. iii. et lib. xi. tit. 7. de Exactionibus leg. i. et lib. iv. tit. 12. de Vectigalibus. leg. i. <sup>3</sup> Cod. Th. lib. xi. tit. 16. de Extraordinariis. leg. xi. Obnoxius quadrupli repetitione teneatur, &c. <sup>4</sup> Cod. Th. lib. xi. tit. 8. de Superexactionibus. leg. i. Si quis exactorum superexactionis crimen fuerit confutatus, eandem pœnam subeat, quæ Divi Valentiniani sanctione dudum fuerat definita. Capitulis nam-

nishments together, ordering the exactor to be put to death and quadruple restitution to be made out of his estate to the injured person;<sup>1</sup> laying a fine wihal of thirty pounds of gold upon any judge, that neglected to put the law in execution. Now what the civil law so severely condemned, there is no question but that the ecclesiastical law punished in the spiritual way, with equal severity, under the general name of oppression.

SECT. 12.—Of the Exactions of Advocates, and Lawyers, and Apparitors of Judges.

There was another cruel way of oppression under colour of law, much practised by advocates and lawyers, commonly called, *Scholastici et Defensores*, and the apparitors and officers of the civil courts, and attendants of judges. Their exactions, and extortions upon men's necessities, are frequently complained of, and provided against by several laws. The law allowed them certain stated wages, or canonical pensions, as the term is, for pleading and managing causes: but beyond these they often made no scruple to exact maintenance for themselves and their horses, wherever they came, in the city, or in mansions, without any pay; which super-exactions are particularly noted in advocates and officers by Constantius,<sup>2</sup> as instances of insatiable covetousness: and therefore he gives orders to judges to defend the people from such extortions, and not suffer their injuries and enroachments to go unpunish-

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que periculo posthâc cupiditas amovenda est, quæ prohibita totiens in hisdem sceleribus perseverat. <sup>1</sup> Cod. Th. lib. xi. tit. 7. de Exactionibus.

leg. xx. Si in concussione possessorum exactores fuerint deprehensi, ilico et capitali periculo subiaceant, et directorum quadrupli pœnâ ex eorum patrimonio eruetur, &c. Vid. ibid. tit. 8. de Superexactionibus. leg. ii. et iii. ejusdem Honorii. It. lib. ii. tit. 26. de Discussoribus. Leg. i. &c. lib. xiii. tit. 11. de Censitoribus leg. vii. et x. Et Valentiniani iii. Novel. 7. de Indulgentiis reliquorum.

<sup>2</sup> Cod. Th. lib. viii. tit. x. de Concussionibus Advocatorum et Apparitorum. leg. ii. Præter sollemnes et canonicas pensationes multa à provincialibus Afris indignissimè postulantur ab officialibus et scholasticis, non modo in civitatibus singulis, sed et mansionibus, dum ipsis et animalibus eorundem alimonix sine pretio ministrantur, &c. Provinciales itaque cuncti judices tueantur, nec injurias inultas transire permittant.



ed. Constantine reflects upon the like extortions of advocates in making wicked bargains with their clients,<sup>1</sup> to make over to them the best of their lands, their cattle, and their slaves; which he calls spoiling and pillaging those, that stood in need of their patronage; and orders, that such rapacious vultures, as Gothofred terms them, should be expelled the court and never after be allowed the liberty of pleading. Another way, whereby wicked advocates were wont to oppress the poor, was, by encouraging their clients to draw their adversaries in a civil cause from the cognizance of the ordinary judges to a military tribunal, where they had more liberty by bribery, and other corrupt practices, to oppress them. Great complaints are made, by Ammianus Marcellinus,<sup>2</sup> of this sort of depredation made upon the poor in the time of Valens, who, he says, opened the doors to robbery, which gained strength every day by the pravity of the judges and advocates, who sold the causes of poor men to the rulers in the army, or such as bore sway in the palace, by which means they increased their wealth, or brought themselves to preferment. To correct this abuse, Arcadius made a law,<sup>3</sup> that whoever transferred a civil cause from the ordinary judges to a military court, should be liable to banishment, besides other penalties inflicted by former laws; and the advocate concerned in such a cause, should forfeit ten pounds of gold, except they had a special license from the Emperor for such a removal. Valentinian III. added to this, that

<sup>1</sup> Cod. Th. lib. ii. tit. 10. de Postulando, leg. i. *Advocatos, qui consceleratis depectionibus suae opis egentes spoliant atque decudant, non jure cause, sed fundorum, pecorum et mancipiorum qualitate rationeque tractatâ, dum eorum præcipua poscant coacta sibi pactione transcribi, ab honestorum cœtu, judiciorumque conspectu segregari præcipimus. Vid. Cod. Justin. lib. ii. tit. 6. de Postulando, leg. v.*

<sup>2</sup> Ammian. lib. xxx. p. 448. *Laxavit rapinarum fores, quæ roborantur indies judicium advocatorumque pravitare, qui tenuiorum negotia militaris rei rectoribus, vel intra palatium validis venditantes, aut opes, aut honores quæsivere præclaros.*

<sup>3</sup> Cod. Theod. lib. ii. tit. I. de Jurisdictione, leg. ix. *Si quis neglectis judicibus ordinariis, sine cœlesti oraculo, causam civilem ad militare judicium credideret deferendam, præter pœnas ante promulgatas, intelligat se deportationis sortem excepturum. Nihilominus et advocatum ejus decem libris auri condemnatione feriendum.*

the advocate should lose his office,<sup>1</sup> and the counsellor be banished also. And there were many other laws made by Theodosius, Valentinian junior, and Marcian, to the same purpose, which the curious reader may find in Gothofred upon the forementioned law of Arcadius. It is true, the Ecclesiastical Law does not particularly specify these things; but we may suppose, they being great crimes, were included in the general notion of illegal oppression, which was thought to deserve ecclesiastical censure.

SECT. 13.—Of griping Usury and Extortion.

But there is one sort of oppression, which the laws of the Church more particularly take notice of, and condemn both in the clergy and laity, that is, griping usury or extortion upon the poor. The nature of usury, and the several degrees of it, I have had occasion already to explain in a former book:<sup>2</sup> all, therefore, I shall here take notice of, is the censures of the Church passed upon all, that were guilty of what they reckoned cruel and criminal in it. The Council of Eliberis not only orders the clergy to be degraded, who were found guilty of taking usury, but threatens<sup>3</sup> excommunication to every layman, that after admonition, persisted in the practice of it. And the first Council of Carthage gives this reason, why clergymen should not practise it, because it was a thing, that was culpable in laymen. And the reason, why it was so generally condemned by the Ancients even in laymen, was, because it was generally a great oppression of the poor, to whom the charity of lending without usury was due; and many times it was attended with extortion, as in the centesimal interest, which was twelve in the hundred; and what they called *Hemiolia*, which was receiving *half as much more as the*

<sup>1</sup> Valentin. Novel. de Episcopali Judicio. tit. xii. Causidicum officii amissio, jurisconsultum existimationis et interdictæ civitatis damna percellant.

<sup>2</sup> Book vi. chap. ii. sect. 6.

<sup>3</sup> Con. Eliber. can. xx.

Si quis etiam laicus accepisse probatur usuras, si in eâ iniquitate duraverit, ab ecclesiâ sciat se esse projiciendum.

<sup>4</sup> Con. Carth. i. can. 13.

Quod in laicis reprehenditur, id multo magis in clericis oportet prædamari.

*principal* by way of interest, both which were condemned by the laws of the State as illegal exactions, and downright extortion. Upon which bottom all the arguments and invectives of the Ancients are founded. So that usury in this sense was reckoned a plain robbery of the poor, and a cruel oppression of those, to whom mercy and charity ought to be shewn upon all occasions. And to this we may join all extortion made by force or fear, which the civil law condemns and annuls,<sup>1</sup> though a covenant or promise had been obtained of the injured party.

SECT. 14.—Of Forgery.

The last sort of robbery, was that, which was committed by fraud and deceit, which the law calls *Dolus Malus*, and *Stellionatus*, from *Stellio*, that little animal with shining spots like stars, the lizard, or tarantula, of which naturalists<sup>2</sup> observe, that there is no animal, which more fraudulently envies man than this: for changing his skin every year, which was reckoned a sovereign remedy against the falling-sickness, he devours it himself, lest men should have the benefit of it: whence the lawyers call all imposture and fraud, which has no special title in law, by the name of *Stellionatus*,<sup>3</sup> as Ulpian explains it: thus if a man mortgage or pawn that, which is already engaged, fraudulently dissembling the former obligation; or pass it away in exchange, or pretend to pay debts with it, when it is under a pre-engagement; all such frauds are called *Stellionatus*. So if a man change the wares, which he has sold, or corrupt them, or direct them to another use after he has pawned them; or if he used any collusion or imposture to compass the death of any man, this was reckoned a fraud of the same

<sup>1</sup> Cod. Th. lib. ii. tit. 9. de Pactis. leg. iv. Pacta quidem per vim et metum apud omnes satis constat cassata viribus respuenda.

<sup>2</sup> Plin. lib. xxx. cap. 10. Nullum animal fraudulentius invidere homini tradunt: inde stellionum nomen aiunt in maledictum translatum, &c.

<sup>3</sup> Digest. lib. xlvii. tit. 20. Stellionatus leg. iii. Ubi cunque titulus criminis deficit, illic Stellionatus objicimus. Maximè autem in his locum habet: si quis forte rem alii obligatum, dissimulatâ obligatione, per calliditatem alii distraxerit, vel permitaverit, vel in solutum dederit, &c.

nature. If in giving a pawn, he substituted brass in the room of gold; if he sold a freeman under the notion of a slave; if he received a sum of money as a debt, that was really paid him before; he was liable to be punished upon an action of fraud upon the same title;<sup>1</sup> and for his crime, if he was a plebeian, he might be condemned to the mines; if a person of quality, he might be sent into banishment, or be degraded. The instances of such frauds and collusions are too many and intricate, to be here particularly recounted, but the chief of them may be summed up under these five titles, forgery, calumny, flattery, deceitfulness in trust, and deceitfulness in traffic.

Forgery may be committed either in counterfeiting coin, to impose upon the unskilful and unwary; or else in counterfeiting deeds and instruments, to lay claim to other men's estates, as is done by those, who make a title upon false wills or bonds, or conceal or corrupt the true ones. The counterfeiting of the coin, was not only an injury to private men in commerce, but also an act of treason against the supreme powers: and therefore punished as a capital offence with confiscation, banishment, or death, and that sometimes of the cruellest sort, burning alive, as appears from several laws in the Theodosian Code made upon this occasion.<sup>2</sup> Particularly Constantine,<sup>3</sup> in one of his laws, orders such to be put to the sword, or burnt alive, or to be punished with some such violent death, whether they were guilty of clipping the coin, and diminishing its quantity, or adulterating its quality, and vending it as good by manifest fraud and imposture. And what the law punished thus severely in the state, there is no question but that it was with equal severity in the spiritual way censured, and condemned as a

<sup>1</sup> Vid. Calvin. *Lexicon Juridicum*, Voce. *Stellionatus*.

<sup>2</sup> Cod.

Theod. lib. ix. tit. 21. de *Falsa Moneta*. leg. 1, 2, 3, 5, 6.

<sup>3</sup> *Ibid.* tit. 22. *Si quis solidi circulum inciderit, vel adulteratum in vendendo subjecerit.* leg. i. *Aut capite puniri debet, aut flammis tradi, vel aliâ pænâ mortiferâ. Quod ille etiam patietur, qui mensuram circuli exterioris adraserit, ut ponderis minuat quantitatem; vel figuratum solidum adulterâ imitatione in vendendo subjecerit.* Vid. *Digest.* lib. xiii. tit. 7. de *Pignoratitiâ Actione*. leg. 1, et 16.

fraud and robbery by the Church. The counterfeiting of false deeds, and especially false wills, was esteemed an heinous crime even by the old Roman laws, of which there is a whole title in the Pandects;<sup>1</sup> one of which, related by the famous lawyer, Julius Paulus, says,<sup>2</sup> whoever conceals a will, or conveys it away, or destroys it, or puts another in its room, or cancels it; or whoever writes, or signs, or fraudulently produces a false will, is liable to be punished upon an action of forgery, by the Cornelian law. And that punishment is either banishment, or confiscation,<sup>3</sup> or death according to the quality of the offender. And by the laws of Constantine the same punishments of banishment and death were awarded to this sort of forgery.<sup>4</sup> And though the Ecclesiastical Laws do not particularly specify the punishment of this crime, yet they must be supposed to comprehend it under the general title of theft and robbery, which made men liable to ecclesiastical censure.

SECT. 15.—Of Calumny with Regard to Men's Estates and Fortunes; and its Reverse, the Fraud of Flattery.

Another sort of fraud that might be committed against men, in order to rob them of their estates and fortunes, was impeaching them of feigned crimes, by false accusation and calumny. This sometimes affected men's lives, and then it was a species of murder, and punished under that denomination, as has been shewn before. Sometimes it affected their fame and reputation, and as such it will be considered

<sup>1</sup> Digest. lib. xviii. tit. 10. de Lege Corneliâ de Falsis.

<sup>2</sup> Paulus ibid. leg. ii. Qui testamentum amoverit, celaverit, eripuerit, deleverit, interleverit, subjecerit, resignaverit: quive testamentum falsum scripserit, signaverit, recitaverit dolo malo, ejusve dolo malo id factum fuerit, legis Corneliæ pœnâ damnatur.

<sup>3</sup> Ibid. leg. i. n. 13. Pœna falsi, vel quasi falsi, deportatio est, et omnium bonorum publicatio: et si servus eorum aliquid admiserit, ultimo supplicio adfici jubetur.

<sup>4</sup> Cod. Theod. lib. ix. tit. xix. ad Legem Cornelianam de Falsis. leg. 1. et 2. Capitali post probationem supplicio (si id exigat magnitudo commissi) vel deportatione ei qui falsum commiserit imminente.

Vid. Cod. Justin. lib. x. tit. 13. De his qui se deferunt.

Leg. i. Occultator gestorum in insulam deportetur, &c.

hereafter. In this place, we take it only as affecting men's estates and fortunes, and as an intention by fraud, to rob them of their property and possessions. In which sense, the law sometimes takes calumny and false accusation, as a species of theft and robbery, and proscribes it under that title. As appears from that law of Valentinian and Gratian, in the Theodosian Code, which joins these three sorts of calumny together,<sup>1</sup> viz. against men's fame and reputation, against their fortunes, and against their lives: ordering, that whoever impleaded another upon any of these three heads, should undergo the same penalty as he intended to bring upon the party he impeached, if he proved to be a false accuser, and did not fairly make out his action. Against such calumniators, fraudulent informers, and false accusers, whose chief aim was in a plausible way, and under pretence of legal process, to come at other men's estates there are two or three whole titles more in the Theodosian Code,<sup>2</sup> where such accusers and impeachers are called the bane of human life, and the common pest of mankind: and they are ordered to be prosecuted to the last degree with confiscation and death. The ecclesiastical law also enjoins them a severe penance. By a Canon of the Council of Eliberis,<sup>3</sup> "he, that bears false witness against another to the loss of his life or liberty, is not to be received to communion even at his last hour." And if it was in a lighter cause, as in a pecuniary matter or the like, he was to do penance for five years, before he was reconciled and perfectly restored to the peace of the Church. St. Austin also reckons this sort of calumny among the species of robbery and oppression.<sup>4</sup> And

<sup>1</sup> Cod. Th. lib. ix. tit. 1. de Accusationibus. leg. xi. Qui alterius famam, fortunas, caput denique et sanguinem in iudicium devocaverit, sciat, sibi impendere congruam pœnam, si quod intenderit, non probaverit.

<sup>2</sup> Cod. Th. lib. ix. tit. 39. de Calumniatoribus. It. lib. x. tit. 10. de Petitio-nibus et Delatoribus. leg. i. ii. iii. x. xxxiii. &c. Et tit. 12. Si vagum petatur mancipium.

<sup>3</sup> Con. Eliber. can. lxxiii. Delator si quis extiterit fidelis, et per delationem ejus aliquis fuerit proscriptus vel interfectus, placuit eum nec in fine accipere communionem. Si levior causa fuerit, intra quinquennium accipere potuit communionem.

<sup>4</sup> Aug. Ep. liv. ad Macedon.

the author of the Constitutions,<sup>1</sup> giving directions to the bishop what sort of persons he should reject from the communion, among others mentions soldiers, who are false accusers, and not content with their wages, but oppress the poor.

Adulation and flattery is the reverse of calumny, and yet by these means some made a shift by fraudulent arts, to get themselves made heirs to dying persons, to the prejudice of those, who had a more just and real title. To prevent which sort of fraud, Valentinian made a law,<sup>2</sup> that no ecclesiastical person or ascetic (for the fraud was chiefly committed by them) should clandestinely resort to the houses of dying widows or orphans, to get their estates, or any legacies to be settled upon them: which if they did, they were liable to be prosecuted at law by the deceased parties next relations: they were to enjoy nothing, that they had so fraudulently obtained, under pretence of religion, from any such persons, either by way of donation and gift, or last will and testament; but the legal heirs might make their claim, and set aside all such legacies; or otherwise they were to be confiscated to the public. There are two laws of Theodosius also much to the same purpose.<sup>3</sup> And the Fathers are so far from complaining of the seeming hardship of these laws, that they rather complain of the fraud and avarice, and rapaciousness of those, who gave occasion to these pious emperors to make such laws against them. St. Ambrose says,<sup>4</sup> such men were guilty of violence, and invasion of the rights of

<sup>1</sup> Const. lib. iv. cap. 6.

<sup>2</sup> Cod. Th. lib. xvi. tit. 2. de Episc. et Clericis. leg. xx. Ecclesiastici, aut ex ecclesiasticis, vel qui continentium se volunt nomine, nuncupari, viduarum ac pupillarum domos non adeant: sed publicis exterminentur judiciis, si posthac eos affines earum vel propinqui putaverint deferendos. Censemus etiam, ut memorati nihil de ejus mulieris, qui si privatim sub prætextu religionis adjunxerint, liberalitate quâcunque, vel extremo judicio possint adipisci, &c. Vid. leg. xxi. ibid.

<sup>3</sup> Ibid. leg. xxvii. et xxviii.

<sup>4</sup> Ambros. Ser. vii. de Clericis. p. 232. Nemo nos invasionis arguit, violentiæ nullus accusat? Quasi non interdum majorem prædam à viduis blandimenta eliciant, quàm tormenta: non interest apud Deum, utrum vi, an circumventionem quis res alienas occupet, dummodò quoquo pacto tenet alienum. Vid. Librum cont. Symmachum.

others: they made a greater prey of widows, by their blandishments and flatteries, than others did by torments: but it was all one before God, whether a man seized the substance of others by force, or by circumvention, so long as he detained what of right belonged to other men. In like manner St. Jerome:<sup>1</sup> "I am ashamed to say, that the idol-priests, and stage-players, and horse-racers, and harlots, may be left heirs, whilst clerks and monks only are prohibited by this law; and that not by persecuting tyrants, but Christian princes. Neither do I complain of the law, but it grieves me to think we should deserve such a law. The caution of the law is provident and severe, and yet our covetousness is not restrained thereby. We evade the laws by feoffments in trust: and as if the edicts of emperors were greater than those of Christ, we are afraid of their laws, whilst we contemn the Gospels. It is evident by these complaints made by these holy Fathers, that this fraudulent way of catching at the estates of widows, by fawning arts and assentation, (whence these flattering hypocrites were commonly called *Hæredipetæ* and *Captatores*,) was esteemed no less a theft, than that which was committed by open violence and oppression. This was a scandalous sort of theft even among the heathens;<sup>2</sup> Juvenal often spends his satirical wit upon it: and so does Martial, and Seneca, and Pliny, and Lucian,<sup>3</sup> and many others. Which makes it less wonder, that the Christian laws should proscribe it, and the fathers so sharply inveigh against it, even when it looked like a means of augmenting the revenues of the Church. But that shews the purity of the ancient discipline, that they

<sup>1</sup> Hieron. Ep. ii. ad Nepotianum. Pudet dicere, sacerdotes idolorum, mimi, et aurigæ, et scorta hæreditates capiunt; solis clericis ac monachis hæc lege prohibetur: et non prohibetur à persecutoribus, sed à principibus Christianis. Nec de lege conqueror, sed doleo cur meruerimus hanc legem. — Provida severaque legis cautio: et tamen nec sic refrænatur avaritia. Per fidei commissa legibus illudimus: et quasi majora sint Imperatorum scita quam Christi, leges timemus, et evangelia contemnimus. Vid. Ep. iii. ad Nepotian. et Ep. xxii. ad Eustoch. It. Leo et Majorian. Novel 8. Insidiosam mensecula diriguuntur, subornantur medici, qui prava persuadeant, &c.

<sup>2</sup> Juvenal. Sat. v. ver. 98. Sat. vi. ver. 40. Sat. x. 202.

<sup>3</sup> Vid.

Calvin. Lexicon Juridicum. Vocæ, Captare.



would not spare a crime, that could appear with so fine an aspect; being utter enemies to all scandalous and disreputable ways of increasing the clerical maintenance, as I have had occasion to shew in several instances, in speaking more particularly of the revenues of the Church.

SECT. 16.—Of Deceitfulness in Trust.

Another sort of fraud is committed in matters of trust, as when a steward or servant embezzles his master's goods, or makes fraudulent and injurious bargains for him; or when a guardian or tutor, who is entrusted with the execution of a dead man's will, acts an unfaithful part, and enriches himself out of what was designed for the maintenance of others; or when a man denies, or conceals, or refuses to restore any thing, that was deposited with him, and committed to his trust. The Ancients were extremely conscientious in this last instance of things committed to their trust, inso-much as that Pliny himself can inform us,<sup>1</sup> that it was one part of their solemn business every Lord's day to bind themselves with a sacrament, or an oath, not to commit any wickedness, theft, robbery, adultery; not to falsify their word; not to deny any thing wherewith they were intrusted, when they were required to deliver it up again. And therefore we may reasonably conclude, that no one was thought qualified for communion in such a society, who was guilty of breach of faith in any such trust, which was both against the laws of common justice, and his own solemn engagement. Some trusts were of a more sacred nature, being designed for the service of God and the poor, an unfaithfulness in such trusts was therefore reckoned a double and a triple crime, because it added, as it were, murder and sacrilege to the injustice. Upon this account the fourth Council of Carthage calls those,<sup>2</sup> who endeavour to defraud the

<sup>1</sup> Plin. lib. x. Ep. 97. Seque sacramento non in scelus aliquod obstringere, sed ne furta, ne latrocinia, ne adulteria committerent, ne fidem fallerent, ne depositum appellati abnegarent.

<sup>2</sup> Con. Carth. iv. can. 95. Qui oblationes defunctorum aut negant ecclesiis, aut cum difficultate reddunt, tanquam egentium necatores, excommunicentur.

Church of such legacies or oblations, as were left her by the dead, murderers of the poor; because their robbing the Church of that, which was given for the maintenance of the poor, was in effect to starve and famish the poor: and for such fraud and cruelty they are subjected to the censure of excommunication. Among the Epistles of Cyprian, there is a letter of Cornelius, bishop of Rome,<sup>1</sup> to Cyprian, giving him an account of one Nicostratus, a deacon, whom he charges with this sort of fraud: for he had not only cheated his temporal patroness, whose affairs he managed, but had carried away a great part of the revenues of the Church, which was entrusted with him as archdeacon for the maintenance of poor widows and orphans; for which crime he was forced to fly from Rome, for fear of being called to give an account of his rapine and sacrilege. And Cyprian himself in another Epistle,<sup>3</sup> giving an account to Cornelius of the wickedness of Novatus, says, he had defrauded the widows and orphans, and denied the Church's revenues, which were entrusted with him; for which, and many other crimes, as starving his own father, and causing his wife by a sudden blow to miscarry, he had certainly been removed not only from his seat in the presbytery, but from all communion with the Church, had not the approach of a fierce persecution put a stop to his trial and condemnation. By which it appears, that there was no crime more heinously resented than this of unfaithfulness in trust, nor any more severely pursued and punished by the censures of the Church.

SECT. 17.—Of Deceitfulness in Traffic.

The last sort of fraud is that, which is committed in traffic and commerce, between buyer and seller. The buyer may be guilty either in taking advantage of the ignorance of the seller, when he knows not the true value of his own goods; or in taking advantage of his necessity, when his poverty compels him to sell at an under-rate; or in paying

<sup>1</sup> Ap. Cypr. Ep. xlvi. al. 50.  
Cornel. 97.

<sup>2</sup> Cypr. Ep. xlix. al. 52, ad

him in false and corrupt coin, which is the same thing as defrauding him in the original contract. This last sort of fraud was severely punished by the Roman laws, both heathen and Christian. For the vender, as well as the forger of false coin, is condemned in all the penalties of fraud, recounted in the Pandects.<sup>1</sup> And Constantine made it a capital crime,<sup>2</sup> not only for any one to adulterate, or clip, or diminish the coin, but also to pass any such away knowingly in payment to others, to put a wilful cheat upon them. And though this be not expressly and particularly specified in the ecclesiastical law, yet being a principal fraud, it must be comprehended under the general titles of frauds, which came under the cognizance of the spiritual jurisdiction. For fraud was always reckoned a crime of the first magnitude; St. Austin<sup>3</sup> puts it in the same class with murder, adultery, fornication, theft, and sacrilege: and Tertullian joins it with<sup>4</sup> the great sins of blasphemy, idolatry, apostacy, murder and adultery, which defile the temple of God, and unqualify men for Christian communion. As to the buyer's overreaching the seller, by taking advantage of his ignorance or unskilfulness in the just value of his commodity, this being a thing not easy to be discovered or proved, it may be supposed to be a fraud rather left to his own conscience, than ordinarily brought under public discipline. Yet certain it is, a conscientious man will not load his soul even with this guilt. St. Austin gives a rare instance of singular justice in this case.<sup>5</sup> He says, he knew a man, who having a book offered him to be sold at an under-rate by one, who understood not the true value of it, gave him the just price of it; surprising him by an uncommon generosity and equity,

<sup>1</sup> Digest. lib. xliii. tit. 7. de Pignoratitiâ Actione. leg. i. et xvi. lib. xlvi. tit. 10. ad legem Corneliam de Falso. leg. ix.

<sup>2</sup> Cod. Theod. lib. ix. tit. 22. Si quis solidi circulum incidit, vel adulteratum in vendendo subjecerit. leg. i. Capite puniri debet, aut flammis tradi, vel aliâ pœnâ mortiferâ, si quis mensuram circuli exterioris adraserit, vel figuratum solidum adulterâ imitatione in vendendo subjecerit.

<sup>3</sup> Aug. Tract. xli. in Joan. tom. ix. p. 126. cap. xix. Cont. Marc. lib. iv. cap. 9.

xliii. cap. 3.

<sup>4</sup> Tertul. de Pudicit.

<sup>5</sup> Aug. de Trinit. lib.

which allows no man to take advantage of another's ignorance; though it be against the general maxim of the world, which loves to buy cheap, and sell dear, (as the mimic said, when he undertook to divine and tell all men their wishes,) whatever evil consequences may attend it.

On the other hand, fraud may be committed also by the seller, and that several ways; either by over-rating the commodity to the ignorant and necessitous buyer, which is also extortion and oppression; or by vending corrupt wares, which are not really and truly what they are said or appear to be, which is a fraud in the quality; or by using false weights and measures, which is a fraud in the quantity of the thing contracted for, and which is commonly branded with this note in Scripture, that "it is an abomination to the Lord." The old Roman laws were exceeding careful about this matter of just weights and measures.<sup>1</sup> The Ediles were obliged to examine them; the standards of both were religiously kept in the Capitol: and thence, afterward, in Christian times, they were removed and placed under the custody of bishops in the churches, as appears from Justinian's<sup>2</sup> Pragmatic Sanction, and one of his Novels to this purpose.<sup>3</sup> Every city, and mansion, or place of custom, had likewise their public standards, as well to prevent the frauds of the exactors of tribute, as those of others in private contracts, one with another. To which purpose there are several laws of Theodosius,<sup>4</sup> and Honorius,<sup>5</sup> and Valentinian III.<sup>6</sup> and Majorian,<sup>7</sup> in the Theodosian Code. And very severe and capital punishments are there appointed for all such as were found guilty of fraud in altering or corrupting the public standard. The Church has not many particular laws about

<sup>1</sup> Vid. Digest. lib. xlviii. tit. 10. ad Legem Corneliam de Falso. leg. xxxii.

<sup>2</sup> Justin. Pragmat. Sanct. cap. xix.

<sup>3</sup> Justin.

Novel. cxviii. cap. 15.

<sup>4</sup> Cod. Th. lib. xii. tit. 6. de Susceptoribus. leg. xix.

In singulis stationibus et mensuræ, et pondera publicè conlocentur, ut fraudare cupientibus fraudandi adimant potestatem. It. leg. xxi.

<sup>5</sup> Cod. Th. lib. xi. tit. 7. de Super Exactionibus. leg. iii.

<sup>6</sup> Cod. Th. lib. xii. tit. 6. de Susceptor. leg. xxxii. It Novel.

Valentin. et Theodos. xxv. de Pretio Solidi.

<sup>7</sup> Majorian.

Novel. i. Vid. Sidon. Apollinar. lib. v. Ep. 7. et Cassiodor. lib. v. Ep. 30. lib. xi. Ep. 16.

this in her discipline: but it being a flagrant crime in the eye of the state, we may presume she punished offenders in this kind, by the general laws against fraud, without specifying all particular cases. The author of the Constitutions,<sup>1</sup> gives a general rule about this matter, when he orders the bishop to reject the oblations of all such as were noted by the common name Παδισργοί, *fraudulent dealers*: and he more particularly marks the Δολομέτροι, *those that used fraud in measures*, and the Ζυγοκροῖται, *that is, such as though they did not use false weights, and balances of deceit, yet used a more sly art and fraud, in giving a turn to the scale with their fingers, to gain that by artifice and sleight of hand in weighing, which they durst not venture to do by false weights*. Constantine also take notice of this fraud in one of his laws,<sup>2</sup> where he forbids the receivers of tribute to use any art with their fingers to press down the scale, but to be exact in poising and libration, that no one might complain of any injustice done him. And it is observable, that Julian,<sup>3</sup> to prevent such frauds in weighing, appointed a standing officer in every city, whom he calls by a Greek name Ζυγостάτης, that is, the public weigher, or supervisor of the scale, who was to determine all controversies arising about weight between buyer and seller, and put an end to them by examining what was suspected, by the public standard. And the care of an heathen emperor, to correct frauds and abuses of this nature, made it more reasonable for the Church to look into them, and bring delinquents of this kind under penance by the power of ecclesiastical censure.

The author of the Constitutions likewise takes notice of the other sort of fraud, which may be committed in traffic by dissembling the ill qualities of things, and vending corrupt wares under the notion and appearance of that which is

<sup>1</sup> Constit. lib. iv. cap. 6.

<sup>2</sup> Cod. Th. lib. xii. tit. 7. de Ponderatoribus. leg. i. Aurum quod infertur, æquâ lance et libramentis paribus suscipiatur: nec pondera deprimant, &c.

<sup>3</sup> Ibid. leg. ii. Placet, quem sermo Græcus appellat, per singulas civitates, constitui Zygotaten, ut ad ejus arbitrium et ad ejus fidem, si qua inter vendentem emptoremque in solidis exorta fuerit contentio, dirimatur.

perfect and good. As when a man puts off brass for gold, or a mixture of water or other liquor for pure wine. Therefore in his directions to the bishop, whose oblations he shall receive, and whose refuse at the altar, he says, in the first place, he shall reject those, whom the Greeks call, *Κάπηλοι*; and the Latins, *Caupones*; by which he does not mean victuallers strictly, or merchants, or tradesmen in general; though the words be so sometimes taken; but fraudulent hucksters, who corrupt and adulterate their wares, to make the greater gain and advantage of them. As appears from that passage, which, according to the Septuagint, he quotes out of Isaiah, i. 22. *Οι κάπηλοι σς μίσγσσι τὸν οἶνον τῷ ὕδατι, thy hucksters mingle wine with water.* Lactantius<sup>1</sup> argues this point acutely against Carneades, the heathen philosopher, who taught, that if a man has a fugitive slave, or an infected and pestilential house, which he sets to sale, he is bound in prudence not to discover their faults: because if he does, he shall either sell them for little, or not at all. Which he calls poisonous doctrine, and shews it at large to be both against the rules of Christian justice, and prudence also. For nothing can be more valuable to a man than keeping innocence and good conscience. Upon this account St. Hilary says,<sup>2</sup> whoever either designs, or commits fornication, or murder, or theft, or fraud, or rapine, makes his body a den of thieves. Some of the Ancients, indeed,<sup>3</sup> are a little more severe against negotiating in any trade, except a manual art, for gain, because of the danger of fraud, that sticks so close between buying and selling: but Pope Leo more favourably distinguishes between honest and filthy gain,<sup>4</sup> and says the quality of the gain either excuses or condemns the tradesman. So that it was not all trade and merchandize that they condemned as simply unlawful in itself, but only

<sup>1</sup> Lact. lib. v. cap. xvii. et 18.

<sup>2</sup> Hilar. in Psal. cxviii. cxxxix.

p. 278. Corpora, cum cogitamus aut agimus stupra, cædes, furta, falsitates, rapinas, speluncam latronum constituimus.

<sup>3</sup> Vid. Tertul. de Idol. cap. xi. Epiphani. Expos. Fid. n. xxiv. Auctor operis imperfecti in Mat. xxi. xii.

<sup>4</sup> Leo. Ep. xciii. ad Rustic. cap. ix. Qualitas lucri negociantem aut excusat, aut arguit: quia est honestus quæstus aut turpis.

when it was accompanied with such fraudulent practices, as made it an unconscionable gain, and no better than a plausible theft, and more artificial way of robbery.

The last sort of fraud in the seller is committed by overrating his commodity; which is done either by monopolizers, when a single man, or a body of men, get the sole power and propriety of any commodity into their own hands, and set what arbitrary price they please upon it; or when the seller takes the advantage of the ignorance or necessity of the buyer to enhance his price, and make a gain of his weakness, his poverty, or his indiscretion. Against the fraud of monopolizers, there is a famous law of the emperor Zeno in the Justinian Code,<sup>1</sup> where he first forbids any single man to monopolize any wares under the penalty of confiscation of all his goods, and perpetual banishment of his person: and then proceeds to inhibit any body of men to combine in any unlawful contract not to sell their goods but at a certain rate, under the penalty of forfeiting forty pounds of gold: he likewise prohibits all artificers and workmen from combining among themselves, that if any one undertook a work for another man, and left it unfinished, no one of the same occupation should meddle with it to finish it without the consent of the first undertaker; which was an art of raising their labour to what arbitrary price they were pleased to set upon it. To obviate which fraud, and the difficulty, which honest men thereby lay under, he dissolved all such unlawful contracts and combinations, and left men at perfect liberty, when they were deserted by one workman, to employ another, without any fear or molestation arising from the pretence of any pre-engagement.

The other way of enhancing the price, by the seller's taking advantage of the buyer's ignorance or indiscretion, is what no laws could well provide against in all cases: and therefore it was rather left to the equity and conscience of men, to be examined and judged by the divine law, than

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<sup>1</sup> Cod. Justin. lib. iv. tit. 59. de Monopoliis. leg. i. Si quis monopolium ausus fuerit exercere, bonis propriis expoliatus, perpetuitate damnetur ex illi, &c.

brought under any certain rules of human judgment. However, being a species of fraud, and extortion, and oppression, it is probable the governors of the Church took occasion in many notorious cases to condemn it under the general title of *Ῥαδιουργία*, that base craft, and gain that is gotten by imposture in any kind, for which the bishop in the Constitutions is required to debar men from making their oblations at the altar.<sup>1</sup>

And to this head may be reduced the selling of that, to which the seller himself has no just title; as the selling of fugitive slaves belonging to another master, which the law forbids,<sup>2</sup> both because it is a sort of plagiarism in the seller, and an imposition upon the buyer, and an encouragement to the slaves to rob and pillage, and desert their proper masters. Such is also the selling things of no real worth, but a mere fraud and imposture; as, the taking money for calculating nativities, and telling of fortunes, and divining for things lost, and many the like vain practices, which the canons condemn, not only as curious and superstitious arts, but as fraudulent,<sup>3</sup> and cheating tricks, imposing upon men by cozenage and imposture. All which, and a thousand other ways of pillaging, oppressing, and defrauding, the Church in her discipline censured as direct methods of committing theft and robbery.

SECT. 18.—Of abetting and concealing Robbers; and buying stolen Goods, &c.

But besides the direct ways of committing this sin, there were several other base and disallowable practices, which virtually and by just construction might be interpreted theft, as the harbouring, abetting, and concealing robbers; buying of stolen goods; leading an idle life, without any lawful vocation; spending in prodigality or unlawful gaming, that, which was designed for the maintenance of others. All which either the laws of Church or state censured as so many indirect ways of encouraging or committing robbery.

<sup>1</sup> Constit. lib. iv. cap. 6.  
ad Legem Fabiam de Plagiar. leg. 6.

<sup>2</sup> Cod. Justin. lib. ix. tit. xx.  
<sup>3</sup> Con. Trull. can. 61.



The laws of the state laid a severe penalty upon all, that sheltered any criminals in any kind whatsoever. Valentinian in one law condemns them as associates with the criminals,<sup>1</sup> and makes them liable to the same punishment. In another law he particularly condemns such as harbour robbers and screen them from public justice; making them<sup>3</sup> liable either to corporal punishment, or confiscation of all their goods, according to the quality of their persons. And if any agent or steward sheltered them without his lord's knowledge, he was to be burnt alive. There is another law of Marcian to the same effect in the Justinian Code,<sup>3</sup> shewing how men are to be treated, who entertain robbers, and use force to protect and defend them.

They who bought stolen goods, knowing them to be such, were also deemed guilty of partaking in the theft, because this was an encouragement to robbers, and a sort of approbation of them. St. Chrysostom,<sup>4</sup> and St. Austin,<sup>5</sup> make this remark upon those words of the Psalmist, "When thou sawest a thief, thou consentedest unto him," that to shew a liking to the thief, is the same thing as committing the robbery. And certainly none can shew a greater liking to him, than he, who for a little filthy lucre gives encouragement to him by trafficking and negotiating with him, as some critics observe the Arabic translation literally renders the phrase of the Psalmist. There is but one case in which the casuists allow men to buy of a known thief, and that is when he can do it for a small matter with an intent to restore what is stolen to the true owner. For in that case he intends not the encouragement of the thief, but the interest and advantage of the just proprietor. And for this they allege the<sup>6</sup>

<sup>1</sup> Cod. Th. lib. ix. tit. xxix. leg. 1. Eos, qui secum alieni criminis reos oculendo sociârunt, par atque ipsos reos pœna expectet. <sup>2</sup> Ibid.

leg. ii. Latrones quisquis sciens suscepit, vel offerre judiciis supersederit, supplicio corporali, aut dispendio facultatum, pro qualitate personæ ex judicis æstimatione plectatur. Si verò actor, sive procurator domino ignorante occultaverit, et judici offerre neglexerit, flammis ultricibus concremetur. <sup>3</sup> Vid. Cod. Justin. lib. ix. tit. 41. De his qui latrones occultaverint. leg. 2.

<sup>4</sup> Aug. in Psal. xlix. tom. viii. p. 194.

<sup>5</sup> Chrys. in Loc. tom. iii. p. 301.

<sup>6</sup> Vid. Lessium de Jure et

Justit. lib. ii. cap. xiv. p. 171.

known rules of the civil law. But in all other cases to negotiate with thieves is to partake in their sin, and to encourage and strengthen them in their subsequent villainies. Therefore this and all other ways of partaking and co-operating with thieves, of which there are various methods noted and summed up by the doctors,<sup>1</sup> in the schools,<sup>2</sup> were anciently computed in the general account of theft and fraud, and accordingly punished with ecclesiastical censure.

SECT. 19.—Idleness censured as the Mother of Robbery.

Neither was it only the associating and partaking with robbers, which they thus condemned, but all such unlawful vocations, or rather want of vocation, as put men in a manner upon the necessity of stealing, and having recourse to fraud and violence, as the only support of a dissolute life. Idleness they esteemed the mother and nurse of theft, and a life without employment as no better than that of a common robber: because men of that character were only *fruges consumere nati, born to devour that which of right belonged to others*. Therefore the laws both of Church and state are very severe against all such. There is a law of Valentinian Junior, in the Theodosian Code,<sup>3</sup> against young stout, lusty beggars, who being slaves or freedmen able to work, yet fled from their masters to Rome, to skulk in corners, and live as drones upon false charity: whom he orders to be examined, and if they were found able to work they should either become the possession of the informer, who discovered them, or be returned to their original masters, who had a good action in law against any, who either harboured such fugitives, or by their counsels instigated them to desertion. Justinian inserted this law into his Code likewise,<sup>4</sup> and set forth a new edict of his own to the

<sup>1</sup> Aquin. 2a. 2æ. Quæst. lxxii. art. 7.

<sup>2</sup> Jussio, consilium, consensus, palpo, recursus participans, mutus, non obstans, non manifestans.

dis. leg. 1.

<sup>3</sup> Cod. Th. lib. xiv. tit. 18. de Mendicantibus non invalidis.

validis. leg. 1.

<sup>4</sup> Cod. Justin. lib. xi. tit. 25. de Mendicantibus

same purpose. The Church also was very careful in this matter, not to suffer stout idle wandering beggars to devour the revenues of those, that were really infirm and poor. Upon this account she forbid any of her clergy to rove about the world, or wander from one diocese to another without letters dimissory, as some did, under the scandalous name of Βακάντιβοι, *men out of business*, as I have had occasion to show more fully in another place.<sup>1</sup> She obliged all her monks and men of the ascetic life to live upon their own labour. Insomuch that a monk, who did not work, was looked upon as a thief and a defrauder, as Soerates<sup>2</sup> tells us the Egyptian fathers were used to express themselves concerning such as eat other men's bread for nought. St. Austin wrote a whole book to prove this to be the proper duty of a monk,<sup>3</sup> to live upon his own labour, where he answers all objections, that can be made to the contrary. And there are innumerable passages in other ancient writers upon the same topic, to which I have referred the reader in discoursing upon the rules of the monastic life in a former book.<sup>4</sup> Here I shall only add one noted passage of St. Ambrose, where he gives rules and directions for dispensing charity with prudence only to such as really want it. There ought to be, says he,<sup>5</sup> a due measure observed in liberality, that our charity be not useless: and this moderation is chiefly to be regarded by bishops and priests, that they do not dispense, the Church's treasure, to importunate beggars, but as the justice and necessity of the case requires: for none are commonly more greedy in their petitions than such as those. Many come a begging, who are lusty and strong; many come, who have no other reason, but an idle vagrant humour; who would evacuate the subsidies of the poor, or empty their chests, and consume what is laid up for their maintenance: neither are they content with a little, but require great largesses; they appear as gentlemen in their dress, and make that a means to promote their petition,

<sup>1</sup> Book vi. chap. iv. sect. 5.<sup>2</sup> Socrat. lib. iv. cap. 23.<sup>3</sup> Aug. de Opere Monachorum. cap. 17, &c.<sup>4</sup> Book vii.

chap. iii. sect. 10.

<sup>5</sup> Ambros. de Offic. lib. iv. cap. 16.

and pretending to be men of good birth, they make use of that as an argument to gain a greater contribution. If any one is too easy in giving credit to such as these, he will quickly defeat those useful methods, which are taken for the maintenance of the poor. Therefore a moderation is to be observed in giving; that neither such may be sent away empty, if really in want; nor the livelihood of the poor be turned into another channel, to become a spoil and prey to the frauds of the crafty. It is plain from such accounts as these, that they looked upon an idle life as no better than living upon the spoils of the poor, and a robbery of the worst sort; because it often joined fraud and cruelty to the theft, making use of false pretences to divert the current of men's charity from the widow and the fatherless, and turn it to themselves; who had no necessity but what they voluntarily made to themselves, either by their idleness, or luxurious and prodigal way of living: the supporting of which was an arrant theft and robbing of the poor, which is the height and extremity of cruelty and oppression. And therefore as the laws of the state made idleness in vagrants an actionable crime, *Αργίας δίκη* the law itself terms it: so the rules of the Church brand it as an infamous way of living, and worthy of ecclesiastical censure.

SECT. 20.—And Gaming, as an Occasion of Fraud, and Ruin of many poor Families, who by these Means were reduced to the greatest Exigence.

To this they added gaming, as another way of cheating and defrauding; and that in a double respect, because men thereby were inclined to cozenage and deceit, and often ruined their families, who by this means were reduced to the greatest poverty and want by the dissoluteness and folly of a wicked parent. There might be many other reasons for declaiming against this vice, as that it is a reproachful way of dissolute living, and spending men's time in luxury, condemned by many wise and sober heathens; that the old Roman laws punished gamesters with banishment, and many other severe penalties;<sup>1</sup> that gaming inclines men to many

<sup>1</sup> See Bishop Taylor, *Dubit.* book iv. chap. i. p. 776.

great and horrible vices, as covetousness, perjury, lying, cursing and swearing, anger and passion, quarrelling and murder, and rioting and intemperance of all sorts: but I consider it here only as attended with the evil effects of fraud and consumption of men's estates, which involves many poor families in ruin, in which notion it is a downright theft and robbery. And as such it was anciently prohibited by the rules of the Church, not only to the clergy, but the laity also. "If any bishop, presbyter, or deacon," says one of the Apostolical Canons,<sup>1</sup> "spend his time at dice or in drinking, let him either refrain or be deposed." And the next canon adds, "if any subdeacon, reader, or singer do the like, let him be excommunicated, and laymen also." And so the Council of Eliberis separates all gamesters in general from the communion.<sup>2</sup> "If any Christian, play at dice or tables, let him be restrained from communicating; but if he leaves off and amends, after a year's penance he may be reconciled." Albaspinæus thinks the reason of the prohibition was,<sup>3</sup> because the dice had the images of the heathen gods, as Venus, &c. imprinted on them instead of numbers, and that men in their play called upon them for good fortune: but if so, I conceive, a greater penalty would have been imposed upon them, as upon idolaters, by this Council. Therefore it is more reasonable to suppose, that the Council considered gaming as a mispending of men's useful time, and consumer of their fortunes, and destruction of their families, and an inlet to fraud and covetousness, and all the forementioned vices; and under that notion, condemned such as made a trade and business of it, and not a diversion. Upon this account St. Ambrose pronounces<sup>4</sup> the gain that is got by dice and gaming to be no better than theft, or unmerciful and griping usury, and that the man, who gives himself to it, leads the life of a savage wild beast. And Justinian made a law,<sup>5</sup> that no one should

<sup>1</sup> Can. Apost. 42. al. 35.

<sup>2</sup> Con. Eliber. can. 79. Si quis fidelis aleâ, id est, tabula luserit, placuit eum abstinere: et si emendatus cessaverit, post annum poterit reconciliari.

<sup>3</sup> Albaspin. in Loc.

<sup>4</sup> Ambros. de Tobia. cap. i.

<sup>5</sup> Cod. Justin. lib. iii. tit. 43. de Aleatoribus. leg. i. Victum in aleæ lusu non

be obliged to pay what he lost at dice; or if he had paid it, he or his heirs might recover it at law of the winner or his heirs for thirty years after and longer. Or, if he did not reclaim it, any one else might do it, or the chief magistrate of the city, the defensor, might exact it, and lay it out upon some public work or building for the use of the city. And in such games, as were permitted,<sup>1</sup> he allowed the richest to play for no more than one shilling, and others only in proportion to their substance. And this was a very wise law, considering the complaint, which St. Jerom makes,<sup>2</sup> that whilst men play for vast sums, and stake their whole estates at once, the poor stand naked and hungry before their doors, and Christ perishes and is starved to death in his poor members for want of their relief. Nay many times their own flesh and blood, their families and relations are ruined by their folly in one night. And what character or punishment could be thought too bad for such? "He that provides not for his own, and especially those of his own house, has denied the faith, and is worse than an infidel." And for this reason both the civil and ecclesiastical laws were so severe against dice and gaming, because of such evil consequences so commonly attending them, when they are undertaken for undue ends, and pursued by false measures, only to serve men's fraud and filthy lucre. Otherwise, to play *γερωντιχῶς*, as old men used to play, for diversion, and not for lucre,<sup>3</sup> is what wise and good men have always innocently done without any reproach or censure. And so I have done with the several sorts of theft and robbery, which are great transgressions of the eighth commandment; by which we may judge of the mistake of those, who confine the discipline of the Church to the punishment of three capital crimes, idolatry, adultery, and murder: for it will be hard to bring theft under any of those denomina-

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posse conveniri: et si solverit, habere repetitionem tam ipsum quàm hæredes ei adversus victorem et ejus hæredes, idque perpetuò et etiam post triginta annos, &c.

<sup>1</sup> Vid. Ibid. leg. 2.

<sup>2</sup> Hieron. Ep. xii. ad Gaudentiun.

Posita dum luditur arca, stat pauper nudus atque esuriens ante fores, Christusque in paupere moritur.

<sup>3</sup> See Bishop Taylor.

Duct. Dubit. book iv. chap. i. p. 776.

tions, unless we say all theft is covetousness, and covetousness is idolatry. But in that large sense of idolatry, which is serving our own affections more than God, not only covetousness, but adultery and murder will be idolatry also. And then all crimes might be resolved into one, and the Church had nothing to do but to punish one crime under different species of adolatry: which does by no means rightly explain her discipline, which makes idolatry a distinct crime against a command in the first table of the decalogue, as disobedience to parents, adultery, murder, and theft, are against the second table; and according to this order I have hitherto considered them in this discourse.

### CHAP. XIII.

*Of great Crimes against the Ninth Commandment, False Accusation, Libelling, Informing, Calumny and Slander, Railing and Reviling, &c.*

#### SECT. I.—Of False Witness.

THE intent of the ninth commandment is to secure our neighbour's credit from injury by spreading false reports concerning him to the prejudice of his good name and reputation. This is sometimes done in a public manner, by bearing false witness against him: and then it is adding perjury to the calumny, and sometimes theft and murder also: for it may affect not only his credit, but his fortune, and his life too; as it did in the case of Naboth, who was stoned to death upon a false accusation, "Naboth did blaspheme God and the king." And so our Saviour and many of his disciples after him, suffered by the malicious and false imputations of their enemies, the Jews and Heathens. The greatness of the crime in these respects has been already shewn under the several titles of perjury, theft, and murder: here I only consider it as an injury to men's reputation, which being a thing dear and valuable to all men, the laws

were very careful to secure men in the quiet enjoyment of it, and punish all base attempts to ruin and destroy it. Aulus Gellius tells us,<sup>1</sup> the punishment of false-witness among the Romans, by the law of the twelve tables, was to cast the criminal head-long from the top of the Tarpeian Rock: and he thinks, if this punishment had continued, it might have been of great service to the Roman commonwealth, in deterring men from the commission of this crime by its just severity. Afterward by a law, called the *Lex Remmia*,<sup>2</sup> false witnesses were burnt in the face, and stigmatized with the letter K, denoting them to be calumniators or false accusers. In opposition to whom the law calls honest men,<sup>3</sup> *homines integræ frontis*, men without any such mark set upon them. This law and punishment is often mentioned by the Roman writers, Tully,<sup>4</sup> Pliny,<sup>5</sup> and others.<sup>6</sup> And though the Christian law abolished it, as it did that of the cross and some others, yet still false accusation and calumny were corrected with suitable punishments, such as infamy, banishment, and suffering the same evil, by the law of retaliation, which the false accuser intended to draw upon others; as appears from several laws in the Imperial Codes,<sup>7</sup> and particularly those, which bind the accusing party to undergo the same punishment, which his false accusation tended to bring upon the supposed criminal, if he did not make good his charge against him. We have already seen<sup>8</sup> a law of Valentinian and Gratian, ordering, that whoever impleaded another either in regard to his fame and reputa-

<sup>1</sup> Gell. Noct. Attic. lib. xx. cap. 1. An putas, Favorine, si non illa etiam ex duodecim tabulis de testimoniis falsis pœna abolevisset: et si nunc quoque, ut antea, qui falsum testimonium dixisse convictus esset, è Saxo Tarpeio dejiceretur, mentituros fuisse pro testimonio tam multos, quàm vide-  
 mus?

<sup>2</sup> Digest. lib. xlviii. tit. 16. ad Senatus-consultum Turpillianum. leg. i. Calumniatoribus pœna lege Remmiâ irrogatur.

<sup>3</sup> Digest. lib. xxii. tit. 5. de Testibus. leg. xiii. Testimonii fides, quod integræ frontis homo dixerit, &c.

<sup>4</sup> Cicero Orat. ii. pro Roscio. n. lv. et lvii.

<sup>5</sup> Plin. Panegyric. p. 106.

<sup>6</sup> Vid. Demster. Addit. ad Rosin. lib. ix. cap. xvi. p. 1517.

<sup>7</sup> Cod. Theod. lib. ix. tit. 39. de Calumniatoribus. leg. i, ii, iii. lib. xvi. tit. 2. de Episc. et Cler. leg. xxi. Cod. Justin. lib. ix. tit. 46. de Calumniatoribus. leg vii, et viii, ix. x.

<sup>8</sup> Chap. xii. sect. 15.



tion, or his fortune, or his life, should undergo the same penalty he intended to bring upon the party so impeached, if he proved a calumniator, and did not fairly make out his action. And every accuser was tied in bonds, which the law calls,<sup>1</sup> *vinculum inscriptionis*, to suffer a retaliation, or similitude of punishment, upon failure of evincing his charge against another. Such care was taken by the secular laws to discourage delators or false informers, and preserve the fame and reputation of innocent men against the vile attempts of such dangerous aggressors. Nor were the ecclesiastical laws less severe in their way against such transgressors. The false witness in any case was to do penance five years for his crime by a canon of the Council of Eliberis.<sup>2</sup> And this, provided it was not in the case of death. For in that case, being the crime of murder, the criminal was to be debarred from communion to the very last, as has been shewn before in speaking of murder.<sup>3</sup> The Councils<sup>4</sup> of Agde and Vannes impose a general penance upon such offenders, without naming the term or duration of their penance, which was left to the discretion of the bishop, who was to judge of the sincerity of their repentance. But the first Council of Arles<sup>5</sup> obliges them to do penance all their lives:<sup>6</sup> and the second only moderates their punishment so far as to leave it to the bishop to determine of their repentance and satisfaction.

<sup>1</sup> Cod. Theod. lib. ix. tit. 1. de Accusationibus et Inscriptionibus. leg. 19, 11, 14, 19.

<sup>2</sup> Con. Eliber. can. lxxiv. Falsus testis prout crimen est abstinebit; si tamen non fuerit mortis quod objecit. Et si probaverit quod diu tacuerit, biennii tempore abstinebit. Si autem non probaverit in conventu clericorum, placuit per quinquennium abstinere.

<sup>3</sup> Chap. x. sect. 9 and 10. <sup>4</sup> Con. Agathen. can. xxxvii. Censemus homicidas et falsos testes à communione ecclesiasticâ submovendos, nisi pœnitentiæ satisfactione crimina admissa diluerint. Vid. Con. Veneticum. can. i. in the same words. And Con. Carthag. iv. can. 55.

<sup>5</sup> Con. Arelat. i. can. 14. De his qui falsò accusant fratres suos, placuit, eos usque ad exitum non communicare, &c.

<sup>6</sup> Con. Arelat. ii. can. 24. Eos qui falsa fratribus capitula objecisse convicti fuerint, placuit, usque ad exitum non communicare (sicut magna synodus ante constituit) nisi dignâ satisfactione pœnituerint.

## SECT. 2.—Of Libelling.

Another way of injuring men's credit and reputation was, by spreading false reports in a covert and clandestine manner, which the law calls libelling. This was done, when a man was accused by a bill of indictment, to which the author was afraid to set his name. And such accusations were of no force in law, but were appointed to be torn in pieces or burnt; and no man might read, or retain, or divulge them, without being reputed the infamous author of them. The Christian Emperors were extremely careful in discouraging all such base attempts upon men's credit and reputation, as may be seen in the several laws of Constantine, Constantius, Valentinian and Valens, Theodosius and Arcadius, in the Theodosian Code, under the title, *de famosis libellis*. It will be sufficient to repeat one of them made by Valentinian in this tenour:<sup>1</sup> "the very name of scandalous libels is infamous. Therefore whoever collects, or reads them, and does not immediately commit them to the flames, shall be liable to be condemned to a capital punishment." By which it is easy to judge how infamous the authors of such libels were, since none were allowed so much as to read and retain them with impunity, but were in danger of being proceeded against as the suspected authors of them. The Ecclesiastical Law made the authors and publishers of all such pasquils, when detected, liable to excommunication. For so the Council of Eliberis words it in one of her canons:<sup>2</sup> "if any are found to have scattered or dispersed infamous libels in the Church, let them be anathematized."

## SECT. 3.—Of Detraction, Whispering, and Backbiting.

Another sort of secret defamation was that, which was

<sup>1</sup> Cod. Th. lib. ix. tit. 34. de Famosis Libellis. leg. 7. Famosorum infame est nomen libellorum. Ac si quis vel colligendos, vel legendos putaverit, ac non statim chartas igni consumpserit, sciat se capitali sententiâ subjugandum.

<sup>2</sup> Con. Eliber. can. 52. Si qui inventi fuerint libellos famosos in ecclesiâ ponere, anathematizentur.

committed by the detraction of the lurking whisperer and backbiter: against whose venomous tongues St. Austin is said to have endeavoured to guard his own family and conversation, by causing these two verses to be written upon his table:—

*Quisquis amat dictis absentum rodere vitam,  
Hanc mensam indignum noverit esse sibi.*

“ He that takes delight in lessening the characters of the absent, is no welcome or worthy guest at this table.” This he did, to admonish every one, that came there, to abstain from defamatory discourse and detraction. And Possidius<sup>1</sup> says, he was so strict and punctual in the observation of this rule, that he would sometimes sharply reprove his most familiar acquaintance and fellow-bishops for forgetting and transgressing it; telling them, that either those verses must be erased from his table, or he must withdraw and retire to his private apartment. This was a sort of private discipline, like that of St. Austin’s mother denying him the privilege of sitting at her own table, whilst he was a Manichee; and it was a very proper way of discouraging all evil-speaking and detraction; but I do not find that this crime was brought under public discipline by any general rule of the Church. And the reason might be, what St. Jerom observes, that the sin was too general and epidemical to be publicly corrected.<sup>2</sup> “ For there are very few that have wholly renounced this vice; and it is a rare thing to find any so careful to make their own life unblameable, not to be willing to find fault with others. Yea, so great a propensity is there in men’s minds towards this evil, that they, who are far removed from other vices, fall into this as the last snare of the devil.”

<sup>1</sup> Possid. Vit. Aug. cap. xxii.

<sup>2</sup> Hieron. Ep. xiv. ad Celantiam. Pauci admodum sunt, qui huic vitio renunciant; raroque invenies qui ita vitam suam irreprehensibilem exhibere velint, ut non libenter reprehendant alienam. Tantaque hujus mali libido mentes hominum invasit, ut etiam qui procul ab aliis vitiis recesserunt, in istud tanquam in extremum diaboli laqueum incidant.

**SECT. 4.**—Of Railing and Reviling, or scurrilous and abusive Language :  
and of revealing Secrets.

But when this detraction broke out into open slander and calumny, and especially when it was attended with contumelious, bitter, and reproachful words, with railing and reviling, and scurrilous and abusive language ; then, as it was matter of public scandal, so it became the subject of a public censure, for St. Paul puts railers and revilers into the numbers of those, who are neither fit for the society of men, nor the kingdom of God. 1 Cor. v. 11. “ I have written unto you, not to keep company, if any man, that is called a brother, be a fornicator, or covetous, or an idolater, or a railer, or a drunkard, or an extortioner, with such an one, no not to eat.” And again, 1 Cor. vi. 9, 10. “ Be not deceived : neither fornicators, nor idolaters, nor adulterers, nor effeminate, nor abusers of themselves with mankind, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners, shall inherit the kingdom of God.” And therefore the Church, following this rule, reckoned slanderous railing and scurrility among the crimes, that deserved ecclesiastical censure. Insomuch that a clergyman, who was noted for scurrilous and scoffing language, is ordered by the Council of Agde to be degraded.<sup>1</sup> And the same canon occurs in the fourth Council of Carthage,<sup>2</sup> with some others of the like nature : as if he be given to railing,<sup>3</sup> or revealing of secrets to the infamy and disgrace of others. Upon this latter case, of defaming men by divulging unnecessarily their secret crimes,<sup>4</sup> St. Austin has a whole discourse, where he particularly says, that he, that rebukes a man publicly before all, when his crime is known to none but himself alone, is not a reprover, but a betrayer. He reminds such of the example of Joseph, who, finding the

<sup>1</sup> Con. Agathen. can. lxx. Clericum scurrilem et verbis turpibus jocularitorem ab officio retrahendum.

<sup>2</sup> Con. Carth. iv. can. 60.

<sup>3</sup> Ibid. can. 57. Clericus maledicus, maximè in sacerdotibus, cogatur ad postulandam veniam. Si noluerit, degradetur. It. can. 56. Clericus, qui adulationibus et proditionibus vacare deprehenditur, ab officio degradetur.

<sup>4</sup> Aug. Serm. xvi. de Verbis Domini. tom. x. p. 29. Si solus nosti quia

holy virgin to be with child, and suspecting her to be guilty of fornication, yet being a just and good man, was minded to put her away privily, and not make her a public example. And he adds,<sup>1</sup> that bishops were wont thus to proceed with private criminals in the Church. "A bishop knows a man to be guilty of murder, and the thing is known to none besides himself. If in this case I should reprove him publicly, some other would take the law upon him. Therefore I neither betray, nor neglect him: I reprove him in secret, I set before his eyes the judgment of God, I terrify his guilty conscience, I persuade him to repentance." So again, says he, "there are some men, that are adulterers in their own houses, they sin sometimes in private, and they are discovered to us by their own wives, sometimes in zeal and fury, sometimes in merey, desiring the salvation of their souls. Now in this case we do not betray them openly, but rebuke them in secret. Where the evil is committed, there it dies: yet we do not neglect that wound, but before all things shew the man, that has committed such a sin, and wounded his conscience thereby, that his wound is mortal." By this discourse of St. Austin, it seems clear, that the Church brought no private crimes under public penance, except when the guilty person consented to it and required it: and to do otherwise was an high crime in the minister, who was charged, for any such attempt, as a divulger of secrets, and betrayer of his trust, and one that brought an unnecessary defamation and scandal upon his brethren.

SECT. 5.—Of Lying. How far it brought Men under the Discipline of the Church.

Thus far the discipline of the Church proceeded against all defamatory and pernicious lying. But there are some

peccavit in te, et eum vis coram omnibus arguere, non es correptor, sed proditor.

<sup>1</sup> Ibid. Novit enim nescio quem homicidam episcopus, et alius illum nemo novit. Ego illum volo publicè corripere, at tu quæris inscribere. Prorsus nec prodo, nec negligo: corripio in secreto; pono ante oculos Dei judicium, terreo cruentam conscientiam, persuadeo pœnitentiam.

other sorts of lies, as the ludicrous lie, and the officious lie, which, though culpable and sinful in themselves, were not so severely pursued by ecclesiastical censures. Tertullian<sup>1</sup> reckoning up those lesser sins, which were not publicly punished by penance in the Church, puts lying out of modesty, or necessity, among them. And Origen makes<sup>2</sup> lying one of those sins, which were incident to those, who had made the greatest proficiency in the Church. Some indeed pleaded for officious lies, as not only innocent and lawful, but in some cases useful and necessary: as if it were to save the life of an innocent person, a man ought in that case, rather to tell a lie, than to betray him to death. But St. Austin disputes against this sort of officious lies also, and shews them to be culpable and sinful; arguing, that a man ought neither to betray an innocent person, nor tell a lie to save him, but to venture his own life, by professing roundly, that he will neither lie for him, nor discover him. And he gives a rare instance of this sort of fortitude in one Firmus, bishop of Tagasta, who according to what the Greeks call *Pheronymy*, *Φερωνυμία*, carried firmness in his name,<sup>3</sup> and firmness in his resolution. For when one of the Heathen Emperors had sent his apparitors to search for a certain person, whom he had hidden, he told them plainly, he could neither tell a lie, nor betray the man; and though they put him to the rack, and tortured him to make him confess, yet he persisted in his resolution not to discover the man that was fled to him for safety and protection. Whereupon he was carried before the Emperor himself, where he gave such admirable and fresh proofs of his firmness, that the Emperor without any great difficulty was prevailed upon to pardon the man, whom he kept in private under his protection. This was a singular instance of heroic gallantry, rather to

<sup>1</sup> Tertul. de Pudicit. cap. xix.

<sup>2</sup> Orig. Tract. vi. in Mat. p. 60. See

before, chap. iii. sect. xiv.

<sup>3</sup> Aug. de Mendacio ad Consentium. cap.

13. Firmus nomine, firmior voluntate—respondit quærentibus, se nec mentiri posse, nec hominem prodere; passusque multa tormenta corporis permansit in sententiâ, &c.

run the hazard of his own life, than tell a lie to save another from destruction. But the discipline of the Church did not run thus high, to oblige all men to come up to this degree of veracity under pain of excommunication. It was sufficient to encourage truth and ingenuity in all cases, and punish falseness and perfidiousness in all notorious instances of mischievous evil: but in other cases it was no blemish to the discipline of the Church to suffer some sort of more pardonable lying to pass without the animadversion of the highest censure, so long as they gave no encouragement to it, but condemned it universally as a lesser instance of transgression. To this purpose St. Austin says in another place,<sup>1</sup> there are two sorts of lies, in which there is no great fault, and yet they are not wholly without fault, that is, when we lie in jest, and when we lie for the advantage of our neighbour. In this latter case, he thinks, a man may honestly conceal the truth by silence, but he must not upon any account speak false, or tell a lie. For that will not consist with the perfection of a Christian. Therefore if he would not betray a man to death, he must prepare himself to conceal the truth, but not to speak false;<sup>2</sup> so as that he may neither betray the man, nor tell a lie; lest he destroy his own soul to preserve the life of another. As this shews the perfection of the Christian morals, so it equally declares the abatement that was made in the discipline of the Church, in reference to such officious lies as were extorted from men upon some extraordinary charity; which though it did not wholly excuse the sin, yet it made it so far tolerable, as not to incur the severity of public discipline, but come within the number of those lesser sins, which did not ordinarily fall under the greater censures of the Church.

In all other cases, where lying was attended with mis-

<sup>1</sup> Aug in Psal. v. p. ii. Duo sunt omninò genera mendaciorum, in quibus non est magna culpa: sed tamen non sunt sine culpâ, cum aut jocamur, aut, ut proximis prosimus, mentimur.

<sup>2</sup> Ibid. Aliud est mentiri; aliud, verum occultare: ut si quis forte vel ad istam visibilem mortem non vult hominem prodere, paratus esse debet verum occultare, non falsum dicere; ut neque prodatur, neque mentiatur; ne occidat animam suam pro corpore alterius. Vid. Con. Tolet. viii. can. 2. et Gratian, caus 22. quæst.

chievous and pernicious effects, it was punished according to the proportion of those crimes that accompanied it. As we have already seen in the case of false witness, libelling, slandering, railing and reviling. And when it implied any fraud, or equivocation, or double dealing in matters of religion it was punished as apostacy or perjury, as we have seen in the case of the *Libellatici*,<sup>1</sup> who either denied their religion in writing, or purchased libels of security from the magistrate, to excuse them from sacrificing; and those, who feigned themselves mad to avoid a prosecution: both which sorts of men the Church condemned as idolaters, and as guilty by their dissimulation and cowardice of betraying their holy religion. The *Priscillianists* were likewise infamous for this character and abominable practice of equivocation. For they taught their disciples this base art of dissembling, and concealing their vile practices by lies and perjury;<sup>2</sup> giving them this direction, as one of their rules and instructions in cases of danger: swear, and forswear, and never discover your secrets. How much more laudable and commendable is the rule given in this case even by the Heathen Satyrist,<sup>3</sup> which deserves to be written in letters of gold! “If ever you are called to be a witness in a doubtful matter, though Phalaris himself should command you to speak false, and threaten to burn you in his brazen bull, unless you will forswear yourself; in that case reckon it the greatest villany to prefer life before truth and honesty, and for the sake of living to forego those things, which are the only true reasons of living, that is, probity, integrity, and a good conscience, for which end men are born and sent into the world by the providence of God.” This rule is often in-

<sup>1</sup> Chap. iv. sect. 6 and 7.

<sup>2</sup> Aug. de Hæres. cap. lxx. Propter occultandas autem contaminationes et turpitudines suas, habent in suis dogmatibus et hæc verba, jura, perjura, secretum prodere noli.

<sup>3</sup> Juvenal. Sat. viii. ver. 80.

Ambiguæ si quando citabere testis,  
 Incertæque rei, Phalaris licet imperat, ut sis  
 Falsus, et admoto dietet perjuria tauro;  
 Summum crede nefas animam præferre pudori,  
 Et propter vitam vivendi perdere causas.



culcated by the heathen moralists, Marcus Antoninus, Epictetus, Seneca, and Plutarch: which made it the more reasonable for the Christians to insist upon it, and punish the crimes of perjury and falseness with the severest of ecclesiastical censures, whenever they could plainly convict any one of being guilty of them: and when they could not, the providence of God commonly interposed, and discovered and punished them by some remarkable divine judgment. Of which, beside the case of Ananias and Saphira in Scripture, we have a memorable instance in Eusebius of three men,<sup>1</sup> who combined together in a false accusation of Narcissus, bishop of Jerusalem, imprecating upon themselves very direful judgments, which the providence of God justly brought upon them; of which because I have given a full relation before,<sup>2</sup> I need say no more in this place.

#### CHAP. XIV.

##### *Of great Transgressions against the Tenth Commandment, Envy, Covetousness, &c.*

SECT. I.—Whether Envy brought Men under the Discipline of the Church.

THERE is but little to be observed in the ancient discipline of the Church concerning the transgressions against this commandment: because, though some of them were great crimes, yet they were such as chiefly consisted in the internal corruptions of the mind; and the Church could take no notice of them, till they first discovered themselves in some outward actions. Envy was a crime of that nature: it was always reckoned a diabolical sin, and one of the first magnitude: but yet before it could bring a man under public discipline, the inward rancour of the heart must betray itself in some outward, apparent, and visible action. In this sense

<sup>1</sup> Euseb. lib. vi. cap. 9.

<sup>2</sup> Chap. vii. sect. 8.

we are to understand St. Chrysostom,<sup>1</sup> when he says, the envious man ought to be cast out of the Church as well as the fornicator, to preserve others from the contagion and poison of his example. That is, when envy shews itself in any of those mischievous effects, which naturally arise from it, and turn to the apparent detriment of men or religion. For as Cyprian observes,<sup>2</sup> envy is a very prolific vice, multiplying itself into various shapes and figures: it is the root of all evils, the fountain of destruction, the seminary of sins, and the matter of all offences. Hence proceeds hatred, hence animosity arises. Envy inflames covetousness, making a man not to be content with his own, whilst he sees another richer than himself. Envy excites ambition, whilst a man sees another in greater honour than himself: envy blinds our senses, and reduces the interior faculties of the soul under its power and dominion. Then the fear of God is slighted, the precepts of Christ are neglected, the day of judgment is not thought of. It puffs us up with pride, it embitters us with cruelty, makes us prevaricate with perfidiousness, shocks us with impatience, enrages us with discord, inflames us with anger; and a man cannot contain or govern himself, who is now under the power of another. By this means the bond of divine peace is broken, brotherly charity is violated, truth adulterated, unity divided, and heresies and schisms take their original; whilst men disparage the priests, and envy the bishops, and every one complains that he himself was not ordained, or takes it in dudgeon that another was preferred before him. When envy was attended with any such effects as these, then it fell under the cognizance of public discipline; not as it was an inward corruption of the mind, but as it discovered itself in some outward and vicious action, as open dissension, or heresy, or schism, or the breach of unity and peace, ecclesiastical or civil: which crimes being the subject of Church-censure, so far as envy was concerned in any of them, so far it might be said to be punished by the public discipline of the

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<sup>1</sup> Chrys. Hom. xli. in Mat. p. 353.

<sup>2</sup> Cypr. de Zelo et Livore. p. 223.

Church, but no otherwise, for want of sufficient ground to proceed in a legal way of evidence against it. But yet this bitter root gave but too many occasions to the Church to punish it in other species; being one of those sins that could not contain itself or long lie hid, having a train of other vices commonly attending it, according to the observation made by Cyprian, and long before by St. James; "for where envying and strife is, there is confusion and every evil work."

SECT. 2.—Of Pride, Ambition, and Vain-glory.

The like is to be observed of pride, ambition, and vain-glory. These were great sins in their own nature: but being internal and spiritual sins in their kind, the discipline of the Church could take no notice of them, till they discovered themselves in some enormous, outward vicious actions. As when pride drew men into blasphemy against God, or oppression of men when ambition or vain glory made men factious and turbulent in the Church, and pushed them forward into open heresy or schism: then was the proper time for the Church to take her spiritual sword into her hand, and make use of her censures for their correction. Thus we have seen the pride of Andronicus corrected by Synesius, bishop of Ptolemais,<sup>1</sup> when it brake forth into open blasphemy against Christ: and thus all along heretics and schismatics found their punishment, when their ambition and restless spirit proceeded so far, as to make some open breach upon the faith or unity of the Church. But in these cases, pride was rather punished in other species of sin, blasphemy, heresy or schism; for the censure of which the reader must look back into the former parts of this book.

SECT. 3.—Of Covetousness.

The same observation is to be carried further, and made upon covetousness, which is another of those three great lusts that reign in the world, the lust of the heart, the lust

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<sup>1</sup> Synes. Ep. 58. see chap. 2. sect. 6. and 8.

of the eye, and the pride of life. Covetousness, which is the lust of the eye, is always a very great sin before God; being, as the Apostle terms it, "idolatry, and the root of all evil;" and even when it is only conceived in the mind, it makes a man odious to his Maker. But because God sees not, as man sees, for God looks upon the heart, therefore before covetousness can render a man a proper object of the Church's discipline, it must discover itself in some visible act of injustice, as theft, oppression, or fraud, under which appearances, but not otherwise, it was liable to the Church's judgment and censure. And this is what Gregory Nyssen<sup>1</sup> observes, that among all the species of covetousness none were expiated by solemn penance, but such as theft and violation of graves, that is, such instances of covetousness as manifested themselves in some outward and apparent evil action.

#### SECT. 4.—Of Carnal Lusts.

And the like is to be said of the lust of the heart, or carnal lusts, and sins of uncleanness. Though the evil thoughts and intentions of the heart are sinful before God, in general; "for if I regard iniquity in my heart, the Lord will not hear me:" and though in particular, "he that looks on a woman to lust after her, hath committed adultery with her already in his heart;" yet this was not punishable in the discipline of the Church: because the Church is no judge of the secret intentions, but only of the outward and visible actions, that carry scandal as well as sin in them. Therefore we have observed before,<sup>2</sup> out of the Council of Neocæsarea,<sup>3</sup> that no one was to be excommunicated for sins only in design and intention. If a man purpose in his heart to commit fornication with a woman, but his lust proceed not into action, it is apparent he is delivered by grace, says the canon. And therefore though he was culpable before God, yet the Church inflicted not the censure of excommunication on him,

<sup>1</sup> Nyssen. Ep. ad Letoium.  
Neocæsar. can. iv.

<sup>2</sup> Chap. iii. sect. 17.

<sup>3</sup> Con.

because her discipline extended not to men's private thoughts, but only to their outward actions. And this was the case of all transgressions that were purely against this command: they might be punished under other species of sin, but not as they were only sins of the heart, because, as such, human judicature could take no cognizance of them.

We have now gone through the several branches of duty and transgression, and therein taken a full view of the extent of the discipline of the Church; whereby it appears that the objects of ecclesiastical discipline were not only the three great sins of idolatry, adultery, and murder, but all other crimes, that come under the denomination of scandalous and great transgressions. And thus far the discipline of the Church related to all persons in general, but there were some punishments peculiar to delinquent clergymen, which because they are matter of particular inquiry, I shall make them the subject of the following book.

END OF BOOK XVI. AND OF THE SEVENTH VOLUME IN  
THE ORIGINAL EDITION.

## BOOK XVII.

OF THE EXERCISE OF DISCIPLINE AMONG THE  
CLERGY IN THE ANCIENT CHURCH.

## CHAP. I.

*Of the Difference between Ecclesiastical Censures inflicted  
on Clergymen and Laymen.*

SECT. 1.—The peculiar Notion of *Communio Ecclesiastica*, and *Excommunicatio Ecclesiastica*, as applied to the Clergy.

WE have hitherto taken a general view of the discipline of the Church, as it respected all the members of the community falling into the several crimes deserving excommunication. But to have a complete notion and full comprehension of the Church's discipline, we are to consider, there were some punishments peculiar to the clergy, and some censures so particularly respecting their office and function, that they could only be inflicted on them, and not upon laymen. In regard to which, clerical communion and lay-communion were always considered as distinct things; and a man might be deprived of the former, whilst he was allowed to enjoy the benefit and privilege of the latter; and even that, which was many times a very great punishment in a clergyman, or ecclesiastical person, was no punishment at all in a secular person or layman. For there was no suspension from office or benefit, no degradation or deposition, no reduction to lay-communion, that could affect a layman, as they were punishments: but all these were great punish-

ments as inflicted on the clergy, because they deprived them of those special honours and advantageous privileges, that were peculiar to their function. In reference to which things we sometimes find the terms *Communio ecclesiastica*, and *Excommunicatio ecclesiastica*, *ecclesiastical communion*, and *ecclesiastical excommunication*, used in a peculiar and restrained sense, not for communion or excommunication in general, but for admission to, or expulsion from these particular honours and advantages, which were peculiarly appropriated to ecclesiastical persons, or such as were of the clerical order and function. Therefore, though some canons take suspension from ecclesiastical communion,<sup>1</sup> for suspension of laymen from the communion of the eucharist or the prayers of the Church; yet other canons, speaking of the clergy and their punishment, take ecclesiastical communion in a more restrained sense, for communicating in the offices of the clerical function. So that a clergyman was said to be excommunicated, when he was deprived of the power of exercising the offices of his function; and such an excommunication does not always imply, that he was wholly cast out of all communion with the Church, but only communion as specified with this limitation and restriction. This distinction is noted by Balsamon,<sup>2</sup> and Zonaras,<sup>3</sup> and many other learned men after them:<sup>4</sup> and it is necessary to be observed, for the right understanding of many ancient canons,<sup>5</sup> where the words *Ακοινώνητος*, *Αφορισμὸς*, *Εκκηρύττεσθαι*, which signify excommunication, can have no other meaning, as applied to the clergy, but only to denote their degradation or suspension.

SECT. 2.—The Clergy usually punished by a Removal from their Office, but not always subjected to public Penance, as Men wholly cast out of the Communion of the Church.

This may be confirmed from an observation, that has been

<sup>1</sup> Vid. Con. Agathen. can. 37. Con. Aurel. iv. can. 19. Aurel. v. can. 17.

<sup>2</sup>Balsam. in can. xvi. Con. Nic.

<sup>3</sup> Zonar. in eundem.

<sup>4</sup> Albaspin. Observ. lib. i. cap. 2. Habert. Archierat p. 746. Suicer. The-saur. Eccles. voce 'Αφορισμὸς.

<sup>5</sup> Vid. Can. Apost. 6, 43, 45,

54, 57, 58, 59, 72.

made once before in a former book,<sup>1</sup> that some ancient canons expressly forbid the clergy to be punished by the ordinary way of excommunication, which implies a total removal from the communion of the Church; but thought it sufficient to punish them by a removal from their office; and that, because it was not proper to punish men doubly for the same offence. If a bishop, presbyter, or deacon, says one of the Apostolical Canons,<sup>2</sup> be taken in fornication, perjury, or theft, he shall be deposed, but not excommunicated: for the Scripture says, “Thou shalt not punish twice for the same crime.” And the like rule is prescribed in the canons of Peter,<sup>3</sup> bishop of Alexandria, and those of St. Basil.<sup>4</sup>

SECT. 3.—Yet in some special Cases both Penalties inflicted.

Yet for some more flagrant crimes both penalties were inflicted, as appears from the same Apostolical Canons,<sup>5</sup> which order, that if any clergyman was found guilty of simony, or any such heinous offence, he should not only be deposed from his office, but be cast out of the Church. And a great many learned men are of opinion,<sup>6</sup> that this was the constant practice of the Church even in the three first ages, when the Apostolical Canons were most in force. It is certain it was so in the time of Cyprian: for he, speaking of Novatus, who was guilty of murder in causing his own wife by a blow to miscarry, says, that for this crime he was not only to be degraded, or expelled the presbytery, but to be deprived of the communion of the Church also.<sup>7</sup> And in the following ages there are innumerable examples of this practice, as the learned reader may satisfy himself by consulting the passages referred to in the margin.<sup>8</sup>

<sup>1</sup> Book vi. chap. ii. sect. 2.

<sup>2</sup> Canon. Apost. c. xxv.

<sup>3</sup> Pet Alex. can. 10.

<sup>4</sup> Basil. can. 3, 32, 51.

<sup>5</sup> Canon.

Apost. 29, 30, and 51.

<sup>6</sup> Pagi Critic. in Baron. an. lxvii.

n. 15. Quesnel. Not. in. Leo. Ep. ad Rustic. Narbon. Morin. de Pœnit. lib. iv. cap. 12. Fell. Not. in Cypr. Ep. iv. ad Pompon. p. 4.

<sup>7</sup> Cypr. Ep. xlix. al. 52. ad Cornel. p. 97. Propter hoc se non de presbyterio tantum, sed et communicatione prohibere pro certo tenebat, &c.

<sup>8</sup> Conc. Neocæsar. can. i. Πρεσβύτερος εάν γήμῃ, της τάξεως αὐτὸν μεταρίσθῃσθαι εάν δὲ πορνέυσῃ, ἢ μοιχεύσῃ, ἐξωθεῖσθαι αὐτὸν τέλειον, ἢ ἄγεσθαι αὐτὸν εἰς μετάνοιαν. If a presbyter marries, he shall be removed from his order:



## SECT. 4.—Of Suspension from their Revenues.

Now that, which we are concerned at present to inquire after, are those punishments, which particularly affected the clergy: and these were of three sorts; such as respected their maintenance, such as respected their office, and such as respected their persons in corporal chastisement and correction. Sometimes they were punished in their maintenance, by withdrawing the usual portion of the Church's revenues, which was allotted to them out of the public stock for their maintenance and subsistence. The revenues of the Church, as has been observed in a former book,<sup>1</sup> were usually divided among the clergy once a month, whence it had the name of *Divisio mensurna*, the *monthly division*: and when there was occasion to punish a delinquent clergyman for some less offence, it was done by withdrawing this usual portion of the monthly division from him. As appears from that of Cyprian,<sup>2</sup> who, speaking of some of the inferior clergy that had offended, says, "They should be withheld or suspended from their monthly division, but not be deprived of their ministerial office in the Church."

## SECT. 5.—Of Suspension from their Office.

Sometimes they were suspended, not only from their re-

*but if he commits fornication or adultery, he shall be wholly expelled the Church, and reduced to the discipline of repentance.* Vid. Con. Agathen. can. 8, and 42. Con. Ilerdense, can. 1, 5, 16. Con. Valentin. Hispan. can. iii. Con. Veneticum, can. xvi. Con. Aurellan. i. can. 11. Aurelian. iii. can. 4, 7, 8. Con. Turon. i. can. 3, 5. Con. Toletan. ii. can. 3. Con. Tolet. xi. can. v. and 6. Vigiliis Decret. cap. vi. Felix iii. Ep. ad Acacium, writes thus to him: *Sacerdotali Honore, et communione catholicâ, nec non etiam à fidelium numero segregatus, sublatum tibi nomen et munus ministerii sacerdotalis agnosce.* Vid. et Con. Asiaticum Ep. ad Joan. C.P. in Synodo sub Mennâ. Act. i. ap. Crab. tom. ii. p. 36. et Con. Constant. sub Flaviano, in Act. i. Con. Chalcedon. ap. Crab. p. 780. where Eutyches is punished both with deposition and excommunication, as all Heretics commonly were.

<sup>1</sup> Book v. chap. iv. sect. 1. <sup>2</sup> Cyp. Ep. xxviii. al. 31. ad Cler. Interim se à divisione mensurnâ tantùm continent, non quasi à ministerio ecclesiastico privati esse videantur. Vid. Con. Carth. iv. can. 49. Justin. Novel. 123. c. 42.

venues, but from their office and function. And this was either temporary and limited, or perpetual and without restriction. The temporary suspension was only a depriving them of the execution of their office for a certain term; and when that term was over, they had liberty to resume their place, and return to the execution of their office in all the parts and duties of their function: but the perpetual suspension was a total deprivation of them from all power and dignity belonging to the clerical office, and a reduction of them to the state and condition of laymen, without any ordinary hopes or prospect of ever recovering their ancient station. The former of these is commonly called by the Ancients abstinence and suspension from communion, meaning clerical communion only; and the latter vulgarly known by the name of degradation, de-ordination, or deposition from the office and order of the clerical function. Thus Cyprian writing to Rogatian, an African bishop, concerning a contumacious deacon, who rebelled against him, bids him to depose him from his office, or at least suspend him.<sup>1</sup> The penalty of suspension was for less crimes, as in the instance given in the Council of Epone,<sup>2</sup> if a bishop, presbyter, or deacon be detected to keep dogs for hunting, or hawks for fowling, the bishop is to be suspended for three months, the presbyter for two, and the deacon for one. So by a Canon of the Council of Lerida,<sup>3</sup> if any clergyman in a siege bore arms, and killed a man, though it were one of the enemies, he

<sup>1</sup> Cypr. Ep. iii. ad Rogat. p. 6. *Fungeris circa eum potestate honoris tui, ut eum vel deponas vel abstineas.*

<sup>2</sup> Con. Epauenen. can. iii. *Episcopis, presbyteris atque diaconibus canes ad venandum, et accipitres ad aucupandum habere non liceat. Quòd si quis talium personarum in hæc fuerit voluntate detectus, si episcopus est, tribus mensibus se à communione suspendat; duobus presbyter abstineat: uno diaconus ab omni officio et communione cessabit.*

<sup>3</sup> Con. Ilerden. can. i. *De his clericis, qui in obsessionis necessitate positi fuerint, id statutum est, ut ab omni humano sanguine, etiam hostili, se abstineant. Quòd si in hoc inciderint, duobus annis tam officio quàm communione corporis domini priventur—Et ita demùm officio vel communioni reddantur, eâ tamen ratione, ne ulterius ad officia potiora provehantur. See other instances of suspension in Basil, can. 69. Con. Bracar. iii. can. 1. and 5. Con. Aurel. iii. can. 2, 16, 25. Con. Aurel. v. can. 5, and 18.*

was to be suspended from his office two years, and he rendered incapable of any further promotion; because the canons in all cases whatsoever peremptorily forbid a clergyman to be concerned in blood.

SECT. 6.—Of Deposition or Degradation.

The other sort of suspension, commonly called *Καθάρισις*, *deposition* or *degradation*, was a total and perpetual suspension of the power and authority committed to a clergyman in his ordination. For as the Church had power to grant this authority and commission at first, so she had power to resume and withdraw it again upon great misdemeanors and just provocation. And then a clergyman, whatever character he sustained before, was totally divested both of the name and dignity, and power and authority belonging to his former order and function. By some canons<sup>1</sup> therefore he is said to be degraded, deprived, and turned out of office; by others to be totally deposed,<sup>2</sup> Παντελῶς καθαιρεῖσθαι; totally to fall from his order or degree<sup>3</sup>, Παντελῶς ἀποπίπτειν βαθμῆ; to be de-ordained<sup>4</sup>, or un-ordained; to be removed out of the order of the clergy;<sup>5</sup> to cease to be of the number of the clergy;<sup>6</sup> and to be reduced to lay-communication, that is, to the state and quality and condition of laymen. All these expressions, except the last, are commonly well understood by modern writers: but some to serve a peculiar hypothesis have invented very odd and strange notions of it. Therefore to set the matter in a right light, and give a just account of the discipline of the Church, it will not be amiss to be a little more particular upon this point, and shew distinctly what the Ancients meant by this part of their discipline, which they call reducing a clergyman to the state and communion of laymen, which I shall make the subject of the following chapter.

<sup>1</sup> Con. Carthag. iv. can. 48. 49. 50. Con. Tarracon. can. x.

<sup>2</sup> Con. Antioch. can. v.

<sup>3</sup> Con. Ephes. can. vi.

<sup>4</sup> Acta Servatii

Tungrensis, ap. Crab. Con. tom i. p. 318. Nullâ morâ Euphratas deordinatur.

<sup>5</sup> Con. Arelat. i. can. 13. Ab ordine cleri amoveatur.

<sup>6</sup> Con Nicæn,

can. ii. Πεπύδαθω τῆ κλήρῃ.

## CHAP. II.

*Of reducing the Clergy to the State and Communion of Laymen, as a Punishment for great Offences.*

SECT. 1.—Lay-communion not the same as Communion in one Kind only.

LAY-COMMUNION in a layman was no punishment, but a privilege, and one of the greatest privileges that belonged to him as a Christian: for it was entitling him to all the benefits and advantages of Christian communion. But in a clergyman it was one of the greatest of punishments, reducing him from the highest dignity and station in the Church to the level and standard of every ordinary Christian. But now the question is, wherein the nature of this punishment consisted. Bellarmin<sup>1</sup> and some other writers of the Romish Church, taking the word in a new and modern sense, expound it of communion in one kind and bring it as an argument to prove, that the primitive Church denied the people the use of the cup in the Lord's supper, and administered the communion to them only in one kind, because the word lay-communion bears that signification in the present Church of Rome. But this is only begging a principle, and supposing a practice, of which there is not the least footstep to be met with in the ancient Church, as I have fully demonstrated in a former book.<sup>2</sup> And it is such a piece of ignorance and misrepresentation of the ancient discipline, as other learned men in the Romish Church are commonly ashamed of. The notion is entirely rejected and confuted by Lindanus,<sup>3</sup> Albaspinæus,<sup>4</sup> Peter de Marca,<sup>5</sup> Rigaltius,<sup>6</sup> Durantus,<sup>7</sup> and Cardinal Bona,<sup>8</sup> who ta-

<sup>1</sup> Bellarm. de Euchar. lib. iv. cap. 24. p. 678.

<sup>2</sup> Book xv. chap. 5.

<sup>3</sup> Lindan. Panoplia, lib. iv. c. 58.

<sup>4</sup> Albasp. Observ. lib. i. cap. 4.

<sup>5</sup> Marca Tract. in Cap. Clericus, ad calcem Baluzii de Emendat. Gratiani.

<sup>6</sup> Rigalt. in Cypr. Ep. 52. ad Anton.

<sup>7</sup> Durant de Ritibus Eccles. lib.

ii. eap. 55. n. 6.

<sup>8</sup> Bona de Rebus Liturg. lib. ii. c. 19. n. 3.

cily reflects upon Bellarmin and his followers for their childish explication of this ancient term to make it comply with the modern practice. They no sooner hear, says he, of the name, lay-communion, but overlooking the ancient notion, they presently take it only in the sense, which it now bears, and interpret it communion in one kind; the falseness of which we may learn from hence, that we often read of clergymen being thrust down to lay-communion at that time, when laymen communicated in both kinds.

**SECT. 2.**—Neither does it signify, Communicating among Laymen without the Rails of the Chancel.

Lindanus had long before used the very same argument, and advanced a more probable explication, that lay-communion might denote a clergyman's being thrust down to communicate among laymen without the rails of the chancel: which has so much of plausibility in it, that the learned Dr. Forbes,<sup>1</sup> and Vossius<sup>2</sup> give in to this opinion. But though this has something of truth in it, yet it does not express the full meaning of lay-communion. For a man might be admitted to lay-communion not only in the Church, but in a private house, or upon his death-bed, where there could be no such distinction.

**SECT. 3.**—But a total Degradation or Deprivation of Orders, and Reduction to the State and Condition of Laymen.

Therefore the full import of the phrase, and the adequate notion of reducing a clergyman to lay-communion, is totally degrading and depriving him of his orders, that is, the power and authority of his clerical office and function, and reducing him to the state and quality and simple condition of a layman. Thus Chamier rightly explains it against Bellarmin,<sup>3</sup> when he observes, that it was called lay-commu-

<sup>1</sup> Forbes, Irenic. lib. ii. cap. xi. p. 221.

<sup>2</sup> Voss. Thess. Theol.

Disp. xxxiii. Thes. v. p. 514.

<sup>3</sup> Chamier. de Euchar. lib. ix. cap. iii.

n. 33. tom. iv. p. 487. Appellatam fuisse laicam communionem, non à loco, non à speciebus, non à tempore, sed à personâ nimirum quòd qui antè fuerit

nion neither from the place of communicating, nor from communicating in one species, nor from the time and order of communicating the laity after the clergy, but from the condition and quality of the person communicating; namely, because he, that before was a clergyman, or in the roll and nomenclature of the clergy, is now become a layman, and reckoned as one in the order of laymen only. This supposes a power in the Church, not only of conferring clerical orders at first to men, and promoting them from laymen to be bishops or presbyters or deacons; but also a power of recalling these offices, and divesting them of all power and authority belonging to them, by degrading clergymen upon just reasons and reducing them to the state and quality of laymen again. This is undoubtedly the true meaning of all those ancient canons and writers, which speak so often of degrading clergymen for their offences, and allowing them only to communicate in the quality of laymen. Hereby they were deprived of their order and office, and power and authority, and even the name and title of clergymen; and reputed and treated as private Christians, wholly divested of all their former dignity, and clerical powers and privileges, and reduced entirely to the state and condition of laymen. Of which, because I have had occasion to discourse at large in another work,<sup>1</sup> I shall not need to say much in this place, but only add a few testimonies, that were then omitted. In the third Council of Orleans there is a canon,<sup>2</sup> which orders, that if a clergyman, either by his own confession or conviction, was proved guilty of adultery, he should be deposed from his office, and be confined to lay-communication in a monastery all his days. And another canon appoints,<sup>3</sup> that if any clergyman was convicted of theft or fraud, because those were capital crimes, he should be degraded from his order, and only be allowed lay-communication. So in the Col-

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clericus, sive in clericorum nomenclaturâ, nunc sit laicus, et in laicorum ordine.

<sup>1</sup> Scholast. Hist. of Lay-baptism, part. ii. chap. iv.

<sup>2</sup> Con. Aurel. iii. can. 7. Si quis adulterâsse aut confessus fuerit, vel convictus, depositus ab officio, communione concessâ, in monasterio toto vitæ suæ tempore tradatur.

<sup>3</sup> Ibid. can. viii. Si quis clericus furtum aut falsitatem admisit, quia capitalia etiam ipsa sunt crimina, communione concessâ,

lection of Martin Bracarenis<sup>1</sup> made out of the Greek canons for the use of the Spanish Church, it is ordered, that if any one is surreptitiously ordained, who, after baptism, has been guilty of murder, either by immediate commission of the fact, or by command, or counsel, or defence, he shall be deposed, and only be admitted to lay-communication all his days. Gelasius has a like decree,<sup>2</sup> made in the case of a presbyter, who, in a quarrel struck out the eye of another: he orders him to be deposed from his office, and to be cloistered in a monastery, there to repent of the fact, and only to have lay-communication for his whole life. And Gratian cites an order of the Council of Lerida to the same purpose,<sup>3</sup> “that if clergymen, who are once corrected for their offence, shall relapse, and return to their vomit again, they shall not only be deprived of the dignity of their office, but continue all their lives incapable of receiving the communion even as laymen, which shall only be granted them at their last hour.

SECT. 4.—Clergymen thus reduced, seldom allowed to recover their ancient Station.

The plain result of this discourse is, that reducing a clergyman to the communion of laymen was a total deprivation and divesting him of his office and orders. So that if he now pretended to act as a minister, his actions were reputed null and void, and as no other than the actions of a layman. The learned Dr. Forbes has rightly observed this<sup>4</sup>

ab ordine degradetur.

<sup>1</sup> Martin. Bracar. Collect. Canon. c. xxvi. Si quis homicidii aut facto, aut præcepto, aut consilio, aut defensione post baptismum conscius fuerit, et per aliquam subreptionem ad clericatum venerit, dejiciatur, et in finem vitæ suæ laicam communionem tantummodo recipiat.

<sup>2</sup> Gelas. Ep. ad Ruffin. ap. Gratian, Dist. lv. cap. 13. Bene fraternitas tua fecit ab officio eum presbyterii remove. Hoc tamen sollicitudinis tuæ sit, ut locum ei pœnitentiæ constituas, et in aliquo eum monasterio retrudas, laicâ tantummodo sibi communionem concessâ.

<sup>3</sup> Con. Herden. can. v. ap. Grat. Dist. l. cap. 52. Si iterato velut canes ad vomitum reversi fuerint; non solum dignitate officii careant, sed etiam sanctam communionem, nisi in exitu, non percipiant.

<sup>4</sup> Forbes, Irenic. lib. ii. cap. xi. p. 222. Depositus depositione plenâ et perfectâ non validè exercet ea quæ sunt ordinis, quia ipso caret ordine, et potestate ordinis. Et jam non nisi

in the ancient discipline, and I cannot better express it than in his own words: "He, that is deposed with a plenary and perfect deposition, cannot now validly exercise the offices, that belong to this order, because he wants his order and the power of his order. He is now nothing but a mere layman, and in so much a worse condition than other laymen, because the restitution of such an one to his office is a much more difficult thing than the promotion of other laymen." Indeed there are very few instances of recalling such to the clerical office again, which was never done but upon some great necessity or very pressing reason; as in the case of Maximus, the Confessor, when he returned from the Novatian schism, and brought over a great multitude of the people with him; Cornelius, bishop of Rome, in regard to him as a confessor, and as one, that had done good service to the Church by the influence of his example, dispensed with the general rule for his sake, and received him to his place in the presbytery again;<sup>1</sup> and the Council of Nice allowed the same favour to the Novatians, and the African fathers to the Donatists, with a charitable view, to put an end to those great and inveterate schisms. But these were only exceptions to the common rule, and dispensations with the general orders and standing discipline of the Church.

SECT. 5.—Notwithstanding the Pretence of the indelible Character of Ordination.

It may perhaps be said, there was still an inherent power and authority in such deposed clerks, and that their deposition did not totally annul their ordinations: for they still retained the indelible character of their respective orders: and therefore they might be ministers still, and their ministerial actions stand good and authentic, notwithstanding any power and authority in the Church to depose and degrade them. But as this is next to a contradiction in itself, that a man should be deposed from his order, and yet retain his order still, with all the spiritual power belonging to it: so

laicus est, et tanto deteriore conditione quàm alii laici, quòd longè difficilior sit ejus restitutio, quàm aliorum laicorum promotio. <sup>1</sup> Cornel. Ep. xlvi. al. 49. ad Cypr. p. 93. Maximum presbyterum locum suum agnoscere jussimus.



it implies such a notion of that, which is commonly called the indelible character of ordination, as no ancient writer ever thought of. For the notion that the Ancients had of the indelible character of ordination, was no more than they had of the indelible character of baptism; that as the outward form of baptism, washing or immersion in water, though but a transient act, served for ever to distinguish a Christian from a mere Heathen or Jew; so as that, though he apostatized from the Christian faith into Judaism or Gentilism, he should still retain so much of the Christian character, as upon his conversion and return to the faith not to need a second baptism: in like manner the outward form of ordination, which is imposition of hands designing a man to any clerical office, though it be but a transient act, was sufficient to distinguish such an one from a mere layman, who never had any such ceremony of ordination; so that by this mark or character of his office once received, though he should afterward forfeit his office and all the power and honour belonging to it, he would always remain distinguished in some measure from those, who never had such an office; and though he should be wholly divested of his office and power, and reduced to the simple capacity and condition of a layman, yet so much of the marks and footsteps of his former office would remain upon him, as that if he should be recalled again to his office, though he might need a new commission, he would not need this outward character or ceremony of a new ordination. There is no one has explained or illustrated the sense of the Ancients upon this point with more accuracy than the learned Dr. Forbes: and therefore, for further confirmation, I shall here transcribe his words: "There remains," says he, some distinguishing

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<sup>1</sup> Forbes, *Irenic.* lib. ii. cap. 11. p. 224. *Manet quidem in deposito aliquid distinctivum, quo ab aliis laicis distinguitur: ad distinctionem autem non est necessaria aliqua impressa forma, sed sufficit actus transiens in præteritum, nempe quòd sit aliquando ordinatus. Manet in deposito non character præsentis alicujus officii aut potestatis, sed vestigium quoddam præteriti honoris et aliquando habitæ potestatis: per quod vestigium ab aliis laicis, nunquam ordinatis, distinguitur: et peractâ sufficienti pœnitentiâ, si idoneus inveniatur, et utilitas ecclesiæ postulet, restitui poterit absque novâ ordinatione, &c.*

character in a man that is deposed, by which he is distinguished from other laymen: but to make this distinction, it is not necessary there should be any form impressed, but a transient act, that is long ago past, is sufficient, viz. that he was once a person ordained. The character, that remains in a deposed person, is not the character of any present office or power, but only some footstep or mark of an honour that is past, and of a power, that he once had; by which footstep he is distinguished from other laymen, who never were ordained; and may, after a sufficient penance performed, if he be found fit, and the advantage of the Church so require, be bestowed again without a new ordination." As if a prince should imprint upon his nobles the marks and characters of the offices, which they bear under him; making the impress or figure of a key upon the arm of his chamberlain with an hot iron, and the image of a horse upon the arm of the master of his horse, and the image of a cup upon the arm of his butler: and after this it should happen, that the prince being justly offended at them, should depose them from their offices, and put others in their room, signing them with the characters of their offices likewise. Those marks, which in the officers, who were not deposed, were characters of their present power, would in those, that were deposed, be only footsteps of their by-past power: and whatever thing they, who were deposed should do relating to those offices, would have no more validity, than if it was done by any private man, who never bore any such office. Yet in this there would be a difference, that if the prince pleased to restore those, whom he had deposed, there would be no need to set a new mark upon them; but those footsteps or remains of their ancient power would now become again the character of their present power. By this illustration, which justly represents the sense of the Ancients, it is easy for any one to apprehend, how far the discipline of the Church in deposing clergymen extended: namely, that it not only suspended them from the execution of their office, but deprived them of their office, and took away their orders from them; that they were thenceforth no more than laymen, only with this distinction

that they had the external character of a by-past office, which other laymen wanted; that now they had neither the office of clergymen, nor the power of it; nor were their actions of any other account in the Church than as the actions of private men and laymen. Thus far the Church proceeded in her censures of clergymen, that submitted to her discipline, and were not refractory and contumacious: she allowed them the benefit of lay-communion, which was a moderation of their punishment in regard to their submitting quietly to her discipline and censures.

**SECT. 6.**—But sometimes excommunicated, as well as deposed, and denied the Communion of Laymen.

But if they continued contumacious and stubborn, opposing her first censures, and acting as clergymen in contempt of them; she then proceeded one degree further with them, adding to their deposition a formal excommunication, and denying them even the communion of laymen. Thus Arius, and many other first founders of heresies, were anathematized and excommunicated, as well as degraded. And there are abundance of instances of the like proceeding in Cyprian,<sup>1</sup> and the Apostolical Canons,<sup>2</sup> and the Council of Sardica,<sup>3</sup> and the Council of Colen,<sup>4</sup> and the Council of Eliberis,<sup>5</sup> and the Council of Rome<sup>6</sup> under Felix III. All which, because I have produced at large upon another occasion,<sup>7</sup> I think it needless to repeat in this place.

**SECT. 7.**—Sometimes removed and corrected by the Assistance and Authority of the secular Power.

We are likewise to observe, that in case of contumacious contempt of her censures, the Church sometimes had recourse to the secular powers; craving their aid and assistance, either to remove a stubborn clerk from his station and

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<sup>1</sup> Cypr. Ep. xlix. al. 52. ad Cornel. p. 96.      <sup>2</sup> Canon. Apost. 29 et 30.  
<sup>3</sup> Con. Sardic. can. 1 et 2.      <sup>4</sup> Con. Agrippin. ap. Crab. tom. i. p. 317.  
<sup>5</sup> Con. Eliber. can. 18, et 76.      <sup>6</sup> Con. Rom. iii. sub Felice 3. Con. tom. iv. p. 1076. can. 2.  
<sup>7</sup> Scholast. Hist. of Bapt. par. ii. chap. 5.

honourable post in the Church, which he obstinately detained after deposition, or else to inflict some other punishment upon him for his chastisement and correction. We have seen several instances of this before in the general account of the exercise of discipline upon all church-members,<sup>1</sup> related from Eusebius and the Council of Antioch, and the third Council of Carthage, and the African Code, where addresses are made, or appointed to be made, to the secular powers, some Heathen, and some Christian, imploring their assistance to remove some obstinate and contumacious bishops and presbyters from their places, when they would not obey the decrees of the Church, but retain their offices and preferments in spite of her censures. And of these I need not be more particular in this place: as neither of those other various temporal penalties, which the wisdom of the state thought fit to inflict upon heretics in general, laymen as well as clergymen, to discountenance herodoxy, and give more effectual force and vigour to the censures of the Church: for of these I have given a sufficient account in discoursing of the punishments of heresy in the former book.

**SECT. 8.**—What meant by the Punishment, called *Curia tradi*, or delivering up to the secular Court.

But there was one particular civil punishment peculiar to delinquent clergymen, which must be taken notice of in this place. The ancient law comprises it under the name of *Curia tradi*, *delivering up to the secular court*: which, as Gothofred observes,<sup>1</sup> has a different meaning in the ancient law from that, which the modern use and practice has put upon it. For among the modern canonists it signifies delivering a clergyman up to the secular judge after degradation, to be punished for some great crime with death, or such capital punishment as the Church had no power to inflict upon him: but in the old law the *Curia* has a larger sense, not only to denote a judge's court, but the corporation of

<sup>1</sup> Book xvi. chap. ii. sect. 3.  
tit. 2. de Episc. leg. 30.

<sup>2</sup> Gothofred, in Cod. Theod. lib. xvi.

any city, the members of which were commonly called *Decuriones et Curiales*. In this there were some honourable, and some servile offices. And therefore when a clergyman was degraded for any offence, and reduced to the quality of a layman; then, besides that he lost all the privileges and exemptions, that by law and imperial favour belonged to the clergy, he was obliged to serve the *Curia*, or secular corporation of his city, and that many times only in some mean office and servile condition, by way of additional civil punishment for having transgressed the laws of the Church, and the rules of his sacred profession and venerable function. And this was a certain way of precluding him from all hopes ever after of regaining his clerical dignity again. For as the laws absolutely prohibited any of the *Curiales* to be ordained at first,<sup>1</sup> because they were tied to certain municipal and civil offices inconsistent with the spiritual; so if any of the clergy were once degraded and taken into the power of the secular *Curia*, or corporation, there was no possibility of their returning to the ecclesiastical state again. And therefore Honorius made this a law, that the *Curia* should immediately lay hold of such delinquents, to render their punishment irreversible and perpetual. "If a bishop," says the law,<sup>2</sup> "shall condemn any clergyman as unworthy of his office, and separate him from the ministry of the Church; or if any one voluntarily desert his sacred profession, let the *Curia* immediately lay claim to him, that he may no longer be at liberty to return to the Church again; and according to the quality of the man, or the quality of his estate, let him either be taken into the *Curia*, or some collegiate company of the city, and be obliged to undergo those public burdens or necessities,

<sup>1</sup> See book iv. chap. iv. sect. 4. and Book v. chap. iii. sect. 15 and 16.

<sup>2</sup> Cod. Theod. lib. xvi. tit. 2. de Episcopis, leg. 39. *Quemcunque clericum indignum officio suo episcopus judicaverit, et ab ecclesiæ ministerio segregaverit: aut si qui professum sacræ religionis sponte dereliquerit, continuo sibi eum Curia vindicet: ut liber illi ultra ad ecclesiam recursus esse non possit: et pro hominum qualitate, et quantitate patrimonii, vel ordini suo, vel collegio civitatis adjungatur; modo ut quibuscunque apti erunt publicis necessitatibus obligentur, &c.*

which he shall be found qualified for, and this without any collusion, under the penalty of a forfeiture of a considerable sum of gold, to be levied upon the *Decemprimi*, the ten principal men of the Curia, if they connived at any such collusion: and the offending clerk so degraded is further tied up by a negative punishment, never to hold any office or place under any of the secular judges." Justinian renewed and confirmed this law in one of his novels,<sup>1</sup> and by another imposed a like punishment upon any monk, that should desert his monastery, to betake himself to any secular employment: such an one was to serve all his life in some mean and servile office under the judge of the province;<sup>2</sup> and only have this fruit of his change, that for despising his sacred ministry he should be tied to the slavish attendance upon an earthly tribunal.

But besides this, there was another way of delivering over delinquent clergymen to the secular courts and civil judges; which was, when they committed such crimes as were properly of civil cognizance, and might be heard and punished as crimes against the state and commonwealth. For clergymen were considered in a double capacity, as ministers of the Church, and as members of the commonwealth. Whatever crimes they committed in the first capacity, they were indeed liable primarily to be judged by the bishops of the Church, as the proper judges of ecclesiastical causes: yet if their crimes were very flagrant, such as heresy, or simony, though these were properly ecclesiastical causes, yet the criminals might be turned over to the secular judges, after the ecclesiastical sentence was past upon them: for such crimes were punished both by Church and State, with their respective censures. If their crimes were such, as more nearly and directly affected the peace and tranquillity of the commonwealth; such as treason, and sedition, and murder, and robbery, and the practice of magical and pernicious arts; in that case, bishops not only might, but

<sup>1</sup> Justin. Novel. cxxiii. cap. 14.

<sup>2</sup> Justin. Novel. v. cap. 6. Hunc habebit mutationis fructum, ut qui sacrum ministerium despexit, tribunalis terreni observet servitium.

were obliged, *ex officio*, to turn over a degraded clerk to the secular court and a competent judge, to be punished according to the quality of his offences. There is a famous instance relating to this matter in the history of the Acts of the Council of Chalcedon, reported out of the Acts of the Council of Tyre, where Ibas, bishop of Edessa, was accused for intending to promote one Abraamius, a deacon, to a bishopric, when he had confessed himself guilty of magical practices before the bishop and all the clergy: and it is added by way of aggravation of the bishop's fault,<sup>1</sup> that he kept the paper of his magical enchantments by him, when he ought to have presented the execrable criminal to the judge of the province, according as the laws directed. By which one instance, it is easy to apprehend, that there were some crimes both of ecclesiastical and civil cognizance: and when any such clergyman was deposed, in an ecclesiastical court, the bishop was obliged to remit him to a secular judge, to be punished with civil punishments as a layman, according to the nature and quality of his offences. And in this case, I conceive they treated him as an excommunicate person, not barely reduced to lay-communion, but one degree lower, being thrust down to the lowest rank of notorious criminals, and denied the common benefit and privilege of those, who were allowed to partake of the communion of laymen. Of which kind of censure, there are several instances in the Apostolical Canons, and the Councils of Eliberis, Colen, and Sardica; which, because I have produced them at large upon another occasion,<sup>2</sup> I forbear to relate in this place, and proceed to another inquiry, concerning the punishment, which was commonly called *Communio peregrina*, or reducing clergymen to the communion of strangers.

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<sup>1</sup> Con. Chalced. Act. x. Con. tom. iv. p. 648.  
of Lay Baptism. par. ii. chap. v.

<sup>2</sup> Scholast. Hist.

## CHAP. III.

*Of the Punishment called Peregrina Communio, or reducing Clergymen to the Communion of Strangers.*

SECT. 1.—The several Canons, wherein this Punishment is mentioned.

THERE is no one question in all the ancient discipline, that has more exercised the pens of learned men, than this about the punishment called *Peregrina Communio*, the communion of strangers. It plainly appears, from all the Canons, wherein any mention is made of it, that some punishment is intended to be peculiarly inflicted on the clergy for some special offences ; but it is not so easy to discover what sort of punishment it was. I will first set down the Canons, that mention it, and then the different sentiments of learned men concerning it, pointing out that, which seems to be the most rational account of it, with some confirmation out of ancient history. The first Council, that mentions it, is the Council of Riez,<sup>1</sup> anno 439, where it is determined, in the case of a schismatical bishop returning to the Catholic Church, that he shall only be allowed to be a *Chorepiscopus* in some country church under another bishop, or else be content with the communion of strangers. The next Council, that mentions it, is the Council of Agde,<sup>2</sup> anno 506, where in one Canon it is determined, that if any clergyman be found guilty of robbing the Church, he shall be reduced to the communion of strangers. And in another,<sup>3</sup> if any contu-

<sup>1</sup> Con. Rhegiu. can. iiii. Liceat ei in unam parochiarum suarum ecclesiam cadere, in qua aut chorepiscopi nomine, aut peregrina, ut aiunt, communione foveatur.

<sup>2</sup> Con. Agathen. can. v. Si quis clericus furtum ecclesie fecerit, peregrina ei communio tribuatur.

<sup>3</sup> Ibid. can. ii. Contumaces clerici ab episcopis corripiantur: et si qui prioris gradus elati superbia, communionem fortasse contempserint, aut ecclesiam frequentare, vel officium suum implere neglexerint, peregrina eis communio tribuatur, ita ut cum eos poenitentia correxerit, rescripti in matricula, gradum suum dignitatemque suscipiant.



macious clerk despises the communion, or neglects to frequent the church, or fulfil his office, he shall be reduced to the communion of strangers, so as that, when he repents and reforms, he may have his name written again in the *Matri-cula*, or Roll of the Clergy, and obtain his degree and dignity as before among them. After this, in the Council of Lerida, anno 539, we find a like decree,<sup>1</sup> that in case any clergyman upon the death of the bishop pillage his house, or suppress any thing by fraud to the detriment of his successor, he shall be reputed guilty of sacrilege, and condemned with the greater excommunication, and at the utmost only be allowed the communion of strangers. These are the Canons, wherein this punishment, or moderation of punishment, (call it which you please,) is mentioned: but so little light can be had from the Canons themselves, as to the nature of the punishment, that it is no great wonder, that learned men have run into various opinions about it.

SECT. 2.—The Communion of Strangers not the same as Lay-Communion.

Some confound it altogether with lay-communion, as Binius, in his Notes upon the Council of Lerida,<sup>2</sup> and Hospinian,<sup>3</sup> and the old Gloss upon Gratian.<sup>4</sup> But it is no ways probable, that the ancient Church would use two such different names for the same thing, when lay-communion was a word so commonly known among them. Besides that, these two things were evidently different from one another: for clergymen, reduced to lay-communion, were totally and perpetually degraded from their orders, and could not ordinarily be restored to their office again, but ever after continued in the state of laymen, as has been evidently demonstrated in the foregoing chapter: whereas clergymen reduced to the communion of strangers, were still capable of

<sup>1</sup> Con. Herden. can. xv. Si quisquam clericus quâcunque occasione quidpiam probatus fuerit abstulisse, vel forsitan dolo aliquo suppressisse, reus sacrilegii, prolixiori anathemate condemnatur, et vix quoque peregrina ei communitio concedatur.

<sup>2</sup> Binius Not. in Con. Herden. can. xv.

<sup>3</sup> Hospin. Histor. Sacramentar. lib. ii. cap. i. p. 24.

<sup>4</sup> Gloss. in Gratian. Caus. xiii. quæst. ii. cap. 11.

being restored to their office again after the performance of a certain penance, as is expressly said in the forementioned Canon of the Council of Agde, can. ii.

SECT. 3.—Nor Communion in one Kind.

Bellarmin<sup>1</sup> and others not only take it for lay-communion, but boldly assert, that that lay-communion was communion only in one kind: so that when a clergyman is said to be reduced to lay-communion, it is the samething, according to them, as being put down to receive the communion among laymen in one kind. But this is only multiplying of obscurities, and confounding a reader, by adding one error to another. For as the Ancients speak of lay-communion and the communion of strangers as different things; so they had no such notion of lay-communion, as these writers pretend: for all public communion both of clergy and laity in the primitive Church was in both kinds, as has been evidently demonstrated in a former book,<sup>2</sup> and is now ingenuously confessed by the most learned and accurate writers in the Romish Church. So that this opinion, which confounds the communion of strangers with communion in one kind, is without all shadow of truth, and has not the least foundation in antiquity to support it.

SECT. 4.—Nor Communion at the Hour of Death.

The author of the Gloss upon Gratian has another pleasant interpretation: for he fancies it may signify communion at the hour of death, when a man leaves the world, and departs out of this life to take a pilgrimage into the next life and world to come.<sup>3</sup> But this is only fit to make an intelligent reader smile. For it is very improper to call death a pilgrimage, which more strictly speaking, according to Scripture language, is rather a translating of men to their native country, their heaven and their home. Men are said to be

<sup>1</sup> Bellarm. de Euchar. lib. iv. cap. xxiv. p. 679.  
chap. v. sect. 1. &c.

<sup>2</sup> Book xv.  
<sup>3</sup> Gloss. in Grat. ubi supra. Peregrina  
communio, id est, cum recedit, vel peregrinatur de hoc mundo.

strangers and pilgrims upon earth, because they are absent from heaven, the city and country, to which they belong: therefore leaving this world, cannot be said to be entering upon a pilgrimage, but, in propriety, rather ending and finishing a pilgrimage, to go to their everlasting home. Therefore, if the Ancients spake properly, as no doubt they did, they could not mean by the communion of strangers, the communion of dying persons, or such as were taking a pilgrimage out of this world. Besides that the very Canon of the Council of Agde, which the Glosser pretends to explain, makes the communion of strangers not to be the communion of dying persons, but such as are living, and in a capacity to return to officiate as clergymen (after a sufficient correction) in their former station.

SECT. 5.—Nor the Communion of such, as were enjoined to go on Pilgrimage on Earth by way of Penance, a Piece of Discipline unknown to the Ancients.

Cardinal Bona mentions<sup>1</sup> and exposes another more fanciful opinion of one Gabriel Henao, who, he says, wrote a long dissertation upon this subject,<sup>2</sup> wherein he at last concludes, that the communion of strangers was that, which was given to such clergymen, as were enjoined to go on pilgrimage, either temporary or perpetual, by way of penance for their offences. But he no way explains what kind of communion this was; and as Bona observes, he ought to have demonstrated, that when the Canons about the communion of strangers were made, there was any such punishment as pilgrimages, enjoined the clergy for the expiation of their offences. For there is a profound silence in antiquity as to what concerns any such injunction.

SECT. 6.—Nor any private and peculiar Oblation for Strangers.

Cassander<sup>3</sup> and Vossius,<sup>4</sup> after some of the schoolmen and Canonists, think the communion of strangers means the ob-

<sup>1</sup> Bona de Rebus Liturg. lib. ii. cap. xix. n. 5.  
Sacrific. Missie. Part. iii. Disput. xxviii. n. 49.  
de Communionis sub utrâque specie, p. 1029.  
Theol. p. 516.

<sup>2</sup> Henao de  
<sup>3</sup> Cassand.  
<sup>4</sup> Voss. Thes.

lation of the eucharist made after some peculiar rite, and on some particular days, for the use of strangers; and that it was put upon delinquent clergymen as a punishment to communicate with these. But there was no such custom as this of making any particular oblation of the eucharist for strangers in the ancient Church: for all travellers and strangers, when they came to a foreign church, if they brought communicatory or commendatory letters with them, were admitted to communicate with the Church wherever they happened to sojourn: and if they did not bring communicatory letters, they were denied communion till they should procure them. Meanwhile they were allowed to communicate in external good things, or partake of the charity of the Church, if they were in necessity, though they were debarred from all religious communion as suspected persons. And by this distinction we shall be able to come at the true meaning of the communion of strangers.

**SECT. 7.**—But communicating only as Strangers travelling without commendatory Letters, who might partake of the Church's Charity, but not of the Communion of the Altar.

For we are to observe, that communion in the ancient Church signifies not only partaking of the eucharist, or communion of the altar; but also partaking of the charity of the Church. And such travellers, as came to any foreign church without communicatory letters, to testify their orthodoxy and pious conversation, were presumed to be under some censure, and not in actual communion with their own church: till therefore they could clear themselves of this suspicion, by the rules of the Catholic unity, and communion of all Churches mutually with one another, they were to be refused communion in a foreign church, and only to be allowed common charity as strangers. And according to these measures, clergymen, who were delinquents, were for some time treated much after the same manner, and thereupon said to be reduced to the communion of strangers: that is, they might neither officiate as clergymen in celebrating the eucharist, nor any other part of their office: nor in some

cases participate in the eucharist for some time, till they had made satisfaction; but only be allowed a charitable subsistence out of the revenues of the Church, without any legal claim to a full proportion, till by a just penance they could regain their former office and station. This is the most probable account, that can be given of a difficult and doubtful matter, and learned men now generally concur in the substance of this explication; as the reader, that is curious, may see in the writings of Abaspinaeus<sup>1</sup> and Bona,<sup>2</sup> Schelstrate,<sup>3</sup> Priorius,<sup>4</sup> Petavius,<sup>5</sup> Dominicy,<sup>6</sup> and Sirmond;<sup>7</sup> not to mention the hints and strictures occasionally made about it by Lindanus,<sup>8</sup> Baronius,<sup>9</sup> and Peter de Marca,<sup>10</sup> all writers of the Romish communion; whom I the rather name upon this account, to expose more fully the vanity of Bellarmin and his adherents, who with a great deal of confidence, would persuade the world, that they had discovered the lay-communication of their Church under one species, as they call it, in this ancient communion of strangers, when yet they differ as much almost as any two things from one another. Among Protestant writers, the true notion is well expressed by Dr. Sherlock,<sup>11</sup> when he observes, “That the ancient discipline was very severe in admitting strangers, who were unknown to them, to the communion; lest they should admit heretics, or schismatics, or excommunicated persons: and therefore if any such came, who could not produce their recommendatory letters, but pretended to have lost them by the way, they were neither admitted to communion, nor wholly refused, but, if occasion, were maintained by the Church, till such letters could be procured from the Church from whence they came, which was called the *Communio Peregrina*.”

<sup>1</sup> Albasp. Observat. lib. i. cap. 3.  
lib. ii. cap. xix. n. 6.

<sup>2</sup> Bona de Rebus Liturg.

<sup>3</sup> Schelstrat. Not. in Con. Antioch. p. 397.

<sup>4</sup> Priorius de Literis Canonicis Titul. xi. p. 38.

<sup>5</sup> Petav. Not. in Synesii Epist. lxxvii. p. 78.

<sup>6</sup> M. Anton. Do-

minicy. de Commun. Peregrin.

<sup>7</sup> Sirmond. Hist. Pœnitentiæ

cap. ult.

<sup>8</sup> Lindan. Panoplia. lib. iv. cap. 58.

<sup>9</sup> Baron. an. 400. p. 119.

<sup>10</sup> Marca. Dissert. in Cap. Clericus,

ad calcem Baluzii de Emendat. Gratiani. p. 583.

<sup>11</sup> Sherlock

of Church-Unity, in Defence of Stillingfleet, p. 602.

SECT. 8.—This Notion confirmed from several Parts of ancient History.

This notion seems the more agreeable, because it comes recommended and confirmed by several facts in ancient history. Synesius writing to Theophilus, bishop of Alexandria, concerning one Alexander, bishop of Basinopolis in Bithynia, who lay under some suspicion at Ptolemais, tells him, he neither received him in the church, nor communicated with him at the holy table,<sup>1</sup> but in his own house he treated him as an innocent person. And thus, the historians tell us,<sup>2</sup> Chrysostom treated the Egyptian monks, who, being prosecuted by Theophilus, bishop of Alexandria, fled to Constantinople, to have a fair hearing of their cause before the emperor: he entertained them hospitably, and allowed them to join in the common prayers with the Church, but would not admit them to participate at the eucharist, whilst their cause was depending and undetermined. From which it is evident, that strangers travelling without recommendatory letters might be allowed some common offices of christian charity, but could not be admitted to christian communion. And so it was determined expressly in the Apostolical Canons,<sup>3</sup> that if any strange bishops, presbyters, or deacons, travelled without commendatory letters, they should neither be allowed to preach, nor be received to communion, but only have τὰ πρὸς τὰς χρεῖας, what was necessary to answer their present wants, that is, a charitable subsistence. In the first Council of Carthage likewise a rule was made,<sup>4</sup> that neither clergyman nor layman should communicate in a strange church without the letters of their bishop, for fear of surreptitious communion. And in every Council almost there is a Canon to the same purpose. So that according to the treatment of strangers, whether cler-

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<sup>1</sup> Synes. Ep. lxxvi. ad Theotimum leg. Theophilum.      <sup>2</sup> Socrat. lib. vi. cap. 9. Sozomen. lib. viii. cap. 13.      <sup>3</sup> Canon. Apost. xxxiii.      <sup>4</sup> Con. Carthag. i. can. 7. Clericus vel laicus non communicet in alienâ plebe sine literis episcopi sui. Nisi hoc observatum fuerit, communicatio fiet passiva. Vid. Con. Antioch. can. vii. Laodiceen. can. xli. Milevitan. can. xx. Agathen. can. lii. Epaunen. can. vi.

gymen or laymen, in a strange church; such was the discipline exercised upon delinquent clergymen in their own Church: they were suspended from their office and communion, but allowed a necessary subsistence, which was properly the *Communio Peregrina*, or reducing them to the communion of strangers.

SECT. 9.—What Sort of Penance was necessary to restore such delinquent Clergymen to their Office and Station again.

There remains but one difficulty now to be accounted for in this matter; which is, what sort of penance that was, which the Church required of such delinquent clergymen, in order to restore them to their office and station again. That they might be restored by penance, is evident from the fore-mentioned Canon of the Council of Agde,<sup>1</sup> which allows it; and in this the communion of strangers chiefly differed from the communion of laymen, that the one allowed a delinquent clergyman to be restored to his office, and the other ordinarily did not: but then there arises a difficulty from other canons, which both forbid, any one to be ordained,<sup>2</sup> who had done public penance, whilst he was a layman; and also prohibit clergymen, who were reduced to public penance, ever to recover their ancient dignity and station again.<sup>3</sup> Concerning both which points of discipline, besides the Canons, St. Austin is an irrefragable witness in reference to practice: for he testifies,<sup>4</sup> that this was the order of the Church, that no one, who had done penance for any crime, should be admitted to any clerical degree, or return to it after correction, or continue in it: which was done, not to make any one despair of pardon, but only to comply with the strict discipline of the Church. How then can it be said, that the communion of strangers allowed

<sup>1</sup> Con. Agathen. can. ii.                      <sup>2</sup> Con. Nic. can. x. Carthag. iv. can. 56, et 68. Tolet. i. c. 2. Agathen. c. xliii. Epaun. c. iv.

<sup>3</sup> Con. Carth. v. c. 11. Leo Ep. xc. ad Rustic. c. ii.

<sup>4</sup> Aug. Ep. l. ad Bonifac. p. 57. Ut constitueretur in ecclesia, ne quisquam post alicujus criminis pœnitentiam clericatum accipiat, vel ad clericatum redeat, vel in Clericatu maneat, non desperatione indulgentiæ, sed rigore factum est disciplinæ.

clergymen to recover their office and dignity by doing penance, when these canons for doing penance so plainly took it from them? To this it is easily answered by distinguishing between public and private penance: the Canons, which forbid clergymen to be restored to their office after having done penance, speak of public penance done solemnly in the church; but the other Canons, which allow them to be restored, speak of private penance only. And that this is no arbitrary distinction, but of the Church's own making, is evident from the Canons themselves. For the Council of Girone allows such as have done private penance in time of sickness,<sup>1</sup> and received absolution upon it, afterwards to be ordained, provided they never were brought to do public penance in the church, and there was no other objection of immorality to be made against them. In like manner, Gennadius recounting the several things, that hindered a man from being ordained, reckons his having done public penance a sufficient objection against him: but as for private penance, he takes no notice of it.<sup>2</sup> Therefore, by this rule, we are to interpret all the Canons, which forbid penitents to be ordained at first, or deny clergymen after penance the liberty of regaining their ancient station: they are to be understood of public penance, and not of private. And so this seeming difficulty and contradiction of the canons is easily adjusted, whilst the Council of Agde, which allows clergymen, reduced to the communion of strangers, liberty of resuming their office again after penance, must necessarily be interpreted of private penance, and not of public. And this makes it evident, that this reducing of clergymen to the communion of strangers was only a temporary suspension of them from their office, and not a total degradation, or reduction of them to the state and quality of laymen.

<sup>1</sup> Con. Gerunden. c. x. Qui ægritudinis languore depressus, pœnitentiæ benedictionem (quam viaticum deputamus) per communionem acceperit, et postmodum reconualescens caput pœnitentiæ in ecclesiâ publicè non subdiderit; si prohibitis vitiis non detinetur obnoxius, admittatur ad clerum.

<sup>2</sup> Gennad. de Eccles. Dogm. cap. lxxii. Clericum non ordinandum, qui publicè pœnitentiâ mortalia crimina deflet. Vid. Con. Tolet. i. can. 2. Pœnitentem dicimus, qui publicam pœnitentiam gerens, sub cilicio, divino fuerit reconciliatus altario.



## CHAP. IV.

*Of some other special and peculiar Ways of inflicting Punishment on the Clergy.*

SECT. I.—Sometimes the Clergy perpetually suspended from their Office, yet allowed to retain their Title and Dignity.

BESIDES these more general and usual ways of punishing the offending clergy, there were also some less noted and uncommon ways of censuring them, which it will not be amiss to observe, whilst we are upon this subject. Among these we may reckon that sort of suspension, which deprived them entirely of the exercise of their office, and yet allowed them to retain their title and dignity. This was a sort of middle way between a temporary suspension and a perpetual degradation: for they were still allowed to communicate among the clergy, and not entirely reduced to the communion of laymen. Thus in the Council of Ancyra,<sup>1</sup> those presbyters, who had sacrificed to idols, but afterwards returned, and became confessors, were allowed to keep their dignity and title of presbyters, and sit among the rest in the presbytery; but not to preach, or offer the eucharist, or perform any other office of the sacred function. The same is decreed concerning deacons lapsing into idolatry,<sup>2</sup> that they might retain their honour, but cease from all administration of the sacred office, neither distribute the bread nor the cup, nor minister as the common *Præcones*, or eriers of the Church, unless the bishop in consideration of their great pains, humility, or meekness, thought fit to allow them more or less of their office, which was left entirely to his discretion. The Council of Nice made a like decree,<sup>3</sup> concerning the Novatian bishops, whom they degraded to the

<sup>1</sup> Con. Ancyr. can. i. can. viii.

<sup>2</sup> Ibid. can. ii.

<sup>3</sup> Con. Nic.

order of presbyters, but yet permitted them to retain the title of bishops, if the bishop of the place thought fit to allow it. And the same was determined in the case of Miletius by the same synod,<sup>1</sup> that he might retain the bare name and honour of a bishop, but never after officiate in his own church, or any other. So, in the Canons of St. Basil,<sup>2</sup> a delinquent presbyter is allowed to sit among the rest, but obliged to abstain from all offices belonging to his order. And an offending deacon is suspended from his ministry,<sup>3</sup> but yet allowed to partake of the holy elements among the other deacons. The Council of Agde has a like decree about presbyters and deacons,<sup>4</sup> who were digamists, or had married the relict of some other man; that though some former rules of the Fathers had ordered them to be more severely handled, yet such respect and tenderness should be shewn to those, who were already ordained, that they might retain the name of presbyters and deacons: but the presbyters should neither presume to consecrate, nor the deacons to minister in the Church. A like determination was made by the general Council of Ephesus,<sup>5</sup> in the case of one Eustathius, metropolitan of Pamphylia, who for the love of a private life, and some troubles, that he met with in his office, voluntarily relinquished and deserted his bishopric against canon, but afterward petitioned the Council, that he might enjoy the name and honour of a bishop still: in which request the Council gratified him, out of regard to his age and quiet temper; allowing him to have both the name, and honour, and communion of a bishop, but with this condition, that he should neither ordain, nor take any church to officiate in as a priest by his own authority, unless he was admitted as a co-adjutor, or expressly allowed by the bishop of the place.

<sup>1</sup> Con. Nic. Epist. Synod. ap. Theod. lib. i. cap. 9. Socrat. lib. i. cap. 9. Sozomen. lib. i. c. 24.

<sup>2</sup> Basil. can. 27.

<sup>3</sup> Ibid.

can. 70. <sup>4</sup> Con. Agathen. can. i. Placuit de digamis, aut internupularum maritis, quanquam aliud Patrum statuta decreverint, ut qui hujusque ordinati sunt, habitâ miseratione, presbyteri vel diaconi nomen tantum obtineant: officium vero consecrandi presbyteri, et ministrandi hujusmodi diacones non præsumant.

<sup>5</sup> Con. Ephes. Ep. Synod.

ad. Synodum. Pamphyl. Con. tom. iii. p. 808.

SECT. 2.—Sometimes degraded, not totally, but partially, from one Order to another.

It appears from one of the forementioned canons,<sup>1</sup> that there was such a punishment also as a partial degradation; which was when the clergy were not totally deprived of all clerical degree and office, but only thrust down from an higher order to a lower, by way of discipline and correction. Thus the Council of Nice treated the Novatian schismatics, admitting those, who had passed for bishops among them, to officiate only as presbyters in the Catholic Church, unless any bishops would promote them to the office of a *Chorepiscopus* under their jurisdiction. And so the Council of Neocæsarea orders deacons,<sup>2</sup> that sin, to be thrust down and degraded to the order of subdeacons. And by this rule it was, as Valesius observes,<sup>3</sup> out of St. Jerom's Chronicon, that Cyril of Jerusalem degraded Heraclius from the order of a bishop to that of presbyter. But the Council of Chalcedon seems not to have approved of this rule: for in one of her canons it is said to be sacrilege, to bring down a bishop to the degree of a presbyter:<sup>4</sup> and that therefore if there be any just cause to remove a bishop from the exercise of his episcopal function, he ought not to hold the place of a presbyter neither. By which we may conclude, that this point of discipline varied, according to the different apprehensions and sentiments of men in different ages.

SECT. 3.—Sometimes deprived of a Part of their Office, but allowed to exercise the Rest.

Sometimes again they were deprived of their office, as to some particular act of it, but allowed to exercise the rest. Thus the Council of Neocæsarea orders, that if any presbyter confessed, that he had been guilty of any corporal

<sup>1</sup> Con. Nic. can. viii.

Tolet. i. c. 4. Con. Trull. c. 20.

lib. iv. c. 30.

<sup>2</sup> Con. Neocæsar. can. x. Vid. Con.

<sup>3</sup> Vales. Not. in Sozomen.

<sup>4</sup> Con. Chalced. can. xxix.

uncleanness before his ordination, he should not, consecrate the eucharist,<sup>1</sup> but might continue in the exercise of all other parts of his office, if he was a man diligent in his function. And in the fourth Council of Carthage it was decreed, that if a bishop ordained any one wittingly,<sup>2</sup> who had done public penance, the ordination of which was prohibited by the canons, he should for his transgression be deprived of his episcopal power, as to what concerned the particular act of ordaining only: which implies, that he was still allowed to exercise all other parts of his office and function.

SECT. 4.—Sometimes deprived of their Power over a Part of their Flock, but allowed it over the Rest.

In Afric we sometimes find bishops for their mal-administration and indiscreet government deprived of their power over some part of their flock, and yet allowed still to govern the rest. This may be collected from St. Austin's account of their proceeding with one Antonius, a young bishop, who had oppressed some of his people at Fussala, by unreasonable exactions; for which it was thought fit to punish him with this gentle correction, that he should no longer rule over that part of his people,<sup>3</sup> whom he had so oppressed, lest their grief and impatience should break out into some violent attempts, that might be dangerous to both parties. Antonius indeed complained of this as an infringement of his just rights and powers: for he pleaded, that a bishop ought either to be deposed, or to be left in the full exercise of his jurisdiction and power. But St. Austin shews, that this was no new thing in Afric, nor unreasonable in itself: for a bishop may be guilty of many misdemeanours, for which it will neither be proper to let him go wholly unpu-

<sup>1</sup> Con. Neocæsar. can. ix. *Μὴ προσφέρτω, μένων ἐν τοῖς λοιποῖς διὰ τὴν ἄλλην σπικῆν.*

<sup>2</sup> Con. Carthag. iv. can. 68. *Si sciens episcopus ordinaverit talem, etiam ipse ab episcopatus sui, ordinandi duntaxat, potestate privetur.* Vid. Con. Taurin. c. ii.

<sup>3</sup> Aug. Ep. 261. *Honorem integrum servavimus juveni corrigendo, sed corripiendo minimus potestatem, ne scilicet eis præset ulterius, cum quibus sic egerat, &c.*

nished, nor yet to use such severity as to deprive him universally of his episcopal honour and power. In such cases the middle way proves the most useful correction; neither to use too great severity above the nature of the offence, nor too much lenity and mildness, to let it pass entirely without any censure or correction. And he shews, that this was a method often taken in Afric for less faults in other instances of punishment.

SECT. 5.—Bishops in Afric punished by depriving them of their Seniority and Right of succeeding to the Primacy or Metropolitan Power.

Particularly in Afric, (where the primacy of metropolitans always went by seniority of ordination, so that the oldest bishop always regularly succeeded to the primacy of course, whatever diocese he was possessed of,) it was customary to punish an offending bishop, with the loss of his seniority and right to the primacy, by rendering him incapable of ever attaining it. This we learn from St. Austin in the same Epistle,<sup>1</sup> where he gives an instance in one Priscus, of the province of Mauritania Cæsariensis, who was thus censured: and if Antonius's argument had been good, Priscus might have pleaded the same, that he ought either to have been allowed his right of succeeding to the primacy, or to have been deprived of his bishopric: but the African discipline took the middle way, for certain crimes, neither to deprive bishops of their episcopal power, nor to let them go wholly unpunished.

SECT. 6.—Also by confining them to the Communion of their own Church.

Another instance of this discipline was to confine an offending bishop to the communion of his own Church, and prohibit all other bishops from admitting him to communion in any of their Churches. St. Austin mentions one Victor,<sup>2</sup>

<sup>1</sup> Aug. Ep. 261. Clamet Priscus provinciæ Cæsariensis episcopus: "Aut ad primatum locus sicut cæteris et mihi patere debuit, aut episcopatus mihi remanere non debuit."

<sup>2</sup> Aug. ibid. Clamet alius ejusdem provinciæ Victor episcopus, cui relicto in eâdem pœnâ in quâ et Priscus fuit,

who was thus censured ; and he might have pleaded after the same manner : either I ought to communicate in all Churches, or not communicate in my own. But this was thought a reasonable way of discountenancing an offending bishop for some smaller faults, when they did not think them worthy of the highest censure : as in case a bishop neglected to come to the provincial synod at the primate's call, or ordained another man's clerk without his license or approbation ; which are some of the offences specified in the African synods,<sup>1</sup> for which a bishop might incur this censure.

SECT. 7.—Or removing them from a greater Diocese to a less.

St. Austin gives a third instance of this discipline in the African Church : which was the removing of a negligent bishop from a greater diocese to a less ; which was a kind of tacit reproach and dishonour to him, and the disgrace was his punishment. For as it was an honour for a bishop to be translated from a less diocese to a greater by the approbation and judgment of a venerable synod, without which they might not move : so it was a dishonour and reproach to him to be thrust down by a synodical decree, though not to a lower order, yet to a lower station. The one was an argument of merit and great worth, and the other an argument of some demerit and misdemeanor ; and therefore the one was used by way of reward, to promote a bishop for his abilities and good service ; and the other by way of punishment, to give a negligent bishop a little gentle admonition and moderate correction. And thus St. Austin tells us, one Laurentius, a bishop, was punished by the discipline of the African Church.<sup>2</sup>

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nusquam nisi in diœcesi ejus ab alio communicatur episcopo : clamet, inquam, aut ubique communicare debui, aut etiam in meis locis communicare non debui.

<sup>1</sup> Vid. Con. Carthag. v. can. 10, 13. et Cod.

Afric. can. 77, et 81.

<sup>2</sup> Aug. *ibid.* Ep. 261.

SECT. 8.—The Clergy in general punished by Loss of their Seniority among those of the same Order.

It was a moderate punishment, much of the same nature, which the Council of Trullo mentions as common to all orders of the clergy in general:<sup>1</sup> which was to deprive them of their seniority, and sink them down to the lowest seat or degree among those of the same order. This was commonly the punishment of persons of an ambitious and assuming temper. The Council instances in such deacons, as, because they had some more honourable ecclesiastical office, would presume to take place of the presbyters, and sit before them; against whom they allege the parable of our Saviour, “When thou art bidden to a wedding, sit not down in the most honourable place, &c. for he, that exalteth himself, shall be abased; and he, that humbleth himself, shall be exalted.” The author of the Apostolical Constitutions takes notice of the same punishment, as used in his time, even among the laity also. For if an honourable person came into the assembly, being a stranger, and any one refused upon the deacon’s admonition to give him place to sit down; he that so refused was to be removed by compulsion<sup>2</sup> beneath the lowest rank of hearers in the Church. Cotelearius notes the same order as observed among the monks in the rules of Pachomius and St. Benedict for smaller offences. And in the second Council of Nice, a like rule was made for the correction of the clergy,<sup>3</sup> that if any one through haughtiness insulted another, he should for his offence be thrust down to the lowest degree of his own order, to teach him humility and submission in his station.

SECT. 9.—And rendering them incapable of being promoted to any higher Order.

They had also a negative punishment of the same nature for all the inferior orders of the clergy, which was, to deny

<sup>1</sup> Con. Trull. can. vii.  
Nic. ii. can. 5.

<sup>2</sup> Constit. lib. ii. cap. 58.

<sup>3</sup> Con.

them all further promotion, and incapacitate them from attaining to any higher order in the Church. The first Council of Toledo has several canons to this purpose. The first canon orders,<sup>1</sup> that deacons, who lived incontinently with their wives, should never arrive to the honour of presbytery, nor presbyters to episcopacy. This was one of the first steps made towards settling the celibacy of the clergy, which at first was introduced, not by disannulling the orders of the married clergy, but by debarring them from being advanced to any higher order. Another canon appoints,<sup>2</sup> that if a reader marries a widow, he shall never be promoted to any higher degree, but always continue a reader, or at most a sub-deacon. And a third canon of the same Council decrees,<sup>3</sup> that if any one after baptism had followed the soldier's life, though he had never happened to shed blood, if he were ordained to any of the inferior orders, he should never arrive to the dignity of a deacon in the Church. A like decree was made in the Council of Lerida, that if any clergyman, who ministered at the altar, shed human blood, though it were the blood of an enemy in the straightness of a siege, he should not only be suspended from his office and communion for two years, but, after he was restored to his office and communion again,<sup>4</sup> should remain incapable of being advanced to any higher office in the Church. And there is another canon in the same Council, which orders such clergymen as fall by the frailty of the flesh, after penance, to be received again; yet so as not to expect any further promotion in the Church.<sup>5</sup> The first Council of

<sup>1</sup> Con. Tolet. i. c. 1. Placuit ut diacones, qui incontinentè cum uxoribus vixerint, presbyterii honore non cumulentur. Si quis verò ex presbyteris ante interdictum filios suos suscepit, de presbyterio ad episcopatum non admittatur.

<sup>2</sup> Ibid. can. iii. Lector, si viduam alterius uxorem acceperit, ampliùs nihil sit, sed semper lector habeatur, aut forlè sub-diaconus.

<sup>3</sup> Ibid. can. viii. Si quis post baptismum militaverit, et chalydem sumpserit, aut cingulum ad necandos fideles, etiamsi gravia non admiserit, si ad clerum admissus fuerit, diaconii non accipiat dignitatem.

<sup>4</sup> Con. Herden. can. i. Ita demum officio vel communioni reddantur, eà tamen ratione, ne ulteriùs ad officia potiora provehantur.

<sup>5</sup> Ibid. can. v. Ita tamen, ut sic officiorum suorum loca recipiant, ne possint ad altiora officia ulteriùs promoveri.



Orange, and the Council of Turin<sup>1</sup> have canons to the same purpose: and Pope Leo delivers it as a rule, founded upon the general practice of the Church, in the case of heretical clergymen returning to the unity of the faith, that they were to take it as a favour, if they were allowed to continue in the order they were in before, deprived of all hopes of further advancement.<sup>2</sup> Among the Greeks St. Basil has a like rule concerning readers,<sup>3</sup> who were guilty of anti-nuptial fornication, that every such delinquent should be suspended a year from his office, *μένων ἀπρόκοπος*, remaining moreover for ever incapable of attaining to any higher station or preferment in the Church. And Justinian, in one of his Novels made a parallel decree concerning readers,<sup>4</sup> that if any of them married a second wife, or a widow, or one divorced from a former husband, or otherwise forbidden by the laws or sacred canons; that he should never be advanced to any other ecclesiastical order: or if by any means he happened to be unwarily so advanced, he should be put down again, and reduced to his former order. This was one of those negative punishments, which may be proper to discourage and correct offences of a lesser kind; and so far as it was serviceable to that end, it may be reckoned an useful part of the discipline of the Church.

SECT. 10.—The Clergy sometimes punished by denying them the public Exercise of their Office, whilst they were allowed to officiate in private.

St. Basil mentions another piece of discipline,<sup>5</sup> which was pretty peculiar; for I remember no other writer at present that mentions it beside himself: that was to deny an

<sup>1</sup> Con. Arausican. i. can. 24. Taurinen. can. vii.      <sup>2</sup> Leo. Ep. iii. ad Julianum. al. Januariem. Circa quos etiam eam canonum constitutionem præcipimus custodiri, ut in magno habeant beneficio, si ademptâ sibi omni spe promotionis, in quo inveniuntur ordine, stabilitate perpetuâ maneant, si tamen iteratâunctione non fuerint maculati.      <sup>3</sup> Basil. can. lxxix.

<sup>4</sup> Justin. Novel. 123. cap. xiv. Si lector secundam ducat uxorem, aut primam quidem viduam, aut separatam à viro, aut legibus vel sacris canonibus interdictam, nequaquam ad alium ecclesiasticum ordinem provehatur: sed etsi ad majorem ordinem perducatur, expellatur eò, et priori restituatur.

<sup>5</sup> Basil. can. xvii.

offending clergyman the liberty of exercising his office in public, whilst he was allowed to officiate in private. This was a rule made by St. Basil in the case of Bianor and some other presbyters of Antioch in Pisidia, who upon some injury done them, had rashly sworn they would never execute the office of presbyters any more: but afterward repenting of their rash oath, were willing to be admitted to the exercise of their office again. St. Basil being consulted in the case, determined, that they ought to be restrained from the public exercise of their function, because of the scandal and offence, that might be given to many thereby; but still they might be allowed to officiate in private, where no such offence could be taken. These are the specialities of those punishments, which the discipline of the Church commonly inflicted on clergymen for lesser offences; which I have the rather mentioned, because they are seldom to be met with in the accounts of Church discipline, given by modern writers.

SECT. 11.—Of Intrusion of Offenders into a Monastery to do Penance in private.

To all these we may add, that in the fourth and fifth ages, when monasteries began to be settled in the world, nothing was more common than to confine an offending clerk to some monastery, either for a certain term, or during his whole life, as the nature of his temporary suspension or his perpetual deprivation required: there to exercise himself in acts of private repentance for his offences. This was a convenience rather than a punishment, giving them an opportunity of qualifying themselves the better either for a restoration to their office, or for their reception into lay-communication: and therefore it was indifferently used both in cases of deprivation and suspension. Many, who were only suspended from the exercise of their office for a certain time, were yet confined to a monastery during that term; as appears from one of Justinian's Novels, where it is ordered, that if a presbyter or a deacon was convicted of giving false evidence in a pecuniary cause, they should be suspended from

their ministry for three years, and be confined to a monastery during the time of their suspension.<sup>1</sup> And this was in lieu of scourging, which was inflicted for this crime upon other offenders. The second Council of Seville decrees the same in the case of a clergyman, who deserts his own church without his bishop's leave, and makes his residence in any other:<sup>2</sup> he is to lose the badge of his honour and ordination for some time, and be bound to a monastery, till it be proper to recall him to the ministry of his ecclesiastical order again. But in case the punishment amounted to a total and perpetual deprivation, then they were frequently sent to a monastery for their whole lives, and there they spent the remainder of their days only in lay-communication. Of which the canons of Agde and Epone are full proof,<sup>3</sup> to which I refer the learned reader in the margin.

SECT. 12.—Of corporal Punishment. How far used as a piece of Discipline upon the inferior Clergy.

We may observe further, that in the same ages, when it was the custom to shut delinquents up in a monastery, some corporal punishment and confinement in prison also was used, as a piece of Church discipline; to correct the inferior orders. I have had occasion to show before,<sup>4</sup> that the larger churches had commonly their *Decanica* or *prisons*, for this purpose; which were not any one distinct building, but some of the *Catechumenia*, or *Diaconica*, or *Secretaria*, belonging to the church, and made use of for this end, to put offending clerks to a more decent confinement in them. It

<sup>1</sup> Justin. Novel. 123. cap. xx. Sufficiat pro verberibus tribus annis separari à sacro ministerio, et monasteriis tradi.

<sup>2</sup> Con. Hispanen. can. iii. Desertorem clericum, cingulo honoris atque ordinationis suæ exutum, aliquo tempore monasterio relegari. al. religari convenit: sique postea in ministerio ecclesiastici ordinis revocari.

<sup>3</sup> Con. Agathen. can. 1. Si episcopus, presbyter, vel diaconus capitale crimen commiserit, aut chartam falsaverit, aut testimonium falsum dixerit, ab officii honore depositus, in monasterium retrudatur: et ibi, quamdiu vixerit, laicam tantummodo communionem accipiat. Con. Epauenen. can. xxii. Si diaconus aut presbyter crimen capitale commiserit, ab officii honore depositus, in monasterium retrudatur, ibi tantummodo quamdiu vixerit communionem sumendo.

<sup>4</sup> Book viii. chap. vii. sec. 2.

has also been noted in another place,<sup>1</sup> that all monasteries had the discipline of the whip or scourge among them, to punish the junior monks and unruly offenders. And it is as certain it was also used for the correction of the inferior orders among the clergy. The Council of Agde mentions it twice;<sup>2</sup> first as the punishment of those, who wandered about from one Church to another, without the recommendatory letters of their bishop: whom the canon orders first to be corrected by words, and then by stripes, if they remained incorrigible upon admonition. Another Canon appoints the same discipline for drunkenness:<sup>3</sup> a clerk, who is convicted of being drunken, is either to be suspended thirty days from communion, or else to be chastised by corporal punishment. The Council of Epone expressly distinguishes between the superior and inferior clergy in the case:<sup>4</sup> if one of the superior clergy feast with an heretic, he is to be suspended for a year; but one of the inferior for the same crime is to be beaten. The first Council of Maseon orders,<sup>5</sup> that if a clergyman be found wearing an indecent habit, or carrying arms, he shall be imprisoned thirty days, and fed only with bread and water. This imprisonment was the punishment of the superior clergy: for in another Canon the distinction is expressly made in the case of one clergyman accusing another before a secular magistrate:<sup>6</sup> if he was one of the superior clergy, he was to be imprisoned thirty days; if one of the inferior, to receive forty stripes, save one. And this was done in conformity to the rule in the law of Moses,

<sup>1</sup> Book vii. chap. iii. sect. 12.

<sup>2</sup> Con. Agathen. can. xxxviii.

Clericis, sine commendatitiis epistolis episcopi sui, licentia non pateat evagandi.—Quos si verborum increpato non emendaverit, etiam verberibus statuimus coereeri.

<sup>3</sup> Ibid. can. xli. Clericum quem ebrium fuisse constiterit, aut triginta dierum spatio communionem statuimus submovendum, aut corporali subdendum supplicio.

<sup>4</sup> Con. Epauenen. can. xv. Si superioris loci clericus hæretici cujuscunque convivio interfuerit, anni spatio pacem ecclesiæ non habebit; quod si minores clerici præsumpserint, vapulabunt.

<sup>5</sup> Con. Matiscon. i. can. 3. Clericus, si cum indecenti veste aut cum armis inventus fuerit, à seniore ita coereatur, ut triginta dierum inclusione detentus aquâ tantum et modico pane diebus singulis sustentetur.

<sup>6</sup> Ibid. can. v. Si junior fuerit, uno minus de quadraginta ictus accipiat; si certe honoratior, triginta dierum inclusionem muletetur.

that they should not exceed forty stripes; only in case the crime was great, they might repeat them after some days; which is observed out of the Life of Caesarius Arelatensis by the late French author of the *Historia Flagellantium*,<sup>1</sup> who cites many other writers, which need not here be mentioned. I only add that of St. Austin,<sup>2</sup> who says, “this way of coercion was used in bishop’s courts in his time;” but whether he means towards the clergy, or the laity, is not absolutely certain. It might be towards both perhaps in lesser criminal causes, that were of an ecclesiastical nature: for as to those criminal causes, which were of a civil nature, bishops had no power, especially in cases of blood; in which sort of judgments a bishop could not be concerned, without incurring himself the highest censures of the Church: but they might have liberty to chastise the inferior clergy with corporal correction. The law indeed in many cases exempted the superior clergy from corporal punishment: as if a presbyter or a deacon gave false testimony in a pecuniary cause, they might be suspended, and sent to a monastery for a time, but not be corporally punished as other men. In criminal causes it was otherwise: false testimony in such a case deprived them of their orders, and reduced them to the state of laymen; and then, as other laymen, they were liable to corporal punishment, according as the laws required. But whether it were a pecuniary cause, or a criminal cause, if one of the inferior orders gave false testimony, in either case he was liable to suffer corporal punishment: and in this consisted the difference between the superior and inferior clergy in this part of discipline, as is noted in one of Justinian’s Novels,<sup>3</sup> which helps to explain the practice of the Church. And this is what I had to observe concerning those punishments, which by the rules of the ancient discipline were peculiarly inflicted on the clergy for the correction of their offences.

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<sup>1</sup> *Historia Flagellantium*. cap. v. et vi. Paris. 1700. Svo.

Ep. 159. ad Marcellin. Qui modus coercionis, per virgarum verbera, sæpe etiam in judiciis solet ab episcopis adhiberi.

<sup>2</sup> Aug.

<sup>3</sup> Justin Novel.

23. cap. xx.

## CHAP. V.

*A particular Account of the Crimes for which Clergymen were liable to be punished with any of the forementioned Kinds of Censure.*

SECT. 1.—All Crimes, that were punished with Excommunication in a Layman, punished with Suspension or Deposition in the Clergy.

It remains that we now give a particular account of those crimes, for which clergymen might be punished. And here we must observe, that their crimes were of two sorts, such as were common to them with laymen, and such as they might be guilty of in transgressing the rules particularly relating to their office and function. Of the former sort, I need not discourse particularly here, because I have done it largely in the last Book, where I examined the nature of the several great crimes, for which a layman might incur the censure of excommunication: there being only this general difference to be observed between the crimes of a laic and an ecclesiastic, that what was commonly punished with excommunication in a layman, was ordinarily punished with suspension or deposition in a clergyman; or, if the crime was very scandalous and flagrant, with excommunication also. For this reason I here pass over the great crimes of idolatry, divination, magic, sorcery, and enchantment, apostacy, heresy, schism, sacrilege, and simony; which are crimes against the first and second commandment in the decalogue: as also blasphemy, profane swearing, perjury, and breach of vows, against the third commandment: all violations of the law enjoining the religious observation of the Lord's day, against the fourth commandment: all disobedience and disrespect to parents, and treason and rebellion against princes, and general contempt of the laws of the Church, infringing the obligations of the fifth commandment: all the species of murder against the sixth commandment; and all species of uncleanness and

intemperance against the seventh : all kinds of theft, fraud, oppression, and injustice against the eighth : and all kinds of false testimony, libelling, informing, calumny, and slander, against the ninth commandment ; because I have already spoken of all these in particular, and shewn, that as they were punished with excommunication in the laity, so they were commonly punished with suspension or deprivation, and sometimes with excommunication in the clergy also. But besides these crimes, common both to laity and clergy, there were many transgressions and offences, that might be committed by the clergy against the particular rules of their function and profession : and of these we are here to make a more special inquiry. Some of these respected their entrance upon their office ; others, their behaviour in it. We will now speak particularly, but briefly and succinctly, of both.

SECT. 2.—Some Crimes rendered an Ordination originally void, and for such the Clergy were immediately liable to be degraded from their very first Ordination. As, first, for Ignorance or Heterodoxy in Religion.

Some qualifications were originally required in the clergy as necessary at their entrance upon the clerical life and function : and therefore certain rules were prescribed for a due examination and inquiry into these, before their ordination ; and a defect in any of these qualifications, or a transgression against any of these rules, was enough to render an ordination null and void *ab origine* ; so that the clergy thus ordained, were liable to be degraded or deposed immediately from their very first ordination. Of these qualifications, as I have had occasion to shew more at large in a former Book,<sup>1</sup> some respected their faith and knowledge, others their former life and morals, and others their outward quality and condition in the world : and a defect in any of these qualifications, or a transgression of any of the rules prescribed, was in the common course of the discipline of the Church a sufficient reason to depose a clergyman as soon as he was ordained. The first and principal qualifica-

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<sup>1</sup> Book iv. chap. iii.

tion, so necessarily required, was an orthodox faith, and a competent knowledge in the Scriptures and all things relating to the exercise of his function: and if either a bishop was ordained without such an examination, or without such qualifications, both the ordainer and the ordained were immediately to be deposed. The words of Justinian's law are very express in this business:<sup>1</sup> "if any bishop is ordained contrary to the forementioned observation, we command, that both he, who is so ordained, be deposed, and also the bishop who so illegally ordained him."

SECT. 3.—Secondly, for Immorality and Transgressing any of the known Rules of Ordination.

Another strict inquiry was to be made into men's morals; and if in any notorious instance they had formerly been culpable and scandalous, their ordination was forbidden; or if by ignorance or surreption they were ordained, they were immediately upon discovery and conviction to be suspended, if not deposed. Thus in the Council of Neocæsarea we find a rule,<sup>2</sup> that if a presbyter confessed, that before his ordination he had been guilty of corporal uncleanness, he was no longer to be allowed to offer the sacrifice of the altar. This sin always made a man irregular, though some were of opinion, as the canon intimates, that other sins were done away by ordination. The canons further required, that a man should be no digamist, or twice married, nor married to a widow, nor to any, that had been divorced from another man: and if any such were ordained, by the same rule of Justinian, they were immediately liable to be deposed. It was forbidden likewise to ordain any man ἀπολελυμένως, that is, without fixing him to some particular diocese or Church: and the ordination of any one contrary to this rule, is by Pope Leo<sup>3</sup> pronounced vain; and by the great Council

<sup>1</sup> Justin. Novel. 137. cap. ii. Si quis autem præter memoratam observationem episcopus ordinetur, jubemus et ipsum omnibus modis episcopatu dejici, et eum qui contra talem observationem eum ordinare ausus fuerit.

<sup>2</sup> Con. Neocæsar. can. ix. Vid. Con. Nic. can. ix. et x. Con. Eliber. can. lxxvi.

<sup>3</sup> Leo. Ep. xcii. ad Rusticum. cap. i.



of Chalcedon,<sup>1</sup> null and void. It was another rule of this kind, for the preservation of good order in the Church, that no bishop should ordain another man's clerk without his consent: and if any one did so, the great Council of Nice,<sup>2</sup> and the Council of Sardica,<sup>3</sup> and the second of Arles,<sup>4</sup> peremptorily pronounce all such ordinations null and void. It was required in the election and ordination of a bishop, that there should be the general consent of these four parties, the clergy, the people, the provincial bishops, and the metropolitan: and ordinations performed in derogation to any part of this rule, are by abundance of canons declared absolutely void, and bishops so promoted are appointed to be deposed. The Council of Antioch, is express in requiring the presence, or consent of the provincial bishops<sup>5</sup> and Metropolitan; decreeing, that an ordination performed contrary to this rule, shall be of no force, *μηδὲν ἰσχυρίν*. The Council of Riez<sup>6</sup> for this reason actually degraded Armentarius, bishop of Ambrun, because he had neither the general consent of the provincial bishops, nor the metropolitan, but was clandestinely ordained by two bishops without the knowledge of the other parties chiefly concerned. The canons, in the Latin Church especially, are altogether as peremptory and plain in disannulling all ordinations of bishops to any place against the general consent of the people. Let no bishop, says one of the Councils of Orleans,<sup>7</sup> be imposed upon a people against their wills. Nor let the clergy and people be constrained to give their consent by the oppression of any potent persons. If any such thing is done, the bishop, who is so ordained rather by violence, than any

<sup>1</sup> Con. Chalced. can. vi. See more of this Book iv. chap. vi. sect. 2.

<sup>2</sup> Con. Nic. can. xvi.

<sup>3</sup> Con. Sardic. can. xv.

<sup>4</sup> Con. Arelat. ii. c. 13.

<sup>5</sup> Con. Antioch. can. xix.

<sup>6</sup> Con. Rhegiense, can. i. Ordinationem, quam canones irritam definiunt, nos quoque vacuandam esse censuimus, in qua prætermissa trium præsentia, nec expetitis comprovincialium literis, metropolitani quoque voluntate neglectâ, prorsus nihil, quod episcopum faceret, ostensum est. Vid. Con. Arelat. ii. can. 6. Con. Aurelian. v. can. 10.

<sup>7</sup> Con. Aurelian. can. xi. Nullus invitis detur episcopus, &c. quod si factum fuerit, ipse episcopus, qui magis per violentiam quam per decretum legitimum ordinatur, ab indepto pontificatus honore in perpetuum deponatur.

legal decree, shall be deposed for ever from the honour of his priesthood. In like manner the Council of Chalons,<sup>1</sup> “a bishop shall not be chosen to any city any other way, but by the consent of the provincial bishops, the clergy, and the people: if otherwise, the ordination shall be null and void.” To this agrees the resolution of Pope Leo,<sup>2</sup> in answer to the queries of a French bishop, that “reason will not allow those to be received as bishops, who were neither chosen by the clergy, nor desired by the people, nor consecrated by the provincial bishops with the judgment of the metropolitan.” And that rescript of Honorius concerning the election of the bishop of Rome,<sup>3</sup> that if two bishops were ordained by two contending parties, neither of them should be bishop, but one who was chosen out of the clergy by the judgment of the provincial bishops and the consent of all the people. So that if any bishop was ordained against these rules, his ordination was void, and he was liable to be deposed, as soon as he was ordained. So if any bishop was ordained, who was before under the sentence of deposition, his ordination was null, as was declared in the case of Timotheus Ælurus, by several provincial councils related in the acts of the Council of Chalcedon.<sup>4</sup> If a bishop was ordained into a full see, where another was regularly ordained before him, his ordination was of no effect: he was to be reputed as no bishop, but to be rejected as an adulterer, an intruder, an invader of other men’s rights, and a wolf only in sheep’s clothing: which was the answer, that Cyprian<sup>5</sup> gave in the

<sup>1</sup> Con. Cabillon. i. can. 10. Si quis episcopus de quâcunque civitate fuerit defunctus, non ab alio nisi à comprovincialibus, clero et civibus suis alterius habeatur electio: sin aliter, hujus ordinatio irrita habeatur.

<sup>2</sup> Leo. Ep. xcii. ad Rusticum Narbon. cap. i. Nulla ratio sinit, ut inter episcopos habeantur, qui nec à clericis sunt electi, nec a plebibus expetiti, nec à provincialibus episcopis cum metropolitani judicio consecrati.

<sup>3</sup> Honorii Rescript. ad Bonifac. ap. Crab. tom. i. p. 491. Si duo contra fas temeritate certantes, fuerint ordinati, nullum ex his futurum penitùs sacerdotem; sed illum solum in sede apostolicâ permansurum, quem ex numero clericorum, novâ ordinatione divinum judicium et universitatis consensus elegerit.

<sup>4</sup> Synod. Cappadocia in act. Con. Chalced. par. iii. Synod. Galatia. Ibid. cap. lvii. Synod. Paphlagon. cap. liv. Synod. Corinth. cap. lvi. <sup>5</sup> Cyp. Ep. lv. ad Antonian. p. 104.

case of Novatian; and the Council of Sardica in Hilary's collection;<sup>1</sup> and the oriental bishops and synods<sup>2</sup> in the fore-mentioned case of Timotheus Ælurus, mentioned both by Liberatus, and their own acts in the end of the Council of Chalcedon. In like manner it was a rule in the Church, that no energumens, or persons possessed with an evil spirit, should be ordained: or if any such, by any chance or mistake were ordained, he was immediately to be deposed. This is very expressly decreed in the first Council of Orange.<sup>3</sup> "Energumens are not only not to be taken into any order of the clergy, but those who are already ordained, shall be removed from their office also." "There is a necessity of removing such demoniacs," says Gelasius,<sup>4</sup> "lest such ministers should scandalize the weak, for whom Christ died." It was another rule of the Church, that no one, who had voluntarily disfigured or dismembered his own body, should ever be admitted to any sacred order:<sup>5</sup> and therefore if any such were actually ordained, by the order of the great Council of Nice<sup>6</sup> they were to cease from officiating; to be secluded from the clerical function, as soon as discovered, according to the decree of Gelasius;<sup>7</sup> or, as the Roman Council under Hilary words it,<sup>8</sup> if any such crept into orders, the bishop who consecrated them, was obliged to nullify and dissolve his own act, as soon as the fraud was discovered. Another rule was, that no person who was unbaptized, or irregularly baptised without the due form of baptism, should be admitted to holy orders: and for this reason the Council of Nice<sup>9</sup> ordered all such as were ordained by the Paulianists, to be both rebaptised and reordained, if they were otherwise found qualified for their function. A like order was made con-

<sup>1</sup> Hilar. de Synodis, p. 128.  
Con. Chalced. par. iii. epist. 38, 39, 41.

<sup>2</sup> Liberat. Breviar. cap. xv. Acta  
<sup>3</sup> Con. Arausican. i.

can. 16. Energumeni non solùm non assumendi sunt ad ullum ordinem clericatûs, sed et illi qui ordinati jam sunt, ab imposito officio sunt repellendi.

<sup>4</sup> Gelas. Ep. ix. ad Episc. Lucaniæ, cap. xxi. Necessariò removendi sunt, ne quibuslibet, pro quibus Christus est mortuus, scandalum generetur infirmis.

<sup>5</sup> Vid. Canon. Apost. xxi. Con. Arelat. ii. can. 7.

<sup>6</sup> Con. Nic.

can. i. <sup>7</sup> Gelas. Ep. ix. cap. 19.

<sup>8</sup> Con. Rom. can. iii.

<sup>9</sup> Con. Nic. can. xix.

cerning all such as were baptised among heretics, or re-baptised by them; that no such should be ordained: and if any of either kind were surreptitiously admitted to orders, they were to be deposed, under penalty of deposition to the bishop himself, who should presume either to ordain any such,<sup>1</sup> or not remove them when fraudulently ordained by others. If any one made use of the secular powers to gain a promotion in the Church, by a rule of the Apostolical Canons he was to be deposed;<sup>2</sup> and all that communicated with him, were to be suspended from Christian communion. If a bishop ordained any of his unworthy kindred for mere favour, by a rule of the same Apostolical Canons the ordination was null, and the bishop himself was to be suspended.<sup>3</sup> And to this agrees the order made in the tenth Council of Toledo to the same purpose.<sup>4</sup> If a bishop ordained his own successor, by a rule of the Council of Antioch his ordination was null,<sup>5</sup> because it was clandestinely done without the consent of a provincial synod. Or if a bishop was ordained only by two bishops, for the same reason he was liable to be deposed, because it was done against the rule, which required the concurrence of the metropolitan and the provincial synod. Therefore the first Council of Orange ordered in such a case,<sup>6</sup> that if two bishops presumed to ordain a bishop by themselves, both the ordaining bishops were to be deposed; and if the bishop was ordained against his will, he should be put into the place of one of the deposed bishops: but if he was ordained by his own consent, then he also was to be deposed, that

<sup>1</sup> Felic. iii. Ep. i. c. 5. Qui in quâlibet ætate, alibi quàm in ecclesiâ catholicâ, aut baptizati aut re-baptizati sunt, ad ecclesiasticam militiam prorsus non admittantur.—Quoniam de suo ordine et comunione videbitur ferre iudicium, quisquis hoc violaverit institutum, vel qui non removerit eum, quem ex eis ad ministerium clericale obrepsisse cognoverit.

can. xxx.

<sup>2</sup> Canon. Apost. lxxvi.

<sup>3</sup> Canon. Apost. lxxvi.

can. 3.

<sup>4</sup> Con. Antioch. can. xxiii.

<sup>5</sup> Con. Tolet. x.

cau. 21.

<sup>6</sup> Con. Arausic. i.

Duo si præsumperit ordinare episcopum, placuit de præsumptoribus, ut sicubi contigerit, duos episcopos invitum episcopum facere, auctoribus damnatis, unius eorum ecclesiæ, ipse, qui vim passus est, substituatur: si voluntarium duo fecerint, et ipse damnabitur, quo cautius ea, quæ sunt antiquitus instituta, sententur.

the rule prescribed by the ancient Canons might be more cautiously observed. And the Council of Riez<sup>1</sup> actually deposed Armentarius, bishop of Ambrun, for this very reason, because he had not three bishops to ordain him. All these were transgressions against the known rules of ordination, and imputed to men as immoralities, because they were violations of those good rules and orders, which were made with great wisdom for the regular government and benefit of the Church. And therefore if in any of these cases a crime was committed, the ordination was liable to be declared void originally by the discipline of the Church; and the clergy so ordained, might be deposed, as soon as they were ordained, for the offences committed in their ordination. It is true indeed, the Church did not always actually depose such: but then she dispensed with her own rules, and such dispensations were only matters of favour and indulgence, in some special cases, when the Church for prudential reasons thought fit to relax her discipline, and grant men such allowances, as in strictness of law they could not challenge: the general rules of discipline were still in force, though the Church did not always think it proper to put them strictly in execution.

**SECT. 4.—No Remedy allowed in this Case by doing public Penance for Offences.**

Neither was it any remedy in this case, that men made a solemn atonement for their crimes before the Church, by doing public penance for them. For this was so far from opening their way to a regular ordination, that it was one of those things, that rendered them incapable of it; or if by any secret methods they had attained it, this was thought a sufficient reason to withdraw their orders, and degrade them. No one that has done public penance, says the fourth Council of Carthage,<sup>2</sup> shall be ordained a clerk, though he be

<sup>1</sup> Con. Rhegiens. can. i.

<sup>2</sup> Con. Carth. iv. can. 68. Ex pœnitentibus, quamvis sit bonus, clericus non ordinetur. Si per ignorantiam episcopi factum fuerit, deponatur à clero, quia se ordinationis tempore non prodidit fuisse pœnitentem.

otherwise a good man: or if by concealment from the bishop's knowledge this happen to be done, the clerk shall be deposed, because he confessed not at the time of his ordination, that he had done penance in the Church. After the same manner the Roman Council under Pope Hilarius makes the doing of public penance as much a bar to a man's ordination, as the profoundest ignorance, or mangling his own body:<sup>1</sup> and declares, that whatever bishop consecrates any such, he shall be obliged to reverse and cancel his own act; that is, immediately deprive them of their orders, and degrade them. The like was determined by Pope Innocent in the case of one Modestus, who after he had done penance for many crimes, not only was ordained a clergyman, which was against law, but also aimed at a bishopric. His determination upon the point is this; that he ought not only to be defeated in his expectation of a bishopric,<sup>2</sup> but according to the Canons of Nice be removed from all office among the clergy.<sup>3</sup> The third Council of Orleans enacted the same: no one shall be promoted to holy orders, who has either been married to two wives, or married a widow, or done public penance, &c. And if any bishop wittingly act against these rules, he that is ordained shall be deprived of his office, and the bishop himself for six months sequestered or suspended from his ministration.<sup>4</sup> The Council of Agde a little moderates the punishment,<sup>5</sup> allowing such presbyters and deacons, who had done penance, to retain the name and honours of their orders, but forbidding deacons to minister the cup, or presbyters to consecrate the oblation of the altar. And the first Council of Toledo degrades them,<sup>6</sup> not totally, but allows deacons, thus ordained out of penitents, to take place among the sub-deacons, that is, in the next inferior order. Thus one

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<sup>1</sup> Con. Rom. can. iii. Inscii quoque literarum, nec non et aliqua membrorum damna perpessi, et hi qui ex pœnitentibus sunt, ad sacros ordines adspirare non audeant. Quisquis talium consecrator extiterit, factum suum ipse dissolvat. <sup>2</sup> Innocent. Ep. vi. ad Episcopos Apulie, Non solùm ab episcopatûs ambitione, sed etiam à clericatûs removeatur officio.

<sup>3</sup> Con. Nic. can. ix. et x.

<sup>4</sup> Con. Aurelian. iii. can. 6.

<sup>5</sup> Con.

Agathen. can. xliii.

<sup>6</sup> Con. Tolet. i. can. 2.

way or other, every clergyman, who had done penance whilst he was a layman, was corrected and punished, for not declaring, when he was ordained, that he was in such a state, as by the rules of the Church was made a just impediment to his ordination: and it was always thought scandalous and offensive, to allow any man to officiate as a public minister, who had before been a public penitent in the Church. The Church could admit them to pardon and reconciliation after penance, but would not allow them to aspire to any dignity, or continue them in any sacred office of the clerical function.

SECT. 5.—Some Impediments of Ordination arising from Men's outward State and Condition in the World, made sometimes Occasion of their Deprivation.

There was another sort of impediments of ordination, which as I observed, arose not from any criminal action in men, but barely from their outward state and condition in the world; because it happened to be incompatible and inconsistent with the duties of the sacred order: and therefore many strict rules were made to prohibit the ordination of men in such a capacity, and to remove them back again from the clerical to a secular state, if they happened to be unwarily ordained against any such prohibitions. Thus to instance in a few particulars. The military calling, (under which, as I have shewn in another place,<sup>1</sup> were comprehended not only the armed soldiery of the camp, but also all officers of the emperor's palace, and all apparitors and officials of judges or governors of provinces,) I say, the military calling in this comprehensive sense was reckoned inconsistent with the duties of the clerical life: because the men of this vocation were tied by the laws to the service of the empire; and therefore the laws both of church and state forbad the admission of them into any order of the Church; and if they were admitted by any fraud or mistake, they were liable to be deposed, and returned back to their ancient

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<sup>1</sup> Book iv. chap. iv. sect. 1.

service. The Church had another reason also for refusing the soldiers of the camp, because probably they had embrewed their hands in blood, and no such were capable of ordination. Therefore, when some such were got into orders in the Spanish Churches, Pope Innocent wrote a sharp letter to the synod of Toledo, telling them, that by reason of the numbers of those who had been so ordained, it was proper to suffer them to continue, for fear of giving disturbance to the Church, and to leave them to the judgment of God: but for the future, if any such were ordained, both the ordainers and the ordained should be deposed.<sup>1</sup> And the Council of Toledo so far complied with his admonition,<sup>2</sup> as to decree, that if any soldiers had been admitted to any of the inferior orders, they should never rise higher than to the dignity of deacons in the Church. The ordination of slaves and vassals was prohibited upon the same account, because they were tied by the law to the service of their temporal masters: so likewise all members of any civil company, or society of tradesmen, because they were tied to the service of the commonwealth: and all those, who went by the name of *Curiales*, or *Decuriones*, in the Roman Government; being members of the *Curia*, that is, *the court or common-council of any city*, to whose service they were tied by virtue of their estates and possessions. The ordination of all these sorts of men was generally forbidden both by the laws of Church and state: and if any such were irregularly ordained, masters had liberty to reclaim their slaves; and the state her soldiers; and any corporation or *curia*, their deserting members: and the Church, except in some special cases, was bound to depose them, and readily consented to restore them to their ancient secular station and employment again. Of all which I have given

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<sup>1</sup> Innocent. Ep. xxiv. ad Synod. Toletan. cap. ii. Quicumque tales ordinati fuerint, cum ordinatoribus suis deponantur.

<sup>2</sup> Con. Tolet. i. can. 8. Si quis post baptismum militaverit———etiamsi gravia non admiserit, si ad clerum admissus fuerit, diaconii non accipiat dignitatem.



a large account in a former book,<sup>1</sup> and here only hint them to explain the discipline of the Church.

SECT. 6.—What Crimes might occasion the Deprivation of the Clergy, or other Censures, in the Performance of their Office. 1. Clergymen to be censured for Contempt of the Canons.

We have hitherto considered the causes and occasions of men's deprivation, arising from some irregularities committed in their entrance upon the clerical office: we are next to view what crimes might occasion their deprivation, or make them liable to other censures, in the performance of it. And here in the first place it may be noted in general, that a clergyman was ever liable to be censured for any contempt of the Canons. Concerning which there are directions given in the first Council of Carthage,<sup>2</sup> and Turin, and Braga, and several others: but as these equally effect both clergy and laity, I need not be more particular in relating them at length, having done it once before in the general account of discipline in the former book.<sup>3</sup>

SECT. 7.—2. For Negligence in their Duty.

2. They were more especially liable to censure for negligence in their office, or any great irregularity committed in the execution of it. If a bishop or a presbyter be negligent toward the other clergy or people, not instructing them in the ways of godliness, he shall be suspended, says the apostolical Canons:<sup>4</sup> and if he continues in his neglect and slothfulness, he shall be deposed. This neglect is termed sacrilege in the civil law,<sup>5</sup> and accordingly to be punished under that denomination.

SECT. 8.—3. For neglecting to use the public Liturgy, Lord's Prayer, Hymns, &c.

3. If the clergy neglected to use the public liturgy, or

<sup>1</sup> Book iv. chap. iv. sect. 2, &c.

<sup>2</sup> Con. Carth. i. can. xiv.

Con. Taurin. can. ii. Con. Bracaren. i. can. 40.

<sup>3</sup> Book xvi.

chap. ix. sect. 5.

<sup>4</sup> Canon. Apost. lviii.

<sup>5</sup> Cod.

Theod. lib. xvi. tit. ii. de Episcopis. Leg. xxv.

any part of it, the Lord's Prayer, the stated and received Hymns, &c. they were liable to censure and condemnation. The 4th council of Toledo has several Canons to this purpose. If any priest or inferior clerk, says one canon,<sup>1</sup> neglect to use the Lord's Prayer daily, either in public or in private, let him be condemned for his pride, and be deprived of the honour of his order. Another establishes the use of<sup>2</sup> the common prayers, and the doxology, Glory be to the Father, &c. and the Hymns of St. Hilary and St. Ambrose, composed in honour of the apostles and martyrs, under the penalty of excommunication to any priest in Spain or Gallicia, that should presume to reject them. Another confirms the use of the Hymn of three children under the same penalty.<sup>3</sup> A fourth Canon orders after what manner and form the Gloria Patri shall be sung by all ecclesiastics:<sup>4</sup> and a fifth appoints the reading of the Apocalyps at a certain season of the year, between Easter and Pentecost,<sup>5</sup> denouncing the same sentence and punishment of excommunication to any, who should either reject the book as uncanonical, or neglect to use it in divine service according to appointment.

SECT. 9.—4. For making any Alteration in the Form of Baptism.

4. If a minister made any material alteration in the manner of administering the sacraments, he was liable to be deposed for his presumption; as if he either changed the general form of words used in baptism, or the trine immersion received by universal custom in all Churches. If any bishop or presbyter, says one of the Apostolical Canons,<sup>6</sup> baptize not according to the commandment of the Lord, in

<sup>1</sup> Con. Tolet. iv. can. 9. Quisquis sacerdotum vel subjaquentium clericorum, orationem dominicam quotidie aut in publico aut in privato officio præterierit, propter superbiam judicatus, ordinis sui honore privetur.

<sup>2</sup> Ibid. can. 12. Sicut orationes, ita et hymnos in laudem Dei compositos, nullus nostrum ulterius improbet, sed pari modo in Gallicia Hispaniaque celebrent, excommunicatione plectendi, qui hymnos rejicere fuerint ausi.

<sup>3</sup> Ibid. can. 13. Communionem amissuri, qui antiquam hujus hymni consuetudinem, nostramque definitionem excesserint.

<sup>4</sup> Ibid. can. 14.

<sup>5</sup> Ibid. can. 16.

<sup>6</sup> Canon. Apost. xlix.

the name of the Father, Son, and Holy Ghost: but in three unoriginated beings, *τρῆς Ἀνάρχοις*, or three sons, or three paracletes, let him be deposed. And the next Canon says, if a bishop or presbyter use not three immersions in the mystery of baptism, but only one immersion into the death of Christ, let him be deposed. For the Lord said not, baptize into my death, but, “go teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost.”

SECT. 10.—5. For not frequenting Divine Service daily.

5. If any clergyman neglected to frequent the Church and divine service daily, even when he did not officiate or celebrate himself, he was liable to be deposed, if after admonition he persisted obstinately in his contempt. To this purpose it is decreed by the first Council of Toledo,<sup>1</sup> that “if any presbyter, deacon, or subdeacon, or other clerk deputed to the service of the Church, being in any city or place where there is a church, or castle, or village, or hamlet, shall neglect to come to church and the daily sacrifice, he shall be no longer accounted a clerk, unless upon admonition from the bishop he make satisfaction, and obtain pardon for his offences.” The council of Agde reduces such to the communion of strangers,<sup>2</sup> that is, suspends them from their office: and the law of Justinian orders them to be degraded,<sup>3</sup> because of the scandal they give to the laity by such neglect or contempts of divine service.

SECT. 11.—6. For meddling with secular Offices.

6. If any clergyman entangled and embarrassed himself in secular offices, because this was an unnecessary avocation from his own employment, and hindrance to the proper

<sup>1</sup> Con. Tolet. i. can. 5. Presbyter, vel diaconus, vel subdiaconus, vel quilibet ecclesie deputatus clericus, si intra civitatem fuerit, vel in loco in quo ecclesia est, aut castella aut vici sunt aut villæ, si ad ecclesiam aut ad sacrificium quotidianum non venerit, clericus non habeatur, si castigatus, per satisfactionem veniam ab episcopo noluit promereri.

<sup>2</sup> Con. Aga-

<sup>3</sup> Cod. Just. lib. i. tit. iii. de Episcopis. leg. xli. n. 10.

business of his calling, he was liable to be deposed. No bishop or presbyter, says one of the Apostolical Canons,<sup>1</sup> shall thrust himself *εις δημοσίας διοικήσεις*, into any public administrations or employments, but keep himself always in readiness for the service of the Church. Let him therefore either incline his mind not to do this, or let him be deposed. For no man can serve two masters, according to what the Lord appointed. And another Canon says,<sup>2</sup> a bishop, presbyter, or deacon, that employs himself in a military life, and would retain both a Roman office and an ecclesiastical function together, shall be deposed. For we must “render unto Cæsar the things which are Cæsar’s, and unto God the things that are God’s.” The first council of Carthage forbids<sup>3</sup> clergymen to take upon them the administration or stewardship of any houses, because the apostle says, “no man that warreth “in God’s service,” entangleth himself in the affairs of this life.” Therefore clergymen must either quit their stewardships, or stewards their clerical office. But because necessity or charity might seem to require clergymen to engage a little in secular affairs in some special cases, the Council of Chaleedon delivers the rule with some distinction.<sup>4</sup> Whereas we are informed, that some of the clergy for filthy lucre’s sake hire other mens possessions, and exercise themselves in worldly affairs, neglecting the service of God, living in the houses of secular men, and taking upon them the management of their estates out of covetousness and the love of money; the holy synod decrees, that henceforth no bishop, clergyman or monk shall either hire any possessions or put himself into any secular administrations, unless by the law he be called to the unavoidable care or guardianship of orphans, or the bishop of the place permit him to be the procurator of the Church revenues, or to take the care of widows and orphans and such other helpless persons as need the assistance of the Church, which may be done in the fear of the Lord. If any one henceforward transgress these rules,

<sup>1</sup> Canon. Apost. lxxxii.

<sup>2</sup> Ibid. can. lxxxxiii. Vid. can. vii.

ibid. *κοσμικὰς φροντίδας μὴ ἀναλαμβάνετω· εἰ δὲ μὴ καθαιρεῖσθω.*

<sup>3</sup> Con. Carth. i. can. 6.

<sup>4</sup> Con. Chaleed. can. iii.

he shall be liable to ecclesiastical censure. There are many other laws forbidding them to be sureties, or pleaders at the bar for themselves or others in any civil contest, or to follow any secular trade or merchandise; but these with some limitations and exceptions; of all which, because I have had occasion to discourse more fully in a former book,<sup>1</sup> I need say no more in this place.

SECT. 12.—7. For deserting their own Church without Licence to go to another.

7. It was another crime of the like nature, for a clergyman to desert and relinquish his own church, to which he was originally fixed and appointed by his ordination, without licence, from the bishop to whose jurisdiction he belonged. For though this was not properly an absolute and universal renunciation and desertion of the Church's service; yet it was a manifest breach of good order, and a transgression of an useful rule established by often repeated injunctions over the Church universal, that no clerk should leave his own bishop's Church or diocese without his consent, nor find reception in any other, to the prejudice of the bishop who first ordained him. If any presbyter, deacon, or other clerk, say the Apostolical Canons,<sup>2</sup> forsake his own diocese to go to another, and there continue without the consent of his own bishop; we decree, that such an one shall no longer continue to minister as a clerk (especially if after admonition he refuse to return) but only be admitted to communicate as a layman. And if the bishop, to whom they repair, shall entertain them in the quality of clergymen, he shall be excommunicated, as a master of disorder. The same rule is frequently repeated in the ancient Canons, to which I have referred the reader<sup>3</sup> in another place.

SECT. 13.—8. For officiating after the Condemnation of a Synod.

8. If any clergyman pretended to officiate after he was

<sup>1</sup> Book vi. chap. iv. sect. 9, 10, 11, &c.

<sup>2</sup> Canon. Apost. 15 et 16.

<sup>3</sup> Book vi. chap. iv. sect. 4.

censured and condemned by a synod, before he was absolved by that or another synod, he was to be deposed for his contempt, without hopes of restitution. This was first decreed in the Apostolical Canons:<sup>1</sup> if any bishop, presbyter, or deacon, who is justly deposed for his crimes, presume to meddle with the service belonging to his order, let him be wholly cut off from the communion of the Church. The Council of Antioch repeats this rule a little more explicitly:<sup>2</sup> If any bishop, who is deposed by a synod, or presbyter, or deacon, who is deposed by his own bishop, presume to officiate in their ministry, they shall have no hopes of being restored even by another synod, nor any room left for satisfaction: and all that communicate with them, shall be cast out of the Church, especially if they do it after they are apprised of the sentence pronounced against them. This canon is repeated and confirmed by the great Council of Chalcedon,<sup>3</sup> as a standing rule then inserted into the code of the universal Church.

SECT. 14.—9. For appealing from the Censure of a Provincial Synod to foreign Churches.

9. In this case the Church allowed of appeals, that if any one was injured or oppressed by any rash or violent proceeding, he might have justice done him in a provincial synod. But then this liberty of appeals was limited to the place or province where the party lived, and he might not fly to another country under pretence of more impartial justice. The bishops of Rome indeed sometimes laid claim to a peculiar prerogative in this matter, as if they had power to receive appellants from other Churches, and hear and determine the causes arising in foreign countries at the greatest distance and under different jurisdictions: but St. Austin and the African Fathers stoutly opposed these encroachments, and withal made a decree, that if any African clerk appealed from the sentence of his own bishop, or a synod of

<sup>1</sup> Canon. Apost. xxviii.

<sup>2</sup> Con. Antioch. can. iv.

<sup>3</sup> Con. Chalced. act. iv. Con. tom. iv. p. 538.

select judges, he should appeal to none but African synods, or the primates of the provinces. And if any presumed to appeal beyond seas, meaning to Rome, he should be excluded from all communion in the African Churches. This decree was first made in the Council of Milevis,<sup>1</sup> and afterward confirmed by several acts of their general synods, made upon the famous case and appeal of Apiarius, an African presbyter, whom Pope Zosimus pretended to restore to communion after he had been deposed by an African council. What opposition the African Fathers made to this presumption, during the lives of three Popes successively, Zosimus, Boniface, and Celestin, and what arguments they went upon, I have formerly<sup>2</sup> shewn out of the canons of the African<sup>3</sup> Code: and I only note it here with all brevity, to explain the ancient discipline in this point from the current tenour and practice of the Church.

SECT. 15.—10. For refusing to end Controversies before Bishops, and flying to a secular Tribunal.

10. Another thing, which subjected clergymen to ecclesiastical censure, was refusing to end their controversies before bishops, and chusing rather to fly to the secular tribunals. The laws of the state permitted, and the laws of the Church obliged them to bring all their disputes with one another under the cognizance of an ecclesiastical tribunal. I have had occasion, once before,<sup>4</sup> to speak of this as a privilege and immunity granted to the clergy by the imperial laws, and all I shall remark further concerning it here, is only what relates to the discipline of the Church: in reference to which the Council of Chalcedon decreed,<sup>5</sup> that if any clergyman had a controversy with another, he should

<sup>1</sup> Con. Milevit. can. xxii. Quòd si et ab eis appellandum putaverint, non provocent nisi ad Africana Concilia, vel ad primates provinciarum suarum. Ad transmarinæ autem qui putaverit appellandum, à nullo intra Africam in communione suscipiatur.

<sup>2</sup> Book ix. chap. i. sect. 11.

<sup>3</sup> Cod. Afric. à cap. cxxxv. ad cap. cxxxviii.

<sup>4</sup> Book v. chap. i.

sect. 4.

<sup>5</sup> Con. Chalced. can. ix. Vid. Con. Veneticum, can. ix.

not leave his own bishop, and betake himself to a secular court; but first have an hearing before his own bishop, or such arbitrators as the parties should chuse, with the bishop's approbation. Otherwise he should be liable to canonical censure: which censure in the African Church was the loss of his place, whether he were bishop, presbyter, or deacon, or any other inferior clerk, that declined the sentence of an ecclesiastical court, in a criminal cause, and betook himself to a secular court for justice: or if it was a civil cause, he must lose whatever advantage he gained by the action, as the third Council of Carthage determined in the case,<sup>1</sup> because he despised the whole Church, in that he could not confide in any ecclesiastical persons to be his judges. The Council of Milevis added to this,<sup>2</sup> that no clergyman should so much as petition the emperor to assign him secular judges in any case, but only ecclesiastical, under pain of deprivation. And this seems to be the true meaning of those two famous Canons of the Council of Antioch, which have been so generally mistaken by modern authors, as if they had been made only by a cabal of Arians, against the person of Athanasius, when indeed they contain nothing but an ancient rule of discipline universally observed throughout the Church. The words of the Canons are these:<sup>3</sup> if any bishop, or presbyter, or any one within the canon or roll of the clergy belonging to the Church, shall presume to address the emperor without the consent and letters of the provincial bishops, and especially of the metropolitan, he shall be rejected and expelled, not only from communion, but from whatever honour and dignity he enjoys, as one that fills the prince's ears with troublesome complaints, against the law of the Church. But if any necessary cause call him to address the prince, he shall do it by the advice and consent of the metropolitan and the rest of the provincial bishops, who in that case shall assist him with

<sup>1</sup> Con. Carth. iii. can. 9.

<sup>2</sup> Con. Milevit. can. 19. *Quicumque*

*ab imperatore cognitionem judiciorum publicorum petierit, honore proprio privetur. Si autem episcopale iudicium ab imperatore postulaverit, nihil ei obsit.*

<sup>3</sup> Con. Antioch. can. xi.



their recommendatory letters also. The other Canon says,<sup>1</sup> if any presbyter or deacon is deposed by his bishop, or any bishop by a synod, he shall not presume to trouble the emperor with complaints, but have recourse to a greater synod of bishops, and lay the justice of his cause before them, and wait for their discussion and determination. But, if in contempt of this method he trouble the prince, he shall have no pardon, nor room for defence, nor any hopes of restitution. The generality of modern writers, following the censure passed upon this canon by the famous Antonius Augustinus,<sup>2</sup> and Baronius,<sup>3</sup> commonly reckon it a canon made by the Arian faction against Athanasius; and say, it is the same canon that was alledged against Chrysostom by his adversaries, and rejected by him and his advocates, as an Arian Canon, in the following ages. But the learned Schelstrate, who has particularly vindicated the authority of the Council of Antioch,<sup>4</sup> shews this to be a vulgar error; demonstrating, that the Arian canon was very different from this, and that this canon of Antioch was conformable to the received discipline of the ancient Church. For as such, it was inserted into the code of the universal Church, and acknowledged by the Council of Chalcedon, and all the collectors of the canons, Ferrandus Diaconus, Martin Bracarensis, and the Capitulars of Charles the Great. Besides that the Council of Vannes has a canon to the same purpose:<sup>5</sup> “if a clerk suspects the judgment of his own bishop, or has any controversy with him concerning any property, he shall require an hearing before other bishops, and not before the secular powers: otherwise he shall be cast out of communion.” From all which it is plain, nothing more was intended by the Council of Antioch, but only to oblige clergymen to end all their controversies before a

<sup>1</sup> Con. Antioch. can. xii.  
Gratiani, lib. i. dial. xi. p. 123.

<sup>2</sup> Anton. August. de Emendatione

<sup>3</sup> Baron. an. cccxli. n. 28.

<sup>4</sup> Schelstrate de Concilio Antioch. p. 541.

<sup>5</sup> Con. Veneticum, can. ix.

Clericus, si fortasse episcopi sui iudicium cœperit habere suspectum, aut ipsi de proprietate aliquâ adversus ipsum episcopum fuerit nata contentio, aliorum episcoporum audientiam, non secularium potestatum, debet ambire. Aliter à communionem habebitur alienus.

synod of bishops, which is agreeable to the general rule and discipline of the Church.

SECT. 16.—11. For being re-baptised or re-ordained.

11. The laws of the Church were further severe against all re-ordinations in the clergy, and against all re-baptizations both in clergymen and laymen: and therefore any clergyman, who submitted either actively or passively to either of these, rendered himself obnoxious to the highest censure. If any bishop, presbyter, or deacon, say the Apostolical Canons,<sup>1</sup> receive a second ordination, both the ordainer and the ordained shall be deposed; except it appear that his first ordination was given him by heretics: for they, that are baptized or ordained by heretics, are neither to be accounted clergymen nor faithful laymen. Optatus<sup>2</sup> says, that among other reasons why Donatus was condemned and deposed by the Council of Rome under Melchiades, this was one, that he had given imposition of hands to such bishops as had lapsed in time of persecution, which was contrary to the custom of the Catholic Church. If imposition of hands there signify ordination, then his crime was, that he had re-ordained them: but if, as Albaspineus thinks both in his notes and observations, it only means imposition of hands in penance, then we are to lay no stress upon it, because it relates to a different subject. As to rebaptization, the case was the same: the Apostolical Canons appointed,<sup>3</sup> that if any bishop or presbyter presumed to give a second baptism after a true one once received, he should be degraded. And the council of Rome under Felix III. decreed, that if a bishop, presbyter or deacon, suffered himself to be so rebaptised,<sup>4</sup> he should be degraded, and do penance all his life, without being suffered to communicate either in the prayers of the faithful, or the prayers of the catechumens, and only be admitted to lay-communication at the hour of death; because such had not only denied their orders, but

<sup>1</sup> Canon. Apost. lxxviii.  
Canon. Apost. xlvii.

<sup>2</sup> Optat. lib. i. p. 44.

<sup>3</sup> Vid. Felic. ep. i. cap. 2.

their christianity, and openly professed themselves pagans, by being rebaptized. The civil law confirmed these censures of the Church, and added some temporal penalties, to give them greater force; of which the reader may find a more particular account in a former book.<sup>1</sup>

SECT. 17.—12. For denying themselves to be Clergymen.

12. It was a crime of the like nature for any clergyman to deny his order in words, or dissemble his profession before a Jew or an Heathen; because this was but one degree below the renunciation of his religion. “If any clergyman,” says one of the Apostolical Canons,<sup>2</sup> “through human fear of a Jew, or an Heathen, or an Heretic, deny the name of Christ, let him be cast out of the Church: if he deny the name of a clergyman, let him be deposed; but upon his repentance let him be received as a layman.”

SECT. 18.—13. For publishing Apocryphal Books.

13. If any clergyman was convict of publishing any apocryphal books, or books written by impious men under false titles, as sacred and pious writings, to the corruption and seducement both of laity and clergy;<sup>3</sup> by another of the Apostolical Canons he was to be deposed. Tertullian gives an instance of the exercise of discipline in this case upon an Asiatic presbyter,<sup>4</sup> who wrote the book called, the Acts of Paul and Thecla, under the feigned name of the Apostle. He pleaded in his own behalf, that he did it out of love to St. Paul; but this would not satisfy the Church: for upon conviction and confession of the facts, she obliged the man to quit his office for his transgression.

SECT. 19.—14. For superstitious Abstinence from Flesh, Wine, &c.

14. Clergymen were likewise liable to be deposed for any superstitious abstinence from flesh, wine, marriage, or any

<sup>1</sup> Book xii. chap. v. sect. 7.

<sup>2</sup> Canon. Apost. lxii.

<sup>3</sup> Ibid. lx.

<sup>4</sup> Tertul. de Baptismo, cap. xvii.

the like innocent and lawful things; when they refrained from them, not for exercise sake, but out of a false and heretical opinion, that they were polluted and unclean. There was always a grand dispute about meats and marriage between the Church and several sects, that opposed her continually upon this point. Many heretics, such as the Manichees, Priscillianists, and others, pretended to be more spiritual and refined, because they abstained from wine and flesh as things unlawful and unclean; and upon this score censured the Church as impure and carnal, for allowing men in the just and moderate use of them. If any clergymen therefore so far complied with heretics, as either in their judgment to approve their errors, or in their practice by an universal abstinence to give suspicion of their siding with them; they made themselves obnoxious to the highest censures. The Apostolical Canons order, that if any bishop, presbyter, or deacon<sup>1</sup>, or any other clerk, abstain from marriage, flesh, or wine, not for exercise but abhorrence; forgetting, that God made all things very good, and created man, male and female, and speaking evil of the workmanship of God: unless he correct his error, he shall be deposed, and cast out of the Church. Another Canon gives the reason of this censure,<sup>2</sup> because such an one has a seared conscience, and is the cause of scandal to the people. The Council of Ancyra condemns the same error,<sup>3</sup> and inflicts the like penalty of degradation upon any clergymen that should be found guilty of it. And in the first Council of Braga an order was made, that all clergymen, who abstained from flesh, should sometimes eat herbs boiled with flesh, to avoid the suspicion of the Priscillian heresy. And if they refused to do this, they should be excommunicated, and removed from their office,<sup>4</sup> according to the direction of the ancient Canons, as men suspected of that heresy, which then reigned in the Spanish Churches.

<sup>1</sup> Canon. Apost. li.

<sup>2</sup> Ibid. can. liii.

<sup>3</sup> Con.

Ancyr. can. xv. Vid. Con. Gangren. can. ii.

<sup>4</sup> Con. Bracaren. i.

can. 32.

## SECT. 20.—15. For eating of Blood.

15. But on the other hand, because it was the custom of the Catholic Church, almost till the time of St. Austin, to abstain from eating of blood, in compliance with the rule given by the Apostles to the Gentile converts: therefore by the most ancient laws of the Church all clergymen were obliged to abstain from it under pain of degradation. This is evident from the Apostolical Canons,<sup>1</sup> and those of Gangra,<sup>2</sup> and the second Council of Orleans,<sup>3</sup> and the Council of Trullo.<sup>4</sup> But as this was looked upon by some only as a temporary injunction, so it appears from St. Austin,<sup>5</sup> that in his time it was of no force in the African Church. For he says, in his time few men thought themselves under any obligation to observe it, or made any scruple of eating blood. So that this rule of discipline is to be taken with this limitation and restriction, as to what concerns the practice of the ancient Church. He that would see more about it, may consult Curcellæus,<sup>6</sup> who has written a large dissertation upon the subject.

## SECT. 21.—16. For contemning the Fasts and Festival of the Church.

16. The custom of the ancient Church was with a great deal of strictness to observe many stated fasts and festivals: as the annual fast of lent, and the weekly fasts of the stationary days, that is, Wednesday and Friday in every week, and the anniversary returns or commemorations of the great actions of our Saviour's life, and his Apostles and Martyrs: and therefore some Canons lay great penalties especially upon clergymen, who shewed any disrespect to these by a wilful contempt or neglect of them. "If any bishop, or presbyter, or deacon, or reader, or singer," says one of the

<sup>1</sup> Canon. Apost. lxiii.<sup>2</sup> Con. Gangren. can. ii.<sup>3</sup> Con. Aurel. ii. can. 20.<sup>4</sup> C on. Trull. can. lxvii.<sup>5</sup> Aug. cont. Faust. lib. xxxii. cap. 13.<sup>6</sup> Curcel. de Esu Sanguinis, cap. xiii.

Apostolical Canons,<sup>1</sup> “observe not the Lent fast, or the fast of the fourth and sixth days of the week, he shall be deposed, unless he be hindered by bodily weakness and infirmity.” The Council of Gangra<sup>2</sup> goes a little further, and denounces anathema to all the ascetics of the Church, who without any plea of bodily necessity, but mere pride and haughtiness, neglect and despise the fasts commonly received in the Church, and observed by ancient tradition. And another Canon denounces anathema likewise against all,<sup>3</sup> who accuse the assemblies made at the monuments of the Martyrs, or abhor the service that is performed there, or despise the memorials or annual commemorations that were made in honour of them. A like Canon was made in the first Council of Carthage,<sup>4</sup> “that if any one reproachfully said or did any thing to the dishonour of the Martyrs; if he was a layman, he should be put under penance: but if he was a clergyman, after admonition and conviction he should be deprived of his honour and dignity.” And some other Canons were made by the Council of Laodicea to the same purpose.<sup>5</sup>

SECT. 22.—17. For not observing the Rule about Easter.

17. Some Canons also make it a great transgression, not to observe the rule that was settled by the Church in the Council of Nice, for fixing the time of keeping the paschal festival. For though a great liberty was allowed before in this matter, by reason of the disputes that were between the Roman and Asiatic Churches about it: yet when once the great Council of Nice had interposed her authority to end the controversy, it was no longer esteemed a matter of indifferency; but all Churches were obliged to comply with her determination. Therefore the Council of Antioch not long after made a very peremptory decree,<sup>6</sup> that whoever

<sup>1</sup> Canon. Apost. lxi.

<sup>2</sup> Con. Gangren. can. xix.

<sup>3</sup> Ibid. can. xx.

<sup>4</sup> Con. Carth. i. can. 2. Si quis ad injuriam martyrum, claritati eorum adjungat infamiam, placet eos, si laici sint, ad penitentiam redigi: si autem sunt clerici, post commonitionem et post cognitionem, honore privari.

<sup>5</sup> Con. Laodic. can. 34 et 35.

<sup>6</sup> Con. Antioch. can. i.

pertinaciously opposed the rule agreed upon in the Nicene Council, should be excommunicated and expelled the Church if he were a layman. And if either bishop, presbyter or deacon should subvert the people, and disturb the Church by keeping Easter, in a different manner, with the Jews, they should be removed from their ministry, and be cast out of the Church: and whoever communicated with them after such censure, should be liable to the same condemnation. There was also another way of celebrating Easter with the Jews, by a false calculation making it to fall before the vernal equinox, and so many times bringing two Easters into the same year. Which practice is condemned as judaical by the author of the Constitutions,<sup>1</sup> and any clergyman complying with it, by the Apostolical Canons is made liable to deprivation also.<sup>2</sup>

SECT. 23.—18. For wearing an indecent Habit.

18. If any clergyman wore an indecent habit, unbecoming his order and station in the Church, he made himself liable to canonical censure. The first Council of Maseon forbids<sup>3</sup> clergymen to wear arms, or a soldier's coat, or any garments or shoes not becoming their profession, after the manner of seculars or laymen. And whoever offended in this kind, was to be confined for thirty days in prison, and fed only with bread and water, for his transgression. But this was a rule only for common and ordinary cases, not for cases of great exigency, or times of persecution. Therefore when the famous Eusebius of Samosata went about the world in a soldier's habit,<sup>4</sup> as the historians relate, to ordain presbyters and deacons in the heat of the Arian persecution; though this was against the letter of another law, which forbid any

<sup>1</sup> Constit. lib. v. cap. 17.

<sup>2</sup> Canon. Apost. v. al. 8.

<sup>3</sup> Con. Matiscon. i. can. 5. Ut nullus clericus sagum aut vestimenta aut calceamenta secularia, nisi quod religionem deceat, induere præsumat. Quod si post hanc definitionem clericus aut cum indecenti veste, aut cum armis inventus fuerit, à seniore ita coerceatur, ut triginta dierum inclusione detentus, aquâ tantùm et modico pane diebus singulis sustentetur.

<sup>4</sup> Vid. Theodorit. lib. iv. cap. 13.

bishop to ordain in another man's diocese; yet he was never accused by any good Catholic for transgressing either law, because the necessity of the thing justified the fact; and these rules, made for common order and decency, were in this case superseded by a rule of superior obligation. For the preservation of the faith and ministry was of much more weight and concern to the Church at such a juncture, than the wearing of an habit; and it was no fault in him to wear a soldier's coat in such an exigency, to preserve the Church, and pass undiscerned, though it would have been a great violation of the rules of order and decency in other cases. But this only by the way: I now pass on to the remaining laws of discipline, which concerned the clergy.

SECT. 21.—19. For keeping Hawks or Hounds, and following any unlawful Diversions.

19. The same rules of the Church, which obliged clergymen to avoid secular employments, may with good reason be construed also a prohibition of secular diversions, such as hunting, and hawking, and horse-racing, and gaming at dice, and acting of plays and farces, and frequenting the games and sights of the circus and theatre. All these may be comprehended in the general prohibition of secular things: but there are some canons, which more expressly forbid them to the clergy under pain of canonical censure. "Bishops, presbyters, or deacons shall not keep dogs or hawks for hunting," says the Council of Agde.<sup>1</sup> "And if any one is detected in this intention, if he be a bishop, he shall be suspended three months from communion; if a presbyter, two months; if a deacon, he shall wholly cease from his office and communion." The Council of Eliberis has a

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<sup>1</sup> Con. Agathen. can. lv. *Episcopis, presbyteris, diaconibus canes ad venandum, aut accipitres habere non liceat. Quod si quis talium personarum in hac voluntate detectus fuerit, si episcopus est, tribus mensibus se suspendat à communione: presbyter duobus mensibus se absteineat; diaconus verò ab omni officio vel communione cessabit. Vid. Con. Matiscon. ii. can. 13. Con. Mogunt. cap. xiv.*



general canon forbidding laymen to play at dice or tables, under the penalty of suspension from communion for a whole year.<sup>1</sup> And that must be supposed with greater force to affect the clergy. Other canons under Charles the great expressly name the clergy,<sup>2</sup> and refer to the ancient rule of the Church for prohibition. And the Council of Trullo<sup>3</sup> forbids dice both to the clergy and laity, under the penalty of deprivation to the one, and excommunication to the other. The same Council forbids clergymen to act farces as mimics in the theatre,<sup>4</sup> or to bait or hunt wild beasts with dogs, or to dance upon the stage, under the like penalty of deprivation. The Council of Leodicea forbids them to be present as spectators at any stage-plays.<sup>5</sup> And the Council of Carthage gives a good reason,<sup>6</sup> why neither they nor their children ought either to exhibit, or frequent such plays; because they were prohibited to laymen for the blasphemy of those wicked wretches, that were concerned in them. They thought it intolerable, that any of the clergy should encourage those things by their presence, which a layman could not see with innocence, nor be a spectator of without a censure.

SECT. 25.—20. For suspicious Cohabitation with strange Women.

20. The most ancient laws of the Church did not absolutely impose celibacy upon the clergy, nor universally restrain them from the conjugal state and married life, as has been shewn more at large in a former book.<sup>7</sup> But there were two things in the conversation of the clergy, respecting women, which they very much disallowed and censured. One was the suspicious and scandalous cohabitation of some vain and indiscreet men with strange women, who were none of their kindred. The freedom, which these used,

<sup>1</sup> Con. Eliber. can. lxxix.

<sup>2</sup> Con. Mogunt. cap. xiv. Canon.

Apost. xlii.

<sup>3</sup> Con. Trull. can. l.

<sup>4</sup> Ibid. can. li.

<sup>5</sup> Con. Laodic. can. liv.

<sup>6</sup> Con. Carth. iii. can. 11. Ut illi

sacerdotum vel clericorum spectacula secularia non exhibeant, sed nec spectent, quoniam à spectaculo et omnes laici prohibeantur. Semper enim Christianis omnibus hoc interdictum est, ut ubi blasphemi sunt, non accedant.

<sup>7</sup> Book iv. chap. v. sect. 5, &c.

obliged the Church not only to forbid the clergy to cohabit with such, as they then termed foreigners and strangers, *Συνείσακτοι*, in opposition to a mother, a sister, or an aunt, of whom for the nearness of blood there could be no reasonable suspicion; but also induced her to enforce this rule with the utmost severity of discipline upon delinquents. Cyprian<sup>1</sup> commends Pomponius for excommunicating a deacon, who had been found guilty in this kind. And among other reasons alleged by the Council of Antioch for deposing Paulus Samosatensis from his bishopric, this is one, that he had always some of these *Συνείσακτοι*, or strange women to attend him, and allowed his presbyters and deacons to have the like,<sup>2</sup> that they might not accuse him. The second Council of Arles excommunicates every clergyman above the order of deacons,<sup>3</sup> that retains any woman as a companion, except it be a grandmother, or mother, or sister, or daughter, or niece, or a wife after her conversion. And the Council of Lerida orders them to be suspended from their office,<sup>4</sup> till they amend their fault, after a first or second admonition.

SECT. 23.—21. For marrying after Ordination.

21. The other thing that was generally disliked, was the clergy's marrying a second time, after ordination. They did not, as I said, reject married men from orders, nor oblige them to live separate from their wives after ordination: nay if a deacon protested before ordination, that he could not continue in an unmarried state, he might marry afterwards,<sup>5</sup> and not forfeit his office, by a decree of the Council of Ancyra. But other Canons forbid presbyters and bishops to marry after ordination, whether they were married or unmarried before, and this under pain of deprivation. "If a presbyter marries a wife (that is, after he is ordained pres-

<sup>1</sup> Cypr. Ep. l. xii. al. 4. ad Pompon.

<sup>2</sup> Euseb. lib. vii. cap. 30.

<sup>3</sup> Con. Arelat. ii. can. 3. Si quis de clericis à gradu diaconatus, in solatio suo mulierem, præter aviam, matrem, sororem, filiam, neptem, vel uxorem secum conversam, habere præsumpsit, alienus à communione habeatur.

<sup>4</sup> Con. Herden. can. xv.

<sup>5</sup> Con. Ancyr. can. x.

byter, for it regards not his being married before) let him be removed from his order," says the Council of Neocæsarea.<sup>1</sup> The Council of Eliberis and some others in the Latin Church were more rigorous toward the married clergy,<sup>2</sup> and began not only to forbid them to marry after ordination, but to oblige them to relinquish those wives they had married before. But as this was an encroachment upon the primitive rule, and never received in the Greek Church, it is not to be reckoned among the standing rules of discipline that concerned the whole Church.

SECT. 27.—22. For retaining an adulterous Wife.

22. Yet there was one case, in which the clergy were obliged to put away their wives, which was the case of adultery. "If the wife of a layman," says the Council of Neocæsarea,<sup>3</sup> "is convicted of adultery, such a one shall never attain to the ministry of the clergy. If she commits adultery after his ordination, he must put her away, or quit his ministry, if he retains her." The Council of Eliberis<sup>4</sup> goes a little further, and says, "If a clergyman's wife commits adultery, and the husband knows it, and does not immediately put her away, he shall not be admitted to communion even at his last hour; lest they, who should be an example of good conversation, should seem to teach others the way to sin."

SECT. 28.—23. For Non-residence.

23. There were some laws also relating to the residence of the clergy, which was strictly enjoined, with a denunciation of canonical censures to the transgressors. The

<sup>1</sup> Con. Neocæsar. can. i.

<sup>2</sup> Con. Eliber. can. xxxiii. Vid.

Con. Agathen. can. ix. Arausican. i. can. xxiii. Carthag. v. can. 3. Matiscon. i. can. 11.

<sup>3</sup> Con. Neocæsar. can. viii.

<sup>4</sup> Con. Eliber. can. lxxv. Si cujus clerici uxor fuerit mœchata, et sciat eam maritus suus mœchari, et eam non statim projecerit, nec in fine accipiat communionem: ne ab his, qui exemplum bonæ conversationis esse debent, videantur magisteria scelerum procedere.

several laws requiring residence have been noted in another place:<sup>1</sup> here I shall only mention such of them, as specify the punishments that were to be inflicted on offenders in this kind. Among these that Canon of the Council of Agde is most remarkable,<sup>2</sup> which decrees, that a presbyter or deacon, who was absent from his Church three weeks, should be three years suspended from the communion. And by the laws of Justinian<sup>3</sup> every bishop absenting from his Church beyond a certain term, and that upon very weighty affairs, and great necessity, or the will of his prince, is ordered to be removed from the college of bishops, as a man unworthy of his station. And the better to guard against this offence, as no clergyman was allowed to travel without the licence and commendatory letters of his bishop; so neither might a bishop travel or appear at court without the licence and approbation of his metropolitan. This was expressly provided by the same laws of Justinian,<sup>4</sup> and before him by the third Council of Carthage, which orders,<sup>5</sup> that no bishop shall go beyond sea without consulting his primate, or chief bishop of the province, and taking his *Formatæ*, or *letters of commendation*. And before this the Council of Antioch made an order,<sup>6</sup> that no bishop or presbyter, or any other belonging to the Church, should go to court upon any occasion to address the prince, without the consent and letters of the provincial bishops, and especially the metropolitan, under the penalty of being cast out of communion, and losing his honour and dignity in the Church. And to this agree the rules and decrees of Pope Hilary<sup>7</sup> and Gregory the Great,<sup>8</sup> made in conformity to the ancient rules of discipline in the Church.

<sup>1</sup> Book vi. chap. iv. sect. 7.

<sup>2</sup> Con. Agathen. can. lxiv.

<sup>3</sup> Justin. Novel. vi. cap. 2. <sup>4</sup> Ibid. cap. 3. <sup>5</sup> Con. Carth. iii. can. 28. Ut episcopi trans mare non proficiscantur, nisi consulto primæ sedis episcopo, sive cujuscunque provinciæ primate, ut ab episcopo præcipuè possint sumere formatam sive commendationem.

<sup>6</sup> Con. Antioch. can. xi.

<sup>7</sup> Hilar. Ep. viii. ad Episcopos Gallia.

<sup>8</sup> Gregor. lib. vii. ep. 8.

SECT. 29.—21. For attempting to hold Preferment in two Dioceses.

24. The clergy were further obliged to confine themselves to one Church: that is, as I have formerly had occasion to explain it, one diocese or diocesan Church, under the jurisdiction of one bishop; and not to seek, or attempt to hold preferment under two bishops in two such distinct Churches, or different jurisdictions. In this sense pluralities were forbidden under the penalty of deprivation. The Council of Chalcedon is very express to this purpose:<sup>1</sup> it shall not be lawful for any clergyman to have his name in the Church-roll or catalogue of two cities at the same time, that is, in the Church where he was first ordained, and any other, to which he flies out of ambition as to a greater Church; but all such shall be returned to their own Church, where they were first ordained, and only minister there. But if any is regularly removed from one Church to another, he shall not partake of the revenues of the former Church, or of any oratory, hospital or alms-house belonging to it. And such as shall presume, after this definition of this great and œcumenical Council, to transgress in this matter, are condemned to be degraded by the holy synod.

SECT. 30.—25. For needless frequenting of public Inns and Taverns.

25. The Canons had also a great respect to the external and public behaviour of the clergy; obliging them to walk circumspectly, and abstain from things of ill fame, though otherwise innocent and indifferent in themselves; that they might cut off all occasions of obloquy, by avoiding all suspicious actions and all appearances of evil. In regard to which they not only censured them for rioting and drunkenness, which were vices not to be tolerated even in laymen, but forbid them so much as to eat or appear in a public inn or tavern, except they were upon a journey or some such necessary occasion required them to do it, under pain of

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<sup>1</sup> Con. Chalced. cau. x.

ecclesiastical censure. The Council of Laodicea<sup>1</sup> and the third Council of Carthage<sup>2</sup> forbid it universally to all orders of the clergy; and the Apostolical Canons more expressly,<sup>3</sup> with a denunciation of censure, viz. an Ἀφορισμὸς, *excommunication* or *suspension* from their office, to any that should be found in a tavern, except they were upon a journey, and the necessity of their affairs required it.

SECT. 31.—26. For conversing familiarly with Jews, Heretics or Gentile Philosophers.

26. For the same reason the Canons prohibited them conversing familiarly with Jews, Heretics and Heathens, especially the gentile philosophers, because of the scandal attending such communication. The laws forbidding all communication with Jews and Heretics have been mentioned upon another occasion:<sup>4</sup> I shall here only add that remarkable story,<sup>4</sup> which Sozomen tells of Theodotus, bishop of Laodicea in Syria, how he excommunicated the two Apollinarii, father and son, because they went to hear Epiphanius, the sophist, speak his hymn in the praise of Bacchus; which was a thing so disagreeable to their character, the one being a presbyter, the other a deacon in the Christian Church.

SECT. 32.—27. For using over rigorous Severity towards Lapsers.

27. As clergymen were obliged to shew a just severity to impenitent sinners, by putting the laws of discipline duly in execution against them: so on the other hand an over rigorous severity and stiffness in refusing to receive and reconcile penitent lapsers, after they had made canonical satisfaction, was a great offence, and such a manifest abuse of the ministerial power, as the Church thought fit to correct with some sharpness in her clergy. If any bishop, presbyter,

<sup>1</sup> Con. Laodic. can. xxiv.

<sup>3</sup> Canon. Apost. liii. al. 54.

<sup>4</sup> Sozom. lib. vi. cap. 25.

<sup>2</sup> Con. Carth. iii. can. 27.

<sup>1</sup> Book xvi. chap. vi. sect. 3 et 10.

or deacon, say the Apostolical Canons, receives not one<sup>1</sup> that turns from sin, but casts him out, let him be deposed: because he grieves Christ, who said, “there is joy in heaven over one sinner that repenteth.” This was not the true exercise of discipline, but imperiousness and humour, and a mere domineering over God’s heritage by an exorbitant stretch of the ministerial power. It was the very thing which the Novatian heretics contended for, and what the Church always opposed and condemned in them: and, therefore, when any of her own clergy assumed to themselves this extravagant power, she justly esteemed them infected with this Novatian principle of cruelty, and as such made them liable to the sentence of deprivation.

SECT. 33.—28. For want of Charity to indigent Clerks.

28. There was another sort of cruelty, which the Church also much resented in any of her clergy; which was want of charity to any that were indigent and distressed in their own order. As charity obliges men to do good to all, as they have opportunity, but more especially to those, who are of the household of faith: so clergymen were more especially obliged to assist those, who were joined with them in the same ministry, and united more closely by a stricter bond of fraternity in the same occupation and employment. Therefore the Apostolical Canons censure this as a great transgression in these very sharp terms:<sup>2</sup> “if any bishop or presbyter refuse to give necessaries to any clergyman, that is in want, let him be cast out of communion: and if he persist, let him be deposed, as a murderer of his brother.”

SECT. 34.—29. For judging in Cases of Blood.

29. It was thought also some sort of cruelty, at least a very improper and unbecoming thing for any clergyman to be concerned in judging or giving sentence in cases of blood. The laws allowed them to be chosen arbitrators of

<sup>1</sup> Canon. Apost. lii.

<sup>2</sup> Canon Apost. lix.

men's differences in civil causes : but they had no power at all in criminal causes, except such as were purely ecclesiastical ; and least of all in such criminal causes where life and death was concerned. Therefore there are many Canons forbidding this under the penalty of the highest censure of deprivation. The Council of Tarragone universally forbids the clergy to sit judges in any civil criminal causes.<sup>1</sup> The Council of Auxerre more particularly enjoins presbyters not to sit in judgment,<sup>2</sup> when any man is to be condemned to die: And, in another Canon,<sup>3</sup> forbids both presbyters and deacons to stand at the Trepalium, where criminals were put to the rack and examined by torture. The fourth Council of Toledo allows not priests to sit judges in cases of treason,<sup>4</sup> even at the command of the prince, except the prince promised beforehand upon oath, that he would pardon the offence, and remit the punishment. If they did otherwise, they were to be held guilty of bloodshed before Christ, and to lose their order and degree in the Church. The eleventh Council of Toledo goes a little further,<sup>5</sup> not only excluding such from the honour of their order and station, but from all communion during their whole lives, which they are only to be allowed at the point of death.

SECT. 35.—Bishops might be suspended or degraded for giving Ordinations contrary to the Canons.

These were the chief of those rules of ancient discipline, which concerned the clergy in general : beside which there were some, which had a more peculiar respect to the persons

<sup>1</sup> Con. Tarracon. can. iv. Habeant licentiam judicandi, exceptis criminalibus negotiis.

<sup>2</sup> Con. Antissiodor. can. xxxiv. Non licet presbytero in illo judicio sedere, unde homo ad mortem tradatur.

<sup>3</sup> Ibid.

can. xxxiii. Non licet presbytero, nec diacono, ad Trepalium, ubi rei torquentur, stare. Con. Matiscon. ii. can. xix.

<sup>4</sup> Con. Tolet. iv.

can. 30. Ibi consentiant regibus fieri iudices, ubi jurejurando, supplicii indulgentia promittitur; non ubi discriminis (al. sanguinis) sententia præparatur. Sit quis ergo sacerdotum discussor in alienis periculis extiterit, sitreus effusi sanguinis apud Christum, et apud ecclesiam perdat proprium gradum.

<sup>5</sup> Con. Tolet. xi. can. 6. His, à quibus Domini sacramenta tractanda sunt, iudicium sanguinis agitare non licet, &c.



of each particular order. Bishops might be suspended or degraded for several offences committed against the rules of their office and duty peculiar to their function. As first, for wilful transgression of the known laws of ordination. If any bishops pretended to ordain a man into a full see, where another was regularly ordained before him; or if two or three bishops ordained a bishop clancularly without the consent of the rest of the provincial bishops and the metropolitan; not only the bishop so ordained was to be deposed, but the bishops who presumed to give him such an ordination:<sup>1</sup> which was the case of Trophimus and those two other obscure bishops who ordained Novatian; for which offence, as Cyprian and Cornelius often tell us, they were degraded, and reduced to lay-communion. If any bishop ordained those, that were baptized by heretics, or re-baptized by them, he was liable to be deposed for his transgression.<sup>2</sup> If a bishop for favour ordained any of his own unworthy kindred, by a rule of the Apostolical Canons,<sup>3</sup> he was liable to be suspended. If a bishop ordained any in another man's diocese, by a rule of the same Apostolical Canons,<sup>4</sup> he was liable to be deposed, as well as the persons so ordained by him. All these things have been more fully shewn in the third section of this chapter, to which the reader may have recourse. To which I only add, that if a bishop ordained a man, who had done public penance in the Church, he himself was to be deprived of the power of ordination.<sup>5</sup>

SECT. 36.—Also for neglecting to put the Laws of Discipline in Execution.

2. If bishops neglected to put the laws of discipline in execution, which was a peculiar act belonging to their office, they were liable to be deposed for such neglect and contempt of discipline, as well as those, whom they ought to have punished with ecclesiastical censure. This is evi-

<sup>1</sup> Vid. Con. Arausican. i. can. 21.

<sup>2</sup> Vid. Felic. iii. ep. i. can. 5.

<sup>3</sup> Canon. Apost. lxxvi.

<sup>4</sup> Ibid. xxxv.

Carthag. iv. can. 68.

<sup>5</sup> Vid. Con.

dent from the case put by Pope Felix of some, who had been baptized or re-baptized by heretics, and were afterward irregularly ordained in the Church: not only they, who ordained them, were liable to be deposed, but also those bishops, who knew them to be so ordained, and did not remove them from their office, by putting the laws of discipline in execution against them. So again if a presbyter or deacon assumed to themselves any office without the authority of the bishop not belonging to them, and the bishop connived at their usurpation,<sup>2</sup> he himself was liable to canonical censure for his tameness in not correcting them for their presumption.

SECT. 37.—For dividing their Diocese, and erecting new Bishoprics without Leave: Or extending their Claims to other Men's Rights beyond their own Limits and Jurisdictions.

3. Bishops rendered themselves obnoxious to canonical censure, if they made any attempts to alter the boundaries or districts of the Church, settled by ancient law and custom, without the advice and consent of a provincial synod. Dioceses might be divided upon just reasons, and new ones be erected out of them: either when they were too large for one bishop's care: which made St. Austin divide the diocese of Hippo, and take the new bishopric of Fussala out of it; or else when the prince thought fit to advance some eminent town or village into a city; then that city might be made a new bishopric by the consent of a provincial council. But if any one ambitiously got himself ordained bishop of a village, where there never had been any bishop before, or as ambitiously solicited the prince to turn a village into a city, that he might be made the bishop of it: in such cases the Church thought fit to correct the lofty thoughts of aspiring men, and defeat their attempts, by denying them those honours they had taken such indirect methods to obtain, and putting them under the censure of a deprivation.

<sup>1</sup> Felic. iii. Ep. i. can. 5.  
Lucaniæ. cap. viii.

<sup>2</sup> Vid. Gelasii Epist. ix. ad Episc.

There are many Canons and rules of discipline, which forbid this practice: but the rule made in one of the Councils of Toledo is most remarkable, being an inference made upon a special case from all the ancient Canons, (forbidding bishops to be ordained in villages,) which are there recited. King Wamba by an imperious mandate had enjoined some bishops to ordain other bishops in several villages and monasteries, lying in the suburbs of Toledo and other places: against which innovating attempt and usurpation the Council first cites the ancient Canons, and then concludes with a new decree in these words:<sup>1</sup> “if any one shall offer to go against the prescription of these Canons, in procuring himself to be made a bishop in those places, where there never was any bishop before, let him be Anathema in the sight of God Almighty. And let moreover both the ordainer and the ordained lose the degree of their order, because they attempt not only to infringe the decrees of the ancient fathers, but the institutions of the Apostles.” The Council of Chalcedon made a like decree against any,<sup>2</sup> that should presume to address the higher powers to get a province divided into two, in order to erect a new metropolis in it. This, they say, was against the rule of the Church, and therefore they denounce the deprivation against any one, that should attempt it.

SECT. 38.—For not attending provincial Councils.

4. Bishops were obliged to attend provincial Councils; and if they refused or neglected to do this without a reasonable cause, they were liable to suspension. To this purpose there is a decree in the second Council of Arles:<sup>3</sup> if any one neglects to be present, or leaves the assembly of his

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<sup>1</sup> Con. Tolet. xii. can. 4. Si quis contra hæc canonum interdicta venire conatus fuerit, ut in locis illis se episcopum eligat fieri, ubi episcopus nunquam fuit, anathema sit in conspectu Dei Omnipotentis. Et iaspèr tam ordinator, quam ordinatus, gradum sui ordinis perdat: quia non solum antiquorum patrum decreta, sed et apostolica ausus est convellere instituta.

<sup>2</sup> Con. Chalced. can. xii.

<sup>3</sup> Con. Areletan. ii. can. 19. Si quis autem adesse neglexerit, aut cœtum fratrum, antequam dissolvatur concilium,

brethren, before the Council be ended, he shall be excluded from the communion of his brethren, and not be received again, till he is absolved by the following synod. The same decree is repeated by the Council of Tarragone,<sup>1</sup> and said to be conformable to the rules of the fathers, that if any bishop contemptuously omit to come to synod, when he is called by his metropolitan, unless he be under some great bodily infirmity, he shall be deprived of the communion of all the bishops to the sitting of the next Council; which the African synods call,<sup>2</sup> being content with the communion of his own Church only.

SECT. 39.—For oppressing the People with unjust Exactions.

5. If any bishop oppressed his people, or any part of them, with hard usage, unjust demands, or unreasonable exactions; it was peculiarly provided in this case by the laws of the African Church, that he should be amerced or punished with the loss of that part of his diocese or people, who had reason to complain of such oppression. I have already noted this in the last chapter, sect. 4, out of one of St. Austin's Epistles,<sup>3</sup> where he neatly defends this way of proceeding with bishops, when their offences were neither so great, as to deserve deprivation; nor so small, as to be perfectly overlooked, or let wholly pass without a censure.

SECT. 40.—For harbouring such as fled from another Diocese without Leave.

6. Finally whereas it was provided by the Canons, that no bishop should harbour or encourage any clerk flying from his own diocese, nor any monk deserting his own monastery: some Councils took care to prevent this abuse, not

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crediderit deserendum, alienum se à fratrum communione cognoscat, nec eum recipi liceat, nisi in sequenti synodo fuerit absolutus.

<sup>1</sup> Con. Tarracon. can. vi. Si quis episcoporum commonitus à metropolitano, ad synodum, nullâ gravi intercedente necessitate corporali, venire contempserit, sicut statuta patrum censuerunt, usque ad futurum concilium eunctorum episcoporum charitatis communione privetur.

<sup>2</sup> Con.

Carthag. v. can. 10. et Cod. Afric. can. lxxvii.

<sup>3</sup> Aug. Ep. cclxi.

only by degrading the deserting clerk, but by inflicting canonical punishment upon the bishop, that so countenanced or received him. The Council of Antioch leaves it in general to the synod, to punish such an offending bishop.<sup>1</sup> The Apostolical Canons are more particular,<sup>2</sup> that he shall be suspended from his office, as a master of disorder. But in Afric they had a more peculiar sort of punishment for such a bishop, which was, that he should communicate with no other bishop of the province, but be content with the communion of his own Church:<sup>3</sup> which, as has been observed, was a moderate punishment for offences of a lower rate, which neither deserved to be punished with deprivation, nor yet escape wholly unpunished as no offences.

SECT. 41.—*Chorepiscopi* might be censured for acting beyond their Commission.

Next to the bishop there were a sort of ecclesiastical persons, whom the ancient Church called *Chorepiscopi*, or *country-bishops*, because they officiated in certain episcopal duties under the city bishop in country districts. These acted by a limited and dependent power, but many times were inclined to assume a power to themselves beyond their commission. Therefore the Church was obliged to make certain laws and rules to restrain and correct their usurpations. These might ordain the inferior clergy, subdeacons, readers, and exorcists by a general commission, but not presbyters or deacons without a special licence: yet sometimes they would take upon them to do that also without consulting the city-bishop; for which offence they were liable by the Canons to lose their office and be degraded.<sup>4</sup>

SECT. 42.—And Presbyters for usurping upon the Episcopal Office.

The like may be observed of presbyters, who were assist-

<sup>1</sup> Con. Antioch. can. iii.

<sup>2</sup> Canon. Apost. xvi.

<sup>3</sup> Con. Carth. v. can. 13. *Episcopus qui hoc fecerit, à cæterorum communi one sejunctus, suæ tantùm plebis communionem contentus sit.*

<sup>4</sup> Vid Con. Antioch. can. x.

ants to bishops in performing their office, but with certain limitations, that they should not meddle with such parts of it, as they reserved absolutely to themselves; such as ordination and consecration of chrism, for the use of confirming, and the consecration of churches and altars. And if presbyters at any time exceeded the limits of their commission and order, by assuming the exercise and power of these things to themselves, by the laws of the Church they were liable to be divested of their ordinary power, which otherwise they might have enjoyed, and made subject to the penalty of a total deprivation. Thus when Eutychianus and Musæus, who were no bishops, had ordained several clerks, the Council of Sardica ordered,<sup>1</sup> that for this presumption they should be deprived of their orders, and entirely reduced to the communion of laymen. And in the first Council of Braga a decree was made,<sup>2</sup> prohibiting presbyters either to consecrate the chrism, or churches, or altars, under pain of deposition from their office: because the ancient Canons always forbid it.

SECT. 43.—And Deacons for assuming Offices and Privileges above their Order and Station.

Deacons likewise were confined to certain offices and stations appropriated to their order; above which if they presumed ambitiously to aspire and thrust themselves into the presbyter's duty, or any ways insult them: they also incurred the highest censures. The Council of Nice takes<sup>3</sup> notice of some such usurpations and abuses committed by deacons; that in some places the deacons took upon them to distribute the sacrament to presbyters; and to receive it before bishops themselves; and to sit in the midst of the presbyters: which being contrary both to rule and custom, it is ordered that such assuming deacons should be suspended, or cease from their ministry, as the word “*πεπαύς* ζω

<sup>1</sup> Con. Sardic. can. xx.

<sup>2</sup> Con. Bracaren. i. can. 37. Si quis presbyter post hoc interdictum ausus fuerit chrisma benedicere, aut ecclesiam aut altare consecrare, à suo officio deponatur. Nam et antiqui canones hoc vetuerunt.

<sup>3</sup> Con. Nic. can. xviii.

τῆς διακονίας" seem rather to signify. The second Council of Arles has a Canon to the same purpose,<sup>1</sup> that deacons shall not sit in the *secretarium* or *vestry among the presbyters*; nor presume to deliver the body of Christ, when a presbyter is present. If they do, they shall cease to officiate any longer as deacons.

Thus every order among the clergy had their particular offices assigned them; and not only neglects and omissions of their duty, but intermeddling with offices, that did not belong to them, and assuming powers, that were foreign to their order, was a sufficient cause of suspension or deprivation. And so I have done with what relates more peculiarly to the discipline of the Clergy.

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<sup>1</sup> Con. Arelatan. ii. can. 15. In secretario diaconos inter presbyteros sedere non liceat: vel corpus Christi, præsente presbytero, tradere non præsumant. Quod si fecerint, ab officio diaconatus abscedant.

## BOOK XVIII.

### OF THE SEVERAL ORDERS OF PENITENTS, AND THE METHOD OF DOING PUBLIC PENANCE IN THE CHURCH BY GOING THROUGH THE SEVE- RAL STAGES OF REPENTANCE.

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#### CHAP. I.

##### *Of the several Orders of Penitents in the Church.*

SECT. 1.—Penitents divided into four Orders or Classes.

WE have hitherto considered the discipline of the Church, as exercised upon obstinate and notorious criminals, in order to bring them to repentance: we are now to examine it again in its progress, as exercised upon penitents, who submitted to the rules of discipline, and see how they were treated in the performance of their penance, from the time of their excommunication to the time of their admission into the Church again. The performance of penance anciently was a matter of considerable length and time, to examine men's behaviour and sincerity, and make them give just testimony and evidence of real sorrow and hearty abhorrence of their sins, to satisfy the Church, that they were sincere converts, by submitting to go through a long course of penance, according as the wisdom of the Church



thought fit to impose it upon them. And upon this account the Church was used to divide her penitents into four distinct ranks or classes of different degrees, called by the Greeks, Προσκλαίοντες, Ἀκροωμένοι, Ὑποπίπτοντες, and Συνιτάμενοι; and by the Latins, *Fientes*, *Aulientes*, *Substrati*, and *Consistentes*; that is, *the mourners or weepers, the hearers, the substrators, and the co-standers*; the meaning of which names and distinctions shall be explained by and by. Some add to these a fifth order, but without any just ground or reason for it. Bellarmin says,<sup>1</sup> there was a fifth place, of such penitents as had fully completed their penance, and only waited for the time of reconciliation. And the place of these penitents, he says, was called Μέτωσις, or *the completion*. Our learned Dr. Cave also slides unwarily into the same mistake,<sup>2</sup> making five orders of penitents, whereof the fifth and last, he says, were called *Communicantes*, and were admitted to the participation of the holy sacrament. But it is most certain, there never was any such order of penitents, under the name of communicants, or partakers of the holy sacrament, acknowledged in the Church. For communicants, absolutely so called, as denoting partakers of the eucharist, are every where distinguished from the penitents, and go by other names, Πίτοι, Τέλαιοι, &c. *the faithful*, and *perfect*: that is, persons not under discipline and public penance, which is an imperfect state of communion, but in the perfect, peaceable, and full communion of the Church: none of which ever go by the name of penitents, in any ancient writer. Some penitents indeed are said to communicate imperfectly with the Church in some one particular thing; as the fourth order of penitents, called co-standers, are said often to communicate in prayers without the oblation or eucharist: but these, as they did not partake of the eucharist, so neither were they ever reputed perfect communicants in the Church, till they were restored to the Τὸ Τέλαιον, *the complete communion*

<sup>1</sup> Bellarm. de Pœnitent. lib. i. cap. 22. tom. iii. p. 959.  
Prim. Christ. lib. i. cap. viii. p. 217.

<sup>2</sup> Cave,

of the faithful at the altar. So that there is no manner of ground for this fifth order of penitents, the invention of which is entirely owing to a mistake, and implies a contradiction.

SECT. 2.—The first Original of this Distinction.

As to the other four orders of penitents, it is generally agreed among learned men, that the Church observed such a distinction; but how early, is not indisputably certain. Cardinal Bona thinks,<sup>1</sup> the distinction of penitential classes was first made about the time of the Novatian schism, that is, about the middle of the third century. And Suicerus,<sup>2</sup> speaking of the order of penitents, called hearers, says, there is no mention made of it before the time of Novatus; though otherwise a place for hearing the Scriptures and sermon was allowed in the Church for heathens, Jews, heretics, schismatics, and the second rank of the catechumens, who upon that account were commonly termed hearers, long before the name was given to any sort of penitents as a distinct order.

SECT. 3.—Of the *Flentes* or *Mourners*.

But in the third and fourth century, we commonly find the penitents distinguished into four orders; the first of which were the *Flentes* or *mourners*, who were rather candidates of penance, than penitents strictly speaking. Their station was in the church-porch, where they lay prostrate, begging the prayers of the faithful as they went in, and desiring to be admitted to do public penance in the church. This is what Tertullian means, when he says,<sup>3</sup> they were used to fall down at the presbyter's feet, and kneel to the friends of God, and intreat all the brethren to recommend their petition, and intercede with heaven for them. And so the historian represents the practice of Ecebolius,<sup>4</sup> the so-

<sup>1</sup> Bona, de Rebus Liturgic. lib. i. cap. 17. n. 3.      <sup>2</sup> Suicer. Thesaur. Eccles. tom. i. p. 171. Voce Ἀκρόασις. Vid. Constitut. Apost. lib. ii. cap. 16.  
<sup>3</sup> Tertul. de Penitent. cap. ix. Presbyteris advolvi, charis Dei adgeniculari, omnibus fratribus legationes deprecationis suæ injungere. Vid. lib. de Pudicit. cap. xiii.  
<sup>4</sup> Socrat. lib. iii. cap. 13.

phist, who having apostatized under Julian, desired to make his recantation, and do penance under Jovian: the first step toward which was, that he cast himself prostrate to the earth before the gate of the church, crying out, *Calcate me insipidum salem, tread me under foot as salt without savour.* Some Canons pass over this act as only a preliminary to repentance:<sup>1</sup> but Gregory Thamaaturgus and St. Basil, expressly mention it in their Canons. Gregory says,<sup>2</sup> the place of the mourners is without the gate of the church, where the sinner must stand, and beg the prayers of the faithful, as they enter in. And St. Basil thus describes the four stations of penitents: the first year they are to weep before the gate of the church;<sup>3</sup> the second year, to be admitted to hearing; the third year, to genuflexion, or repentance properly so called; and the fourth year, to stand with the faithful at prayers without partaking of the oblation. And in this sense we may understand that passage in St. Ambrose,<sup>4</sup> where speaking to one that had corrupted a virgin, he tells him, his only method now was to implore the help of the saints (meaning, not saints in heaven, but saints on earth in the Church) and to cast himself at the feet of the elect: which seems plainly to allude to this custom. In like manner Eusebius,<sup>5</sup> describing the behaviour of Natalis, the confessor, upon his return to the Church, from the Theodosian heretics, who had allured him by great rewards to become bishop of their party, says, he came in sackcloth and ashes, and with tears cast himself at the feet of Zephyrinus, then bishop of Rome; and not only laid himself under the feet of the clergy, but the laity also; endeavouring to move the merciful Church of the merciful Christ to compassion with his tears, and by shewing them the marks of the stripes, which he had endured for the confession of Christ. Where falling at the feet of the laity, as well as the clergy, can hardly refer to any thing else beside this preparatory introduction to penance, which the mour-

<sup>1</sup> Con. Nic. can. xi. et xii. Con. Ancy. can. 4, 6, 9.

<sup>2</sup> Greg.

Thaumaturg. can. xi.

<sup>3</sup> Basil. can. xxii. Vid. can. 56, 57,

58, 59, 64, 66, 75, *ibid.*

<sup>4</sup> Ambros. ad Virgin. Lapsam, cap.

viii. *Sanctorum petas auxilium, jaceas sub pedibus electorum.*

<sup>5</sup> Euseb. lib. v. cap. 28.

ners used in the church-porch, when they cast themselves before the people, to beg their prayers, and obtain admission into the first apartment of the church.

SECT. 4.—Of the *Audientes* or *Hearers*.

When their petition was thus accepted, they were said to be admitted to penance, that is, to have liberty to pass through the several stages of discipline, which the Church appointed for the probation and trial of such as pretended real sorrow for any notorious offence, and the scandal given to the Church by the commission of it. This is the true meaning of those common phrases, which so often occur in the writings of the Ancients, “*Pœnitentiam dare*,” and “*Pœnitentiam accipere*,” *giving and receiving penance*; that is, granting or accepting the conditions of public penance in the church. Now when men were admitted to this state, they were termed *Audientes*, or *hearers*, which was the second order of penitents; or, if we please, the first of those that had any privilege to enter the church. These were allowed to stay and hear the Scriptures read, and the sermon preached; but were obliged to depart, before any of the common prayers began, with the rest of those, catechumens and others, who went by the general name of hearers only. There is frequent mention made of these in the ancient Canons,<sup>1</sup> prescribing how long penitents were to continue in this station, a year, or two, or three, according as their offence required. Gregory Thaumaturgus particularly assigns them their station in the Narthex,<sup>2</sup> or lowest part of the Church, where they stood to hear with the catechumens of the first or second order, called hearers, and were dismissed with them as soon as the sermon was ended, before any prayers begun. St. Basil says expressly,<sup>3</sup> they were hearers only, and not allowed to be present at any prayers whatsoever. Which agrees exactly with the order in the Constitutions,<sup>4</sup> where the deacon is appointed to make proclamation,

<sup>1</sup> Con. Nic. can. xi. et xii. Con. Ancy. can. 4, 6, 9.

<sup>2</sup> Greg. Thaum. can. xi.

<sup>3</sup> Basil. can. lxxv. Vid. Greg.

Nyssen. can. iii.

<sup>4</sup> Constit. lib. viii. cap. 5.

as soon as the sermon was ended, "*Ne quis audientium, ne quis infidelium: Let none of the hearers, let none of the unbelievers be present.*"

SECT. 5.—Of the Kneelers or Prostrators.

And in this they were distinguished from the penitents of the third order, who were called Γονυκλινοντες and Ὑποπίπτουτες by the Greeks, and *Genuflectentes*, or *Substrati*, by the Latins; that is, *kneelers* or *prostrators*, because they were allowed to stay and join in certain prayers particularly made for them, whilst they were kneeling upon their knees. Bellarmin commits a strange mistake, and betrays a great deal of ignorance in the Greek tongue, whilst he explains the name Ὑποπίπτωσις to be the station of those, who were occupied in the contemplation of heavenly things;<sup>1</sup> taking the word to come from ὀπτομαι, *video*, to see or contemplate; whereas every one knows it comes from ὑποπίπτω, *to kneel*, or *fall down and lie prostrate on the ground*, whence they were properly denominated kneelers or prostrators. These were allowed to stay in the church after the hearers were dismissed, and hear the prayers, that were offered up, particularly for them by all the people, and receive imposition of hands from the bishop, who also made a particular prayer for them, which was styled, the imposition of hands upon the penitents, and the bishop's benediction. The Council of Laodicea,<sup>2</sup> speaks of these prayers under this very title, calling them the prayers of those, that were under penance and imposition of hands. St. Chrysostom also mentions them more than once,<sup>3</sup> styling them the prayers for the penitents, and the prayers full of mercy, because in them intercession was made to God for the penitents by the common voice both of the minister and people. The author of the Constitutions, has the forms of these prayers,<sup>4</sup> which I omit

<sup>1</sup> Bellar. de Pœnit. lib. i. cap. 22. tom. iii. p. 959.

Laodic. can. xix.

Hom. lxxvi. in Mat. p. 624.

<sup>2</sup> Con.

<sup>3</sup> Chrys. Hom. xviii. in 2 Cor. p. 873.

<sup>4</sup> Constit. lib. viii. cap. 8 et 9.

here, because they have been recited at length in a more proper place,<sup>1</sup> where we give an account of the ancient liturgy or service of the Church. The station of this sort of penitents was within the nave or body of the Church,<sup>2</sup> near unto the ambon, or reading-desk, where they received the bishop's imposition of hands and benediction. Some canons style this order simply the penitents,<sup>3</sup> by way of emphasis, without any other distinction: because they were the most noted, and the greatest part of penitential acts belonged to them whilst they were in this station, of which I shall give a more particular account in the following chapters.

SECT. 6.—Of the *Consistentes*, or *Co-standers*.

The last order of penitents were the *Συνιστάμενοι*, *Consistentes*, or *co-standers*, so called from their having liberty, after the other penitents, energumens and catechumens were dismissed, to stand with the faithful at the altar, and join in the common prayers, and see the oblation offered; but yet they might neither make their own oblations, nor partake of the eucharist with them. This the Council of Nice calls,<sup>4</sup> communicating with the people in prayers only without the oblation; which for the crime of idolatry was to last for two years, after they had been three years hearers, and seven years prostrators before. The Council of Ancyra, often<sup>5</sup> uses the same phrase of communicating in prayers only, and communicating without the oblation: and in one Canon expressly styles this order of penitents,<sup>6</sup> the *Συνιστάμενοι*, *co-standers*; by which name they are also distinguished in the Canons of Gregory Thaumaturgus,<sup>7</sup> and frequently in the Canons of St. Basil.<sup>8</sup> In all which we may observe, that the

<sup>1</sup> Book. XIV. chap. v. sect. 10.

<sup>2</sup> Gregor. Thaumaturg. can. xi.

<sup>3</sup> Con. Laodic. can. xix.

<sup>4</sup> Con. Nic. can. xi. Δέο ἔτη χωρίς προσφορᾶς κοινωνήσεται τῷ λαῷ τῆν προσεχῶν Vid. can. xii. ibid.

<sup>5</sup> Con. Ancyra. can. iv. Ἐν χῆρ μόνῃς κοινωνήσεται. Can. v. Κοινωνήσάτωσαν χωρίς προσφορᾶς. II. can. 8, 16, 25.

<sup>6</sup> Con. Ancyra. can. xxvi.

<sup>7</sup> Greg. Thaumaturg. can. xi.

<sup>8</sup> Basil. can. 22, 56, 57, 58, 59, 61,

word communicating does not always signify partaking of the eucharist, but communicating in prayers only without the oblation; which was but an imperfect sort of communion; in opposition to which, when they were admitted again to the eucharist, they were said “*ἔλθειν ἐπὶ τὸ τέλειον, to attain to perfection;*” the participation of the eucharist being the highest state, or consummation and perfection of a Christian. This is the short account of these several orders of penitents, and their stations in the Church: but to have a complete view of the ancient manner of performing penance, it will be necessary to consider both the ceremony of admission to this state, and the several acts of penance, which they performed during their progress or passage through the several stages of it; as also the length of time, or the duration and continuance of this exercise; which was often for a course of many years, and sometimes to the hour of death, without any remission or relaxation. The considering all which will give us an exact and clear idea of the ancient discipline, and shew us at once both the severity, and prudence, and purity of the Church, in proceeding with sharpness against great delinquents, as well to examine the sincerity of their repentance, as to take off the scandal cast upon religion, and prevent their backsliding and relapses for the future. Of these things therefore in the following chapters.

## CHAP. II.

*Of the Ceremonies used in admitting Penitents to do public Penance, and the manner of performing it in the Church.*

SECT. 1.—Penitents first admitted to Penance by Imposition of Hands.

When a penitent desired to be admitted to do public penance, and his petition was accepted, the first ceremony

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<sup>1</sup> Con. Ancy. can. 4, 5, 6.

that was used, was to grant him penance, as the phrase was, by imposition of hands. For this was a ceremony used almost in all religious actions, when any person was solemnly to be recommended to God in prayer. There were many other impositions of hands given them daily, when they came into the third order of penitents; but this was previous to their admission, or rather the form and ceremony of it, when they were first taken in to be hearers in the church. For this we have the plain testimony of the Council of Agde,<sup>1</sup> which orders, “that penitents, at the time when they desire to be admitted to do penance, shall receive imposition of hands from the bishop, and sackcloth to cover their heads.”

SECT. 2.—And obliged to appear in Sackcloth and Ashes upon their Head.

In which canon we may observe another rite and custom of common use in this matter: which was, that penitents were obliged to appear in sackcloth, as an indication and token of their great sorrow and indignation against themselves. Other writers join sackcloth and ashes together; for so Eusebius describing the penitential mien of Natalis the confessor, upon his return from the Theodosian heretics to the Church says,<sup>2</sup> he came clothed in sackcloth and sprinkled with ashes. And St. Ambrose writing to a virgin, that had lapsed, plainly alludes to both customs, when he tells her,<sup>3</sup> “she must macerate her whole body, sprinkling it with ashes, and covering it with sackcloth.” In like manner Tertullian, discoursing of public penance,<sup>4</sup> says, it obliges the sinner to change both his diet and his habit, to defile his body, and lie in sackcloth and ashes. Neither were the greatest personages exempted from this ceremony.

<sup>1</sup> Con. Agathen. can. xv. *Pœnitentes tempore quo pœnitentiam petunt impositionem manuum et cilicium super caput à sacerdote consequantur.*

<sup>2</sup> Euseb. lib. v. cap. 28. See Con. Tolet iii. can. 12.

<sup>3</sup> Ambros. ad Virg. Lapsam, cap. viii. *Totum corpus incuriâ maceretur, cinere aspersum et opertum cilicio.* Vid. Cypr. de Lapsis, p. 135.

<sup>4</sup> Tertul. de Pœnit. cap. ix. *De ipso quoque habitu atque victu mandat, sacco et cineri incubare, corpus sordibus obscurate.*



For St. Jerom<sup>1</sup> describing the penance of Fabiola, one of the greatest ladies in Rome, says, “she stood in sackcloth in the order of penitents in the Lateran Church, to make public confession of her fault in the sight of all the people of Rome:” and they continued the use of it during their passage through all the stages of repentance. For even at last they appeared in sackcloth, when the course of their whole penance was ended, and in this garb, as the Council of Toledo words it,<sup>2</sup> were absolved, and reconciled to the altar of God.” And this is always the meaning of those expressions, which speak of penitents changing their garb, and taking the mournful habit of repentance. Some think this was always done precisely on Ash-Wednesday, or the beginning of Lent, which from thence was called *Dies Cinerum*, the day of sprinkling ashes, and *Caput Jejunii*, the head or beginning of the fast. But this, for ought I can find, is founded upon very uncertain tradition, and the authority of modern authors; there being a perfect silence in the more ancient writers about it. Bellarmin cites the authority of the Council of Agde for it:<sup>3</sup> but this is only to be found in Gratian,<sup>4</sup> for there is no such Canon in the tomes of the Councils. And the Roman correctors of Gratian own as much, referring us to the Roman *Penitentiale*, and Pontifical, and the *Ordo Romanus* for the substance of it. And so Baluzius says,<sup>5</sup> Burchardus has it out of the Roman *Penitentiale*, which is of a much later date: neither does the canon, as cited by Gratian, prove the thing in question, but only describes the ceremony, that was used toward penitents in the beginning of Lent, whether they were then first admitted to penance, or had been admitted before: which very thing supposes, that penance might be imposed at other times, as well as the first day of Lent, as the old gloss

Hieron. Ep. xxx. Epitaph. Fabiolæ. Quis hoc crederet, ut saccum indueret, ut errorem publicè fateretur, et totâ urbe spectante Romanâ, ante diem Paschæ, in Basilicâ Lateranâ—staret in ordine Pœnitentium?

<sup>2</sup> Con. Tolet. i. can. 2. Qui sub cilicio divino reconciliatus est altario.

<sup>3</sup> Bellarm. de Pœnitent. lib. i. cap. 22.

<sup>4</sup> Grat. Dist. l. cap. 64.

<sup>5</sup> Baluz. Not. ad Gratian. p. 464.

upon Gratian rightly observes. The ceremony, as it is described by Gratian, seems only to be an account of the discipline used towards penitents in Lent, different from their treatment at other seasons of the year. For, in *Capite Quadragesimæ*, on Ash-Wednesday, or the first day of Lent all penitents, who either then were admitted to penance, or had been admitted before, were presented to the bishop before the doors of the church, clothed in sackcloth, barefooted, and with countenances dejected to the earth, confessing themselves guilty both by their habit and their looks. They were to be attended by the deans or arch-presbyters of the parishes, and the penitential presbyters, whose office was to inspect their conversation, and enjoin them penance according to the measure of their faults by the degrees of penance, that were appointed. After this they bring them into the church, and then the bishop with all the clergy falling prostrate on the ground, sing the seven penitential psalms with tears for their absolution. After this the bishop rising from prayer, gives them imposition of hands, sprinkles them with holy water, puts ashes upon their heads, and then covers their heads with sackcloth, declaring with sighs and groans, that as Adam was cast out of Paradise, so they for their sins are cast out of the Church: then he commands the inferior ministers to expel them out of the doors of the church; and the clergy follow them, using this responsory, "In the sweat of thy face shalt thou eat thy bread: for dust thou art, and unto dust thou shalt return." In the end of Lent, on the Thursday before Easter called *Cæna Domini*, the deans and presbyters are to present them before the gates of the church again. Thus far Gratian's account, which is manifestly not a determining the time of imposing penance to be the first day of Lent, but a description of the manner of treating all penitents in Lent, whatever time their penance was imposed upon them. And as there are some things in it conformable to the ancient discipline, so there are many things in it, that plainly discover it to have relation to a more modern practice. For there was no use of holy water in the ancient discipline; nor seven penitential psalms in the ancient service, but only one penitential psalm, that is the fifty-first, com-

monly distinguished by the name of *Psalmus Exomologeseos*, the penitential psalm, or *psalm of confession*. Neither was Ash-Wednesday anciently the first day of Lent, till Gregory the Great first added it to Lent, to make the number of fasting days completely forty, which before were but thirty-six. Neither does it appear, that anciently the time of imposing penance was confined to the beginning of Lent, but penance was granted at all times, whenever the bishop thought the sinner qualified for it: as St. Ambrose admitted Theodosius to penance at Christmas; and there are many examples of the like nature. The circumstance therefore of time must be passed over as unlimited and uncertain. Only whenever penance was imposed, the sinner was obliged to change his habit, and appear in a mournful dress, agreeable to a state of repentance: which is all that can be concluded from any of the ancient canons, which speak of the circumstances of repentance.

SECT. 3.—And to cut off their Hair, or go veiled as another Token of Sorrow and Mourning.

At the same time that they changed their habit, some canons obliged penitents to cut off their hair, or shave their heads, if they were men, as another indication of sorrow and mourning. And women were enjoined to wear a penitential veil, and either to cut off their hair, or appear with it dishevelled, and hanging loose about their shoulders; which was another token of deep sorrow and affliction. The Council of Agde made a peremptory order,<sup>1</sup> that if any, who desired to be admitted to penance, refused to cut off their hair, they should be rejected. And the third Council of Toledo has a like order,<sup>2</sup> “that when any one desires penance of the bishop, he shall first poll him, and make him change his habit for sackcloth and ashes, and so admit him to do

<sup>1</sup> Con. Agathen. can. xv. Si autem comas non deposuerint, aut vestimenta non mutaverint, abjiciantur.

<sup>2</sup> Con. Tolet. iii. can. 12. Quicumque ab episcopo pœnitentiam postulat, priùs eum tondeat, aut in cinere et cilicio habitum mutare faciat, et sic pœnitentiam ei tradat. Si verò mulier fuerit, non accipiat pœnitentiam, nisi priùs aut velata fuerit, aut mutaverit habitum.

penance." Optatus alludes to this custom, when speaking of the rudeness of the Donatists in bringing some Catholic bishops to do penance,<sup>1</sup> he says that contrary to all rules they had shaved the heads of the priests: they, who ought to prepare ears to hear their instructions, had prepared razors to sin against them; that is, they had made them do public penance in order to retain their clerical office, which ought not to be done: for if a clergyman was to do public penance, he ought first to be degraded for his offence, and do penance only as a layman. As to women, the custom was to put them on a penitential veil, which is expressly required by the third Council of Toledo, appointing,<sup>2</sup> "that no woman should be admitted to do penance, except she was first veiled, and had changed her habit." Whence Optatus calls such veils, the veils of repentance;<sup>3</sup> objecting it to the Donatists, that they had forced the Catholic virgins, who were innocent, to submit to their imposition of hands, and wear upon their heads the veils of repentance. St. Ambrose seems to intimate, that they also had their heads sometimes shorn or shaven. For writing to a virgin, who had committed fornication, he bids her cut off her hair,<sup>4</sup> which through vain glory had given her occasion to sin. But this was no general custom: for St. Jerom, describing the penance of Fabiola,<sup>5</sup> says, she did it "*sparso crine, with her hair dishevelled*, the bishop and presbyters and all the people weeping with her." Whence we may observe also, with what seriousness, gravity, and concern this whole matter was trans-

<sup>1</sup> Optat. lib. ii. p. 58. Ubi vobis mandatum est radere capita sacerdotum ? — Qui parare debebas aures ad audiendum, parasti novaeulam ad delinquendum. Vid. Cypr. de Lapsis, p. 135.      <sup>2</sup> Con. Tolet. iii. can. 12. Si

mulier fuerit, non accipiat pœnitentiam, nisi priùs aut velata fuerit, aut mutaverit habitum.      <sup>3</sup> Optat. lib. ii. p. 59. Extendistis man-

num, et super omne caput mortifera velamina prætendistis. Et. p. 61. Cum super earum capita velamina pœnitentiæ tendistis.      <sup>4</sup> Ambros-

ad Virg. Lapsam, cap. viii. Amputentur crines, qui per vanam gloriam occasionem luxuriæ præstiterunt.      <sup>5</sup> Hieron. Ep. xxx. Ut

staret in ordine Pœnitentium, Episcopo, Presbyteris et omni populo collacrymantibus, sparso crine, ora lurida, et squalidas manus, sordida calla submitterit.

sacted. For not only the party under penance took shame to himself, and by these ceremonies expressed his sorrow with tears; but the whole Church with a compassionate fellow feeling, took share in his grief, suffering with a suffering member, and weeping and mourning together with him. After this manner Socrates, represents the practice of the Roman Church in this exercise, telling us, that not only the penitents prostrated themselves upon the ground with lamentation and wailing, but that the bishop meeting them in their proper station, fell to the earth likewise with tears, whilst all the congregation wept with them. Then the bishop rose up, and raised the penitents likewise, and made the usual prayers for them before the mystical service began, and so dismissed them from the Church. This was a very solemn way of performing penance, that made a just impression upon the whole Church, whilst every man was touched with a sense of his brethren's folly, and made their sins not matter of sport or ridicule, but an occasion of expressing his pity and compassion toward them, as members of the same body, weeping with those that wept, and joining his prayers and tears with theirs, to besiege heaven with united force, and obtain of God mercy and pardon for them.

SECT. 4.—Penitents to abstain from Bathing, and other innocent Diversions of Life, as Feasting, &c.

Socrates takes notice in the same place, that penitents were used to abstain from bathing and other innocent diversions of life. For he says, they exercised themselves willingly in private, “ ἡ νεκείαις, ἡ ἀλυσίαις, ἡ ἐδεσμάτων ἀποχῇ, with fastings, and neglect of bathing, and abstinence from meats,” as long as the bishop thought fit to enjoin them. Which is also intimated by Pacian, when he brings in the

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<sup>1</sup> Socrat. lib. vii. cap. 16.

penitent declaring,<sup>1</sup> “ that if any one called him to the bath he refused such delights: if any one called him to a feast, his answer was: Those things belong to the happy; but as for me, I have sinned against the Lord, and am in danger of eternal destruction.”

SECT. 5.—To observe all the public Fasts of the Church.

And as they thus exercised themselves in private abstinence, mortification and fasting; so they were more especially obliged to observe all the public fasts of the Church. There might be some reasons to excuse others, and dispense with the rigour and severity of this exercise in some cases and circumstances, requiring a little abatement in the laws of fasting: but penitents were tied up to the strictest observance of them. And therefore the fourth Council of Carthage made a decree,<sup>2</sup> that penitents should present themselves at church on all times of fasting, and receive imposition of hands from the priests.

SECT. 6.—To restrain themselves in the Use of the conjugal State.

Some directions are also given, at least by private writers, that penitents should abstain from the use of the marriage bed, during their continuance in the state of public penance. This is a rule laid down by St. Jerome,<sup>3</sup> that in the time of fasting the bridegroom and the bride should sequester themselves from one another. “ For he that says, he does penance by abstinence from meat, and fasting, and alms, in vain uses this speech, except he go out of his

<sup>1</sup> Pacian. *Pænesis ad Pœnitent.* Bibl. Patr. tom. iii. p. 73. Si quis ad balneum vocet, recusare delicias; si quis ad convivium vocet, dicere, *Ista felicibus!* ego deliqui in Dominum, et periclitor in æternum perire. Vid. Tertul. de Pœnitent. cap. ix. Plerumque verò jejuniis preces alere, &c. Cypr. de Lapsis, p. 135.

<sup>2</sup> Con. Carth. iv. can. 80. *Omni tempore jejunii manus pœnitentibus à sacerdotibus imponatur.*

<sup>3</sup> Hieron. in Joel. cap. ii. *In tempore jejunii non serviat sponsus et sponsa operi nuptiali.—Qui in castigatione victus, et jejunio, et elemosynis dicit se agere pœnitentiam, frustra hoc sermone promittit, nisi egrediatur de cubili suo, et sanctum purumque jejunium pudicâ expleat pœnitentiâ.*

chamber, and make his fast holy and pure by adding continence to his repentance." And so St. Ambrose reckons this a necessary part of self-denial upon such an occasion.<sup>1</sup> "Does any one think that to be repentance, where a man is engaged in an ambitious pursuit of honour, and indulges himself in the use of wine and the marriage bed? Men must renounce the world, abridge themselves of sleep, which nature requires, entreat the favour of God with sighing and mourning and earnest prayers, and live so as to die to the use of this life, and deny themselves, and become wholly new men.

SECT. 7.—For which Reason no married Persons were admitted to Penance, but by Consent of both Parties.

I cannot be positive, and therefore will not venture to affirm it absolutely, that this was imposed by any public rule of the Church, because I remember no Canon at present, that precisely enjoins it. The only thing that may incline a man to think there was such a rule, is, that there is another rule of near relation to it, and which seems to be grounded upon the presumption of such a practice: that is an order we find in the second Council of Arles,<sup>2</sup> that penance should not be granted to any married people, man or woman, without the desire and consent of both parties, this seems to be grounded upon a supposition, that penitents were under obligation to contain during the time of their penance; and if the innocent party would not consent, no force or compulsion could be laid upon them. For the laws of matrimony are prior to any rules, that could be made about the exercise of public discipline by the Church.

SECT. 8.—Penitents not allowed to marry in the Time of their Penance.

It is another rule of the same Council, proceeding upon

<sup>1</sup> Ambros. de Pœnitent. lib. ii. cap. 10. An quisquam illam pœnitentiam putat, ubi acquirendæ ambitio dignitatis, ubi vini effusio, ubi ipsius copulæ conjugalis usus? Renunciandum seculo est, somno ipsi mîns indulgendum — seipsum sibi homo abneget, &c.

<sup>2</sup> Con. Arlat. ii. can. 22. Pœnitentiam conjugatis non nisi ex consensu dandam.

the like reason and supposition of perfect continency in public penitents, that no penitent, man or woman, should have liberty to marry, whilst they were doing penance:<sup>1</sup> and if they did, they should be rejected, and debarred even from entering under the roof of the church. Or if they held any suspicious conversation, or unlawful familiarity with strangers, in this state, they were liable to the same censure. For all this was thought improper in their circumstances, and inconsistent with the profession of a solemn and deep repentance.

SECT. 9.—Penitents obliged to pray kneeling on all Festivals and Days of Relaxation.

And whereas all others might pray standing on all festivals, on the Lord's-day, and the commemorations of martyrs, and the whole fifty days between Easter and Pentecost, which were called days of relaxation, and the standing posture was appointed to be used on them by the laws of the Church: penitents are particularly excepted from this privilege, and obliged to pray kneeling at these times as well as any other. For this posture was most agreeable to their state, whose devotions consisted only in the expression of a deep humility and sorrow for sin, for which kneeling was thought the most decent posture. Therefore as others were obliged to pray kneeling on their stationary days, and days of fasting, because those were times of more solemn humiliation: so the penitents were obliged to kneel every day,<sup>2</sup> even on the days of remission, because every day was a day of humiliation to them, and their business in the church was only to sue for mercy, and to prostrate themselves to receive the solemn imposition of hands and benediction.

<sup>1</sup> Con. Arelat. ii. can. 21. Pœnitentes, quæ, defuncto viro, aliis nubere præsumserint, vel suspectâ vel interdictâ familiaritate se cum extraneo junxerint, cum eodem ab ecclesiæ liminibus arceantur. Hoc etiam de viro in pœnitentiâ posito placuit observari.

<sup>2</sup> Con. Carth. iv. can. 82. Pœnitentes etiam diebus remissionis genua flectent.



## SECT. 10.—Penitents obliged to shew their Liberality to the Poor.

And because mercy and liberality to the poor was a great argument and evidence of repentance, this was always in an eminent degree exacted of them. Cyprian puts this among<sup>1</sup> the other indications of repentance. “Can we think,” says he, “that that man laments with his whole heart, and deprecates the Lord with fasting, weeping, and mourning, who, from the very moment of his sinning, daily frequents the baths, who feeds himself with luxurious feasting, and fills his belly to an extraordinary pitch, only to belch forth his crudities the day after; who imparts not his meat and drink to the necessities of the poor? How does he bewail his own death, who walks about with a merry and cheerful countenance, who trims his beard and attires his face? Does he think to please men, who displeases God? Does that woman lament and mourn, who is at leisure to put on her costly clothing, and never thinks of the garment of Christ, which she has lost?” In such a case he thinks charity to the poor would be a more becoming ornament, than all their silks, and jewels, and gold: therefore he advises them to put on the ornament of Christ, that they might not appear naked before him.

## SECT. 11.—Penitents obliged to minister and serve the Church in burying the Dead.

Finally, in some Churches the penitents were obliged to take upon them the office and care of burying the dead: and this by way of discipline, and exercise of humility and charity, which were so becoming their station. In many Churches, especially those of greater note, this business devolved upon a certain order of men, called *Parabolani*, whose office was particularly to attend the sick, and take care to bury the dead:<sup>2</sup> but probably there was no such

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<sup>1</sup> Cypr. de Lapsis, p. 135.

<sup>2</sup> Book iii. chap. 9.

standing office in many Churches, and therefore this employment was put upon the penitents, as a proper exercise for men in their condition. It is certain it was so in the African Churches: for the fourth Council of Carthage gives a particular direction in the case,<sup>1</sup> “that the penitents should bear out the dead to the church, and take care of their burial.” These were some of those wholesome and salutary exercises, with which the ancient Church disciplined her penitents, especially those of the third order, who were more emphatically called penitents, as being in the state of prostrators, which was the most noted order of penitents in the Church. But there is one eminent act of penance, belonging to this order, yet behind; that is, the *Exomologesis*, or *confession*: which, because it has been turned into a new thing by the Church of Rome, and occasioned some great disputes, I have purposely reserved for a distinct handling, and shall make it the subject of a particular dissertation in the following chapter.

### CHAP. III.

*A particular Account of the Exomologesis, or Confession used in the Discipline of the ancient Church; shewing it to be a different Thing from the private or auricular Confession introduced by the Church of Rome.*

SECT. 1.—The gross Mistake of those, who make the *Exomologesis* of the ancient Church to signify auricular Confession.

THERE is nothing more common among the polemical writers of the Romish Church, than wherever they meet with the word *Exomologesis* in any of the ancient writers,

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<sup>1</sup> Con. Carth. iv. can. 81. Mortuos pœnitentes ecclesiæ afferant et sepeliant.

to interpret it private or auricular confession, such as is now practised in the communion of that Church, and imposed upon them as absolutely necessary to salvation. But they, who with greater judgment and ingenuity among themselves have more narrowly considered the matter, make no scruple to confess, that the *Exomologesis* of the Ancients signifies a quite different thing, viz. the whole exercise of public penance, of which public confession was a noted part. The learned Albaspinæus very strenuously sets himself to refute this error in the writers of his own party. Cardinal Bellarmin, says he,<sup>1</sup> and Baronius, and Maldonat in his Controversies, and Pamelius in his Commentaries upon Tertullian and Cyprian, lay it down as a certain truth, that the Fathers generally take the word *Exomologesis* for private and auricular confession: but having long and accurately considered all the places where it is mentioned, I cannot come in—to their opinion. The Fathers, adds he, always use this word, when they would describe the external rites of penance, viz. weeping, and mourning, and self-accusation, and other the like things, which penitents usually practised in the course of public penance. For no one can be ignorant, that in those first ages, penitents performed a long and laborious penance, wherein they mortified themselves with continual weeping, and stood before the gates of the church to give public testimony of their sorrow for the sin they had committed: moreover that they cast themselves on the ground at the bishop's feet, and fell down at the knees of the martyrs, and besought all the rest of the faithful, that they would become intercessors to God for them, being clothed in sackcloth, and covered with filthiness and horror: and that when they had gone thus far in their penance, the bishop was used to bring them from the doors into the church, and set them before the presbyters, the deacons, the widows, and all the people; where again they were used to prostrate themselves on the ground, detesting their sins, and commending themselves to the prayers of all, and so

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<sup>1</sup> Albaspin. Observat. lib. ii. cap. 26. p. 153.

lemnly protesting, that they would never relapse or return to their former condition again. "And upon this account," says he, "we often find this last rite called *Exomologesis* by the Fathers, because it contained many acts in it, expressing sorrow for the crimes they had committed; in like manner as the whole action and tenor of a penitent's life, whilst he is doing penance, is sometimes called *Exomologesis* by the Fathers." This he proves and confirms from many irrefragable testimonies out of Tertullian, Cyprian, and other ancient writers, which I shall not here relate, but only allege one passage of Tertullian, which comes home to the present purpose. "The *Exomologesis*," says he,<sup>1</sup> "is the discipline of a man's prostrating and humbling himself, enjoining him a conversation, that moves God to mercy and compassion. It obliges a man to change his habit and his diet, to lie in sackcloth and ashes, to defile his body by a neglect of dress and ornament, to afflict his soul with sorrow, and to change his former sinful conversation by a quite contrary practice: to use meat and drink, not to please his appetite, but only for preservation of life; to quicken his prayers and devotions by frequent fastings; to groan and weep, and cry unto the Lord God both day and night; to prostrate himself before the presbyters of the Church, to kneel before the friends of God, and beg of all the brethren, that they would become intercessors for his pardon: all this the *Exomologesis* requires to recommend a true repentance." Here is not a syllable of private or auricular confession, but all relates to the public confession before the Church; and that not so much in words, as in actions, expressing their repentance in public demonstrations of their sorrow, and the uniform tenor of a penitent behaviour; which was of far greater moment to signify and evidence their conversion, than the most pathetical words of any mere verbal or private confession.

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<sup>1</sup> Tertul. de Pœnitent. cap. ix. *Exomologesis prosternendi et humili-  
candi hominis disciplina est, conversationem injungens misericordiæ illicem.  
De ipso quoque habitu et victu mandat, sacco et cineri incubare, corpus sor-  
dibus obscurare, animum mœroribus dejicere, &c.*

## SECT. 2.—No Necessity of auricular Confession ever urged by the ancient Church.

And this is one argument to prove, that the doctrine of the necessity of auricular confession was wholly unknown to the ancient Church. For when public discipline was in general use, and all men were disposed to submit to it, there could be little occasion for private confession, the reason and ground of which was much better answered by the public. But besides this, there is most plain and direct evidence from the testimonies of the Ancients, that no necessity was laid upon any man to make private confession of all or any of his secret sins to a priest, as a matter of indispensable obligation, either to qualify him for the reception of the Eucharist, or to give him a title to the communion of the Church and eternal life. I have already shewn this, with a particular respect to the reception of the Eucharist, out of some very plain passages of Chrysostom, Gennadius, Laurentius Novariensis,<sup>1</sup> and other ancient writers; to which I shall here add such other testimonies, as evidently shew, they required no private confession to be made to man, except in some very particular cases. St. Chrysostom exhorting men to repentance, says,<sup>2</sup> “ I bid thee not to bring thyself upon the stage, nor to accuse thyself unto others: but I advise thee to observe the prophet’s direction, reveal thy way unto the Lord, confess thy sins before God, confess them before the judge; praying, if not with thy tongue, yet at least with thy memory; and so look to obtain mercy. It is better to be tormented with the memory of thy sins now, than with the torment, that shall be hereafter. If you remember them now, and continually offer them to God, and pray for them, you shall quickly blot them out: but if you forget them now, you will then remember them against your will, when they shall be brought forth before the whole world, and be publicly exposed upon the stage before all,

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<sup>1</sup> Book xv. chap. 8. sect. 6.

<sup>2</sup> Chrys. Hom. xxxi. in Hebr. p. 1965.

friends, enemies, and angels." In another place,<sup>1</sup> "It is not necessary, that thou shouldst confess in the presence of witnesses; let the inquiry after thy sins be made in thy own thoughts; let this judgment be without any witness; let God only see thee confessing." Again,<sup>2</sup> "I beseech you make your confession continually to God. For I do not bring thee into the theatre of thy fellow-servants, neither do I constrain thee by any necessity to discover thy sins unto men: unfold thy conscience before God, and shew Him thy wounds, and ask the cure of Him. Shew them to Him, who will not reproach thee, but only heal thee. For although thou confess not, He knows all. Confess therefore, that thou mayest be a gainer. Confess, that thou mayest put off thy sins in this world, and go pure into the next, and avoid that intolerable publication, that will otherwise be made hereafter. "Why art thou ashamed and blushest," says he, in another place,<sup>3</sup> "to confess thy sins? Dost thou discover them to a man, that he should reproach thee? Dost thou confess them to thy fellow-servant, that he should bring thee upon the open stage? Thou only shewest thy wound to Him, who is thy Lord, thy Curator, thy Physician, and thy Friend. And He says to thee, I do not compel thee to go into the public theatre, and take many witnesses. Confess thy sin in private to Me alone, that I may heal thy wound, and deliver thee from thy grief." There are almost twenty passages in the same author,<sup>4</sup> very full and pregnant to the same purpose, which the learned reader may consult in their proper places, or view them at once collected together by Mr. Daille in his excellent book of Auricular Confession,<sup>5</sup>

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<sup>1</sup> Chrys. Hom. de Pœnitent. t. v. Edit. Latin. 5. De Incomprehensibili Dei Naturâ, t. i. p. 392. <sup>2</sup> Hom. xxx. sive Lazaro, t. v. p. 87. <sup>3</sup> Hom. iv. de Pœnitent. t. i. p. 700. <sup>4</sup> Hom. lvii. Quòd peccata non sint evulganda, t. p. 754. Hom. lviii. Non esse ad gratiam concionandum. t. v. p. 772. Hom. lxxviii. de Pœnitentiâ Ahab. t. v. p. 1003. Hom. xxi. ad Pop. Antioch. t. i. p. 270. Hom. viii. de Pœnitent. t. i. p. 700. Hom. ix. de Pœnitent. ibid. p. 708. Hom. lxii. de Paralytico. t. v. p. 927. Hom. xx. in Gen. t. ii. 222. Hom. ii. in Psal. l. t. 3. p. 1004, et 1005. Hom. xx. in Mat. p. 200. Hom. xxviii. in i. Cor. p. 569. <sup>5</sup> Daille. de Confess. Auricular. lib. iv. cap. 25.

where he not only vindicates these passages of Chrysostom from the sophistical glosses and evasions of the Romanists, but also has unanswerably proved by no less than thirty arguments, and a cloud of other ancient witnesses, that there could be no such thing as private, auricular, sacramental confession enjoined, as of necessity to pardon of sin, in the primitive Church. Chrysostom is not the only person, that maintains this assertion. St. Basil says the same thing before him:<sup>1</sup> "I do not make confession with my lips, to appear to the world; but inwardly in my heart, where no eye sees; I declare my groanings unto Thee alone, who seest in secret, I roar within myself: for I need not many words to make confession: the groanings of my heart are sufficient for confession, and the lamentations, which are sent up to Thee, my God, from the bottom of my soul." In like manner St. Hilary makes confession necessary to be made to God only:<sup>2</sup> for commenting on the fifty-second Psalm, he tells us, David teaches us, that confession is necessary to be made to none but God, who hath made the olive fruitful with the hope of mercy for ever and ever. And St. Ambrose as plainly says,<sup>3</sup> that tears poured out before God are sufficient to obtain pardon of sin, without confession made to man. His words are, "Tears wash away sin, which men are ashamed to confess with their voice. Weeping provides at once both for pardon and bashfulness: tears speak our faults without horror; tears confess our crimes without any offence to modesty or shamefacedness." So again,<sup>4</sup> speaking of St. Peter's tears, he says, "I find not what Peter said but I find that he wept: I read of his tears, but I read not of his satisfaction," meaning, that verbal confession was not simply necessary to obtain pardon. And in this sense St. Austin expounding those words of the Psalmist, "I said I

<sup>1</sup> Basil. in Psal. xxxvii. viii.      <sup>2</sup> Hilar. in Psal. li. p. 208. Nulli alii docens confitendum, quam qui fecit olivam fructiferam spe misericordiae in seculum seculi.

<sup>3</sup> Ambros. lib. x. in Luc. 22. Lavant lacrymæ delictum, quod pudor est voce confiteri. Et veniæ fletus consulunt et verecundiæ, &c.

<sup>4</sup> Ibid. p. 157. Non invenio quid dixerit Petrus; invenio quòd fleverit. Lacrymas ejus lego: satisfactionem ejus non lego.

will pronounce or declare my own wickedness against myself unto the Lord, and so Thou forgavest the iniquity of my heart," says, "he had not yet pronounced it,<sup>1</sup> but only promised, that he would pronounce it, and yet God forgave him. He had not yet pronounced it, but only in his heart; his confession was not yet come to his mouth, yet God heard the voice of his heart: his voice was not yet in his mouth, but the ear of God was in his heart; which implies, that God accepts and pardons the penitent and contrite heart, even before any formal declaration is made by vocal confession either to God or man." In another place<sup>2</sup> he speaks of confession as no ways necessary to be made to man. "What have I to do with men, that they should hear my confessions, as though they could heal all my diseases?" He also frequently tells us,<sup>3</sup> with all the rest of the ancient writers, that a great many of those, which the Romanists now call mortal sins, were daily pardoned upon no other confession but the fervent and devout use of that of the Lord's Prayer, "Forgive us our trespasses, as we forgive them that trespass against us." Which evidently shews, that he did not believe auricular confession necessary for expiating all manner of mortal sins. Maximus Taurinensis<sup>4</sup> delivers his opinion almost in the same words as St. Ambrose does: "Tears wash away sin, which the voice is ashamed to confess. Therefore tears provide at once both for men's modesty and salvation; they neither make men blush in their petitions, nor disappoint them of pardon in asking." He adds, "that tears are a sort of silent prayers: they ask

<sup>1</sup> Aug. Ser. ii. in Psal. 31.

<sup>2</sup> Aug. Confess. lib. x. cap. 3. Quid

mihî ergo est cum hominibus, ut audiant confessiones meas, quasi ipsi sanaturi sint omnes languores meos?

<sup>3</sup> See this fully proved, book xvi.

chap. 3. sect. 14.

<sup>4</sup> Max. Taurin. Hom. iii. de Pœnit. Petri. Lavat lacryma delictum. quod voce pudor est confiteri. Lacrymæ ergo verecundiæ consulunt pariter et salutî; nec erubescunt in petendo, et impetrant in rogando.—Lacrymæ tacitæ quodammodo preces sunt; veniam non postulant, et merentur; causam non dicunt, et misericordiam consequuntur; nisi quòd utiliores lacrymarum preces sunt, quàm sermonum; quia sermo in precando fortè fallit, lacryma omninò non fallit. Sermo enim interdum non totum profert negotium; lacryma semper totum prodit affectum.



not pardon in words, and yet deserve it, (that is, in his style, procure it) they declare not the cause, and yet obtain mercy. Nay the prayers of tears are many times of more advantage, than those of words; because words often prove deceitful in prayer, but tears never deceive. For words sometimes declare but half the business; but tears always express the whole affection." Prosper, who was St. Austin's scholar, follows his doctrine: for, speaking of private sins committed by the clergy, he says,<sup>1</sup> "They shall more easily appease God, who being not convict by human judgment, do of their own accord acknowledge their offence; who either do discover it by their own confessions, or else others not knowing what they are in secret, do voluntarily inflict the sentence of excommunication upon themselves; and being separated, not in mind, but in office, from the altar, to which they did minister, do lament their life as dead; assuring themselves, that God being reconciled unto them by the fruits of effectual repentance, they shall not only receive what they have lost, but also being made citizens, of that city which is above, they shall come to everlasting joys." Cassian also assures us, that this was the doctrine of the Egyptian Fathers. For he says, Pinuphius the Egyptian Abbot gave this advice to the monks, that were under him: "Who is it that cannot humbly say? 'I made my sin known unto Thee, and my iniquity have I not hid;' that by this confession he may confidently adjoin that, which follows: 'and so Thou forgavest the impiety of my heart.' But if shamefacedness so draw thee back,<sup>2</sup> that thou blushest to reveal them before men; cease not by continual supplication to confess them unto Him from whom they cannot be hid, and to say, 'I know my iniquity, and my sin is against me, alway: to Thee only have I sinned, and done evil before Thee, whose custom is both to cure without publishing our shame,

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<sup>1</sup> Prosper. de Vita Contemplat. lib. ii. cap. 7. Deum facilius placabunt qui non humano convicti iudicio, &c. <sup>2</sup> Cassian. Collat. xx. cap. 8. Quòd si verecundiâ retrahente, revelare ea coram hominibus erubescis, illi quem latere non possunt, confiteri ea jugi supplicatione non desinas, &c.

and to pardon sins without accusing or upbraiding." These are plain testimonies evidently shewing, that the Ancients did not believe the necessity of auricular confession, or urge it as a thing absolutely necessary to absolution and salvation.

SECT. 3.—This proved further from the Practice of the Ancients in denying all Manner of Absolution to some relapsing Sinners, without excluding them from the Mercy and Pardon of God upon Confession to Him alone.

But besides this the practice of the Ancients, in one particular case, does most irrefragably shew, that they did not believe the necessity of auricular confession. For they allowed no second public penance to many relapsing sinners, nor ever gave them any manner of sacerdotal absolution to their lives end: which shall be evidently demonstrated in the next chapter. Now the plain consequence of this is, that no penitential confession, either public or private, was taken from such, as made to man, in order to obtain sacerdotal absolution: yet still they exhorted them to repent in private, and make private confession of their sins to God, in hopes of obtaining mercy and pardon from him at the great day of retribution. It is confessed on all hands, that such relapsers never had the privilege to make their public confession in the church, in order to obtain public absolution: and it is as certain, they were not admitted to compound by any private sacerdotal confession, to obtain private sacerdotal absolution. For though Cardinal Perron had a strong fancy to solve the difficulty of this argument, by feigning a sort of private confession for them, when they were denied the public; yet Petavius himself refutes this pretence,<sup>1</sup> as a mere dream without any foundation in ancient history, and gives a solid reason to the contrary. For as he argues, if private confession had been allowed to such relapsers, their condition had been happier, and their penance easier, than those who fell but once: which is a thing, that will hardly enter into any man's imagination, that considers things with any

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<sup>1</sup> Petav. Not. in Epiphani. p. 238.

manner of judgment and reason. Supposing then the truth of this fact, that the Ancients allowed such relapsers neither the benefit of public nor private absolution upon any confession whatsoever: it evidently follows, that they did not believe any absolute necessity of auricular confession, since they encouraged such sinners notwithstanding to hope for mercy and pardon upon private repentance and confession made to God only. For the proof of which, one passage of St. Austin will be sufficient, where he speaks the general practice of the Church, and the sense of all his brethren. "The iniquity of men," says he "sometimes proceeds so far, that after they have done public penance, after they have been reconciled to the altar, they commit the same or greater sins; and yet God makes his sun to rise even upon such, and bestows upon them no less than before the greatest gifts of life and salvation. And though there be no place allowed to such in the Church,<sup>1</sup> to perform that humble sort of penance again, yet God does not forget his patience toward them. But if any of these should say to us, either grant me the same place of repentance again, or else suffer me to go on desperately, to live as I list, to do whatever my riches will enable me to do, and no human laws will forbid me, to live in whoredom and all manner of luxury, which though damnable before the Lord, is even laudable in the eyes of many men: or if ye recall me from this wickedness, tell me whether it will profit me any thing towards eternal life, if in this life I contemn the blandishments of enticing pleasure, if I bridle the excitements of lust, if for the chastisement of my body I deny myself many things, that are lawful and allowed, if I torment myself more vehemently in repentance, than I did before, if I groan more miserably, and weep more abundantly, if I live better, if I more liberally sustain the poor, if I more ardently flame in charity, which covers a multitude of sins: which of us is so foolish, as to

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<sup>1</sup> Aug. Ep. liv. ad Macedon. p. 92. *Quamvis eis in ecclesiâ locus humillimæ pœnitentiæ non concedatur, Deus tamen super eos suæ patientiæ non obliviscitur, &c.*

say to this man, all this will profit thee nothing hereafter, go and enjoy the pleasures of this life? God forbid we should be guilty of so monstrous and sacrilegious madness. Therefore though it be a cautious and salutary rule and provision in the ecclesiastical law, that this place of the humblest penance shall not be granted above once in the Church, lest by making the medicine too vile and cheap, it should become less useful to those that are sick, being so much the more beneficial, by how much it is less contemptible: yet who dares to say to God, why dost Thou spare this man, who after his first penance binds himself again in the bonds of iniquity? Who dares say, that God deals not with them according to that saying of the Apostle, ‘Knowest thou not that the long-suffering of God leadeth thee to repentance?’ Or that they are excepted from that general declaration, ‘Blessed are all they that put their trust in him?’ Or that it belongs not to them, when it is said, ‘Be strong, and establish your heart all ye that put your trust in the Lord?’ If St. Austin here rightly represents the practice of the Church, in this one ease, there was no use made either of public or private confession to men, to obtain the remission of the greatest sins; but men were directed to another method, to seek pardon from God by the exercise of a private repentance. Consequently there could be no absolute necessity of auricular confession, which in this case had been most likely to have been prescribed in want of the other, had any such necessity been taught or laid upon it, as is now by the imperious and dictating authority of the Church of Rome.

SECT. 4.—And from several other Considerations of the like Nature.

The learned Mr. Daille, has urged many other considerations of great weight, which I cannot here insist upon, but only mention the heads of them, for the sake of the unlearned readers, or such of the learned as have not that excellent and elaborate work of his by them. 1. He argues from the

practice of all other Churches in the world beside the Roman:<sup>1</sup> the doctrine of the necessity of auricular confession, is taught by no other denomination of Christians, not the Ethiopians, nor the Indians of St. Thomas, nor the Babylonians or Chaldeans, nor the Armenians, nor the Jacobites, nor the Greeks in the manner of the Romans. 2. He shews, that whereas the priests in the Roman Church are nicely instructed in the business of auricular confession, and teach and minister it daily to the people, as the noblest act of their office; there is nothing of all this to be found in the genuine writings of the ancient Christians. 3. Whereas auricular confession is continually mentioned by the Roman writers, among the religious acts of all sorts of men, clergy, monks, laity, princes, private men, noblemen, plebeians, men, women, &c. there is nothing of this among the ancient Christians. 4. In the ancient Church Christians were bound by no law, as now they are in the Roman, to confess their sins to a priest before they came to the Lord's table, to receive the eucharist. Which he demonstrates by eight reasons, and the testimony of Chrysostom, Pelagius, Austin, Dorotheus, the Council of Chalon and Hincmar. 5. In the Roman Church, it is usual for every one to make his auricular confession at the point of death; of which there are no foot-steps among the Ancients. 6. The Romish writers are very full of auricular confession in describing any of the sicknesses, or calamities, or wars, or shipwrecks, or journeys, or other hazardous undertakings of their people: but there was no such practice among the Ancients. 7. The Ancients in describing the persecutions of the Church, or the conflicts and trials and last agonies of their confessors and martyrs, never mention auricular confession, which yet abounds every where in the Romish writers, when they make any such relations of the lives or deaths of their martyrs. 8. The Ancients had no solemn times appointed for auricular confession, as Easter, Christmas, Lent, the greater festivals, and the Friday and Saturday fasts, which are now every where spoken of, in the

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<sup>1</sup> Dail. de Confess. Auricular. lib. iv. cap. 1, &c.

Romish writers, as solemn times of confession. 9. The Ancients say nothing of miracles done in or by confession, which the Romanists continually boast of. 10. The ancient Pagans never objected auricular confession to the primitive Christians, as the modern pagans do to those of the Roman communion. 11. The ancient Church knew nothing of heretics opposing auricular confession, because there was no such thing enjoined; but since it was appointed by the Council of Lateran, Anno 1215, many have been condemned as heretics for opposing it. 12. The primitive bishops often declare, that they were ignorant of the sins of their people; particularly this is said by Chrysostom, Austin, Innocent, and Leo, bishops of Rome: which is an argument, that they were not revealed to them by sacramental confession. 13. The first man, that instituted any private confession, was St. Anthony, who appointed his monks to write down their thoughts, and communicate them one to another: but this was nothing to sacerdotal confession; for these monks were only laymen. 14. The ancient writers have none of those intricate questions and disputations about auricular confession, which so much stuff the books of the modern casuists in the Church of Rome. 15. The Fathers never interpret those passages of Scripture, which the Romanists produce for auricular confession, in their sense, but most of them to a contrary meaning. 16. The Fathers in those Books, which they wrote professedly of repentance, never urge auricular confession as a necessary part of repentance. 17. The Fathers acknowledged only three sorts of repentance; the ante-baptismal, for all manner of sins; the quotidian or daily repentance, for lesser sins of daily incursion; and the public penance of lapsers, falling into more heinous sins: but auricular confession appertains to none of these. 18. Gregory Nyssen says expressly there were some sins,<sup>1</sup> such as covetousness, which the Fathers before him endeavoured to cure, not by any canonical punishments, but only by the public exhortations of the word and doctrine: which will not

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<sup>1</sup> Nyssen. Ep. ad Letoium.

consist with the doctrine of auricular confession. 19. Nectarius wholly abrogated the office of the penitentiary priest. Which argues, that there was no necessity of auricular confession: but of this office we must speak a little more particularly hereafter. 20. His next argument is drawn from those passages of Chrysostom, Hilary, Basil, Ambrose, Maximus Taurinensis, and St. Austin, which have been already mentioned, asserting, that remission of sins may be obtained of God by contrition only, without any oral confession. 21. The Fathers allow salvation to be attainable even by those relapsers, who fell again into sin after their first public penance, though they had no liberty either to make confession or receive absolution. Which argument has been particularly explained already. His 22, 23, and 24 arguments are drawn from the testimonies of Cassian, and Julianus Pomerius or Prosper, and Laurentius Novariensis, which have been related before. 25. To these he adds two considerable testimonies of Bede. 26. And the concessions of Erasmus, Beatus Rhenanus, and Rigaltius, who freely own, that the Romish auricular confession was not in use in the primitive Church. 27. He shews, that there was a change made of the ancient discipline in the ninth age, when private penance enjoined by the priest began to be pretty frequent and common. 28. And yet this differed vasily in many particulars from the confession established afterwards in the Council of Lateran. For still it was believed, that confession made to God only was sufficient to salvation. 29. In the following ages also, Goffridus Vindocinensis, Peter Lombard, and Gratian,<sup>1</sup> say there were many, who still held that confession to God alone was sufficient without confessing to the priest. And Gratian particularly, having cited the authorities on both sides of the question, leaves it to the judgment of the reader to take which opinion he pleases: because each opinion had wise and religious men to au-

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<sup>1</sup> Goffrid. lib. v. ep. 16. Lombard. Distinct. lib. iv. sect. 17. Gratian. de Pœnit. Dist. ii. cap. 89. Cui harum potiùs adharendum sit, lectoris iudicio reservatur. Utraque enim fautores habet sapientes et religiosos viros.

thorise and defend it. Which argues, that in Gratian's time the question about the necessity of auricular confession was not so determined as it was afterwards in the Council of Lateran, and the Council of Trent. This is also acknowledged by Aquinas, Bonaventure, and Antonine, who say, that in the time of Gratian and Lombard, the question about the necessity of such confession, was only problematical, and what might safely be disputed both ways, and that it was no heresy to deny it: but after the determination of the Church made under Innocent III. in the Lateran Council, it was to be reputed heresy for any man to assert, that it was sufficient to confess a man's sins to God without making confession to a priest also. 30. Thus the doctrine of auricular confession was established in the thirteenth century, and not before: and even after that there wanted not witnesses, such as Wickliffe, and Huss, and Semeca, and Michael of Bononia, and Petrus Oxomensis, to bear testimony against its novelty, to the time of the Reformation. This is the short account of those thirty arguments, which the learned Mr. Daille uses to shew the novelty of the Romish doctrine concerning auricular confession. which, the curious reader, who desires to see them more fully deduced and confirmed, may consult in our author's elaborate work for his further satisfaction.

SECT. 5.—Yet private Confession allowed and encouraged in some Cases.  
 As. 1. For lesser Sins, Men were advised to confess mutually to one another, to have their Prayers and Assistance.

But in all that is said by this or any other Protestant writer, there is no intent to deny, that private confession was allowed and encouraged by the Ancients in some cases, and upon some special occasions. For,

1. They advised all men, in case of lesser sins, to make confession mutually to one another, that they might have each others prayers and assistance. This is the advice of St. James. v. 16. "Confess your faults one to another, and pray one for another, that ye may be healed. The effectual fervent prayer of a righteous man availeth much." Which though it be a place commonly produced by the Romanists,



for their auricular confession to a priest, yet it was anciently thought no more than a direction to Christians in general to confess their sins mutually to one another. Thus, it is certain, St. Austin understood it: for writing upon those words of our Saviour in St. John, "If I, your Lord and master have washed your feet, ye ought also to wash one another's feet;" he thus expounds them and the words of St. James together:<sup>1</sup> "Can we say, that one brother may cleanse another from the contagion of sin? Yes we are taught to do it by the mystical meaning of this work of our Lord, that we should confess our sins one to another, and pray one for another, as Christ intercedes for us. Let us hear St. James the Apostle, evidently commanding this very thing, and saying, 'Confess your faults one to another, and pray one for another,' because in this our Lord hath set us an example. For if He, who neither has, nor ever had, nor ever will have any sin, prays for our sins; how much rather ought we to pray for the sins of one another? And if He forgive us, who has nothing to be forgiven by us; how much more ought we to forgive one another, who cannot live here without sin? Let us therefore forgive one another, and pray for each other's sins, that so we may in some measure wash one another's feet." In like manner Eradius, or St. Austin himself in another place says,<sup>2</sup> "We are admonished throughout the whole Scripture to confess our sins continually and humbly, not only to God, but to holy men and those that fear God. For so the Holy Ghost teaches us by James the Apostle, saying, 'Confess your faults one to another, and pray one for another, that ye may be healed.'" Hincmar, a learned French bishop of the ninth age, gives the same interpretation: "Our light and daily sins," says he,<sup>3</sup> "according to the exhortation of St. James, are daily to be confessed to those that are our equals: and such sins we may believe, will be cleansed by their daily prayers, and our own acts of piety, if with a

<sup>1</sup> Aug. Tract. lviii. in Joan. tom. ix. p. 161.

<sup>2</sup> Aug. Hom.

xii. Ex. l. tom. x. p. 161.

<sup>3</sup> Hincmar. Epist. ad Hildeboldum, tom. ii. n. 40. p. 688. Quotidiana autem, levique peccata, secundum Jacobi Apostoli hortamentum, alterutrum cœqu'alibus confitenda sunt, &c.

charitable mind we truly say in the Lord's prayer, 'Forgive us our trespasses, as we forgive them that trespass against us.'" And Maldonat says,<sup>1</sup> this was the sense of all the Ancients, alleging not only St. Austin, but Hesycheus, and Gregory the Great, and Bede, and the author of the Interlineary Gloss. To which others<sup>2</sup> add Scotus, and Biel, and Dionysius Carthusianus, and Cajetan, and Gagnæus, and Godellus, a late bishop, in the French Church: however Bellarmin came to fix upon this passage of St. James, as a plain proof of auricular confession to a priest, which in the case mentioned, according to the opinion of so many Ancients and Moderns, directs to no other confession, but what may be made to any pious Christian.

SECT. 6. — 2. In Case of Injuries done to private Persons, Men were obliged to confess, and ask Pardon of the injured Party.

2. In case of private injuries done to any private person, there was no question ever made, but that the offending party might make a private confession of his fault to the offended party, and give him private satisfaction. For so Christ had appointed, Mat. v. 23. "If thou bring thy gift to the altar, and there rememberest that thy brother hath ought against thee; leave there thy gift before the altar, and go thy way, first be reconciled to thy brother, and then come and offer thy gift." Upon which St. Austin says,<sup>3</sup> "A man may with an unfeigned heart endeavour to pacify and appease him, by asking him pardon, if he does this before God. Nay, it is his only remedy in this case, to ask pardon; which whoever does not, he is puffed up with the spirit of vain-glory."

<sup>1</sup> Maldonat. Controver. tom. ii. de Confessione, cap. ii. p. 33.

<sup>2</sup> Vid. Daill. de confess. lib. i. cap. 12.

<sup>3</sup> Aug. de Sermone Dom. in Monte, lib. i. cap. 10. Poteris eum non stimulo animo lenire, atque in gratiam revocare, veniam postulando, si hoc prius coram Deo feceris—Quod est unum remedium, supplicii animo veniam deprecetur: quod quisquis non fecerit inanis jaectantiae spiritu inflatur.

SECT. 7.—3. When they were under any Troubles of Conscience, they were advised to make private Confession to a Minister, to have his Counsel and Direction.

3. When men were under any perplexities of mind, or troubles of conscience, from the pressure and load of sin; that was another case, in which they were always directed to have recourse to some wise and prudent pastor, to take his counsel and advice, and his assistance, and his prayers, as a sort of mediator and intercessor under Christ for them. The Romish writers are apt to allege many passages out of the Ancients, which upon examination and strict enquiry amount to no more than this. Thus Clemens Romanus, or the author under his name, bids every one, into whose heart either envy or infidelity, or any such crime, has slyly crept, not be ashamed, if he has any care of his soul, to confess his sin to the bishop or minister presiding over him,<sup>1</sup> that by the word of God and his saying counsel he may be healed. And so Maldonat owns,<sup>2</sup> this has no relation to sacramental confession. The same advice is given by Origen, Gregory Nyssen,<sup>3</sup> and St. Basil,<sup>4</sup> upon the like occasion, to confess their sins to the priest, who by his compassion and skilfulness was able to help their infirmities, and at once take care both of their credit and cure.

SECT. 8.—4. To take his Advice also, whether it was proper to do public Penance for private Offences.

4. Origen gives another reason for confessing private sins to the priest, because he was best able to judge, whether it were proper for such sins to admit men to do public penance in the church, which in those days was no unusual practice. “Consider,” says he,<sup>5</sup> “what the holy Scripture

<sup>1</sup> Clem. Ep. i. ad Jacob. Non erubescat qui animæ suæ curam gerit, hæc confiteri ei qui præest, ut ab ipso per verbum Dei et consilium salubre curetur.

<sup>2</sup> Maldonat. de Confess. cap. ii. p. 46 tom. ii.

<sup>3</sup> Nyssen. de Pœnitent. tom. iii. p. 176.

<sup>4</sup> Basil. Reg.

gul. Brev. Resp. 229.

<sup>5</sup> Orig. Hom. ii. in Psal. 37. tom. i.

p. 471.

teaches us, that we ought not to conceal our sin within our own breast. For perhaps as they, who are inwardly oppressed with the humour or phlegm of indigested meat, which lies heavy upon the stomach, if they vomit it up, are relieved; so they, who have sinned, if they hide and conceal their sin within themselves, are inwardly oppressed, and almost suffocated with the phlegm and humour of sin: but if any one become his own accuser, and confess his sin, in so doing he as it were vomits up his sin, and digests and removes the cause of his distemper. Only be circumspect in the choice of him, to whom it will be fit to confess thy sin. Try first the physician, to whom thou art to reveal the cause of thy distemper, and see that he be one, who knows how to be weak with him that is weak and to weep with him that weeps; one who understands the discipline of condoling and compassionating; that so at length, if he shall say any thing, who hath first shewn himself to be both a skilful and a merciful physician, and give thee any counsel, thou mayest observe and follow it. If he discerns and foresees thy distemper to be such, as will need to be declared and cured in the full assembly of the Church, whereby others perhaps may be edified, and thou thyself healed, this is to be done with great deliberation, and the prudent advice of such a physician." It is very plain, that in this case this sort of private confession was made in order to take the minister's advice concerning doing public penance for any private sin; and that men had recourse to him in private, as to one, who was best able to judge, whether their sin were of such a nature, as would require a public humiliation and repentance. For this, as I said before, was no unusual thing in those days, for men sometimes to desire to do public penance for private offences; yea, even for the very intention and design of some grosser sins, though they never proceeded so far as the outward action. Cyprian speaks of some such offenders, who reckoned themselves guilty of idolatry,<sup>1</sup> not

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<sup>1</sup> *Cypr. de Lapsis*, p. 134. *Quamvis nullo sacrificii aut libelli facinore constricti, quoniam tamen de hoc vel cogitaverunt, hoc ipsum apud sacerdotes*

because they had either actually sacrificed to idols, or procured any libel to signify their so doing, but only because they had designed in their hearts to do it: who therefore confessed their wicked intention to the priests, in order to do public penance for it (though it was but a small sin in comparison) as knowing that it was written, "God is not mocked." These private sins after secret confession were sometimes publicly declared and read out of a libel in the congregation: but all bishops did not approve of this practice:<sup>1</sup> and therefore when Pope Leo understood, that several bishops in the provinces of Campania, Samnium, and Picenum took this method, he wrote a sharp letter to them, complaining of it as an unlawful usurpation and irregular practice, to put those who made secret confession to the priests, upon a public rehearsal of their crimes afterwards in the face of the congregation: which custom ought by all means to be abrogated and laid aside. For though it may seem a very laudable plenitude of faith, that for the fear of God makes men not afraid to take shame before men; yet because all men's sins, which come under penance, are not such as they are not afraid to have made public, this unreasonable custom ought to be altered, lest many should be driven from the remedy of repentance, whilst either they are ashamed or afraid to have their actions laid open before their enemies, who perhaps might take occasion from thence to bring them into danger of the civil laws, and the penalties imposed by them upon such offences. Which last words of Leo suggest a further reason, why the Ancients in some cases allowed of private confession, even when penance itself in its exercise was to be public. For we may observe,

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*Dei dolenter et simpliciter confitentes, exomologesin conscientię faciunt, animi sui pondus exponunt, salutarem medelam parvis licet et modicis vulneribus exquirunt; scientes scriptum esse, Deus non deridetur.*

<sup>1</sup> Leo. Ep. lxxx. al. 78. ad Episc. Campau. Illam etiam contra apostolicam regulam præsumptionem, quam nuper agnovi à quibusdam illicitâ usurpatione committi, modis omnibus constituo submoveri, ne de singulorum peccatorum genere libellis scripta confessio publicè recitetur, cum reatus conscientiarum sufficiat solis sacerdotibus indicari confessione secretâ, &c. Vid. Basil. can. lxi. et lxiij. Paulin. Vit. Ambros. p. 10. Ambros. de Penit. lib. i. c. 16. Gennad. de Dogm. Eccles. cap. liii.

SECT. 9.—5. When there was any Danger of Death arising from the Laws of the State against certain Offences.

5. That when there was any apparent danger to men's lives or otherwise, arising from the penalties of the civil laws, inflicting capital punishments on certain offences; in that case the Church was content to take a private confession of sinners, and excuse them from a dangerous publication. It is of this case St. Austin speaks, when he says<sup>1</sup>, "we ought to correct secret sins in secret, lest if we publicly reprove them, we betray the man. We would reprove and correct him: but what if an enemy lies upon the catch, to hear something for which he may punish him? A bishop, (put the case,) perhaps knows a man to be a murderer, and besides himself no one else knows it: I would publicly rebuke the man, but then you would seek to take the law upon him. In this case I neither betray the man nor neglect him: I reprove him in secret; I set before his eyes the judgment of God; I terrify his bloody conscience, and persuade him to repentance. It happened also that sometimes persons confessed such secret sins, as though they would not endanger their lives by a regular course of law, yet might provoke an injured party, if he knew them, in a sudden fit of zeal and passion to destroy them. In this case it was thought more proper to let the confession and penance be both in private, lest any such inconvenience might follow upon the publication. St. Basil instances in the case of a woman,<sup>2</sup> that confesses herself guilty of adultery: the law allowed not the husband to kill her, except he took her in the very act: but it might happen, that in his zeal and fury he might be tempted even against law to kill her, if by any means he came to understand, that she had been guilty of such a transgression: therefore to avoid the occasion of

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<sup>1</sup> Aug. Ser. xvi. de Verb. Dom. cap. viii. In secreto debemus arguere, in secreto corrigere: nē volentes publicè arguere, prodamus hominem. Nos volumus corrigere et corrigere: quid si inimicus querit audire quod punit? &c.

<sup>2</sup> Basil. can. xxxiv.

any such temptation, it was ordered, that no minister should “δημοσιεύειν, *publish* the crime of women under penance of adultery upon their own confession, lest it should occasion their death;” that is, expose them to the fury of their husbands, who might be inclined, in the height of passion, to exceed all bounds, and do what by law they could not answer.

SECT. 10.—6. Private Confession required in Case of private Admonition for Offences.

6. I remember but one case more, in which any thing like private confession was required; and that was, when any man was rebuked for a crime by his spiritual guide, of which he was either notoriously guilty, or violently suspected: in that case it was his duty to give glory to God, and take shame to himself, by an ingenuous confession and acknowledgment of his fault, to answer the true end of private admonition. It is of this sort of confession St. Ambrose speaks in the person of David,<sup>1</sup> when he says, that being rebuked by a private man for his great offence, he did not fret and fume with indignation, but ingenuously confess his fault, and mourn with sorrow for it.

SECT. 11.—The Office of the penitentiary Priest set up in many Churches to receive and regulate such private Confessions.

All these sorts of private confession were anciently allowed of, as consistent with the standing and ordinary discipline of public confession and penance in the Church. And the better to regulate them, and direct men what to do in such cases, there was a particular officer appointed in many Churches under the name of the penitentiary priest: whose office was not to receive private confessions in prejudice to the public discipline; much less to grant absolution privately upon bare confession before any penance was performed; which was a practice altogether unknown to the ancient Church, as we shall see more hereafter: But it was

<sup>1</sup> Ambros. de Apolog. David. cap. ii. Cum à privato homine corripetur, quòd gravitèr deliquisset, non indignatus infrenuit, sed confessus ingenuit culpæ dolore.

to facilitate and promote the exercise of public discipline, by acquainting men what sins the laws of the Church required to be expiated by public penance, and how they were to behave themselves in the performance of it; and only to appoint private penance for such private crimes as were not proper to be brought upon the public stage, either for fear of doing harm to the penitent himself, or giving scandal to the Church.

SECT. 12. —This Office afterwards abrogated, and Men were entirely left to their Liberty, as to what concerned private Confession.

The whole history of the first original and institution of this office in the time of the Decian persecution, and the abrogation of it by Nectarius, Bishop of Constantinople, in the time of Theodosius, is entirely owing to the relation of Socrates and Sozomen, two historians, who lived in the same age that the office was abolished; and therefore it will be proper to relate it in their words first, and then make a few remarks upon it. Socrates,<sup>1</sup> speaking of the reign of Theodosius, says, “About this time it was thought proper to remove the *penitentiary presbyters*—*τὰς ἐπὶ τῆς μετανοίας πρεσβυτέρους*, out of the churches on this occasion. From the time that the Novations made their separation from the Church, refusing to communicate with those that lapsed in the Decian persecution, the bishops added to the *ecclesiastical roll*—(*τῶν ἐκκλησιῶν κανόνι*)—a penitential presbyter; that they, who fell into any sins after baptism, might make confession of them before the presbyter thereto appointed. And this order continues still among other sects; only they who receive the consubstantial doctrine, and the Novatians who agree with them in the same faith, are equally now agreed to reject the penitential presbyter. The Novatians, indeed, never admitted this additional office from the beginning; and the present governors of the Churches, though they allowed it for a long time, yet now under Nectarius laid it aside, upon a certain accident that happened

<sup>1</sup> Socrat. lib. v. cap. 19.



in the Church. For a certain gentlewoman coming to the penitentiary presbyter, made particular confession of her sins that she had committed after baptism. And the presbyter enjoined her to fast and pray continually; that together with her confession she might shew forth works worthy of repentance. But the woman proceeding in the course of her penance, accused herself of another sin: for she confessed, that one of the deacons of the Church had defiled her. Which occasioned the deacon to be cast out of the Church; and there was no small stir among the people, who were incensed not barely for the fact, but because it brought great scandal and reproach upon the Church. And the clergy being chiefly reviled upon this occasion, one Eudæmon, a presbyter of the Church, born at Alexandria, gave counsel to Nectarius to take away the penitentiary presbyter, and leave it to every man's liberty to partake of the holy mysteries according to the direction of his own conscience: for this was the only way to free the Church from reproach." This, he says, he the more confidently inserted into his history, because he had it from the mouth of Eudæmon himself; though he told Eudæmon, he doubted whether his counsel was for the advantage of the Church, since it would occasion the neglect of mutual reproof, and the transgression of that rule of the Apostle, "Have no fellowship with the unfruitful works of darkness, but rather reprove them. Sozomen,<sup>1</sup> in relating the same story, observes, that the chief offices of this penitentiary presbyter were, partly to direct such as had need of public penance, how to go about it, and perform it, and partly to impose private exercises of repentance upon those that needed not to undergo the public: and therefore that he was to be both a prudent man, to direct the one; and Ἐκρύβητος, *a man that could keep secrets without disclosing them*, for the sake of the other. He observes further, that when Nectarius had abolished this office at Constantinople, his example was followed by almost all the bishops of the East; but that it continued

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<sup>1</sup> Sozomen. lib. vii. cap. 16.

in use in the Western Churches, and chiefly at Rome, to prepare men for the public penance of the Church, which he there takes occasion to describe in the whole course and process of it.

Now from hence it is obvious to observe, 1. That this office was not set up to encourage auricular confession in prejudice to the public discipline, but chiefly to promote the exercise of public penance in the Church. 2. That it was not of divine, but only ecclesiastical institution. And therefore, 3. As it was instituted by the wisdom of the Church for good ends; so when those ends could not be served, and perhaps better might, it was at the Church's liberty, by the same wisdom, to abolish it, and put it down again, as Nectarius did in the East. 4. That the abolishing of it did not necessarily imply the abolishing of public discipline; which still continued in force in the Eastern Church, notwithstanding the abrogation of this office; though, perhaps, something weakened in respect to private offenders; partly because they were not so much inclined to confess; and partly because the business of discipline now devolving wholly upon the bishops, as it was before, they had not leisure to attend to it. 5. It is very plain from hence, that there was no necessity laid upon men to confess all their secret mortal sins before they came to the communion; but it was enough, as Valesius ingenuously confesses,<sup>1</sup> for men to search their own consciences, whereby they thought they satisfied that precept of the Apostle, "Let a man examine himself, and so let him eat of that bread, and drink of that cup." And so we have taken a full view of confession, both public and private, so far as it was in use and practice in the ancient Church, beyond which it is none of my province to extend the inquiry, and search after the deviations and corruptions of modern ages, which the reader may find in any of our polemical writers against the Church of Rome, or discern them by the account that has here been given, reducing every thing to the primitive standard.

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<sup>1</sup> Vales. in Sozom. lib. vi. cap. 28.

## CHAP. IV.

*Of the great Rigour, Strictness, and Severity of the Discipline and Penance of the Ancient Church.*

SECT. 1.—Public Penance ordinarily allowed but once to any Sort of Sinners.

THERE remains now but one thing more to be considered in the exercise of the ancient public penance, and that is the great strictness, rigour, and severity of it, expressed against all sins that fell under public discipline, and more especially those that were of a more heinous and malignant nature. One instance of the severity of their penitential rules was, that they ordinarily admitted men but once to the privilege of public penance, and allowed no second penance to be performed in the Church by any sort of relapsers. I have already hinted this in the last chapter, and shall here give more evident proof of it, so far as concerns the general practice of the Church in the four first ages; shewing withal what exceptions it admitted of, by the power that was lodged in every bishop's hands to moderate the exercise of discipline, as occasion might require, according to his own judgment and discretion. We do not indeed find any general rule or Canon for this peremptory denial of a second penance to relapsers; but if we consider the practice of the Church, we shall find it almost univereal. Hermes Pastor, who wrote in the beginning of the second century, plainly asserts this,<sup>1</sup> that the servants of God allowed but of once doing penance. And therefore he advises the husband, who has an adulterous wife, to receive her once upon her repentance, but not oftener. Clemens Alexandrinus<sup>2</sup>

<sup>1</sup> Hermes Past. lib. ii. Mandat. iv. n. 1. Debet recipere peccatricem, quæ pœnitentiam egit, sed non sæpè. Servis enim Dei pœnitentia una est.

<sup>2</sup> Clem. Alex. Strom. ii. cap. xiii. p. 459. Edit. Oxon.

treads in the same steps, allowing but one repentance after baptism, and citing the authority of Hermes Pastor for it. Tertullian, whilst he was a Catholic, allowed with the catholics one penance after baptism, which he calls the second, making the repentance of baptism to be the first, and this the last. "God," says he,<sup>1</sup> "has placed in the porch, or entrance to the Church, a second repentance, which opens to those that knock: but now only once, because now a second time; never more, because the last was vain and to no purpose." Then describing the whole course of this public penance, he says again,<sup>2</sup> "it is a second penance, and but one; which requires so much the more laborious exercise and trial, because it is a thing allowed us in our greatest exigency and distress." In like manner Origen,<sup>3</sup> speaking of the difference between greater and lesser sins, says, "the former had no place of repentance allowed them but only once, or very seldom; whereas those common sins we fall into almost every day, always admit of repentance, and are redeemed immediately without intermission." There are several Canons in the Council of Eliberis to the same purpose, that relapsers should not be admitted to communion by the benefit of a second repentance. One Canon<sup>4</sup> says, "that if any men commit adultery after they have done penance for idolatry, they shall no more be admitted to communion, that they may not seem to make a jest of the Lord's communion." Another orders,<sup>5</sup> "that if any of the faithful, who is under penance for adultery, commit fornication

<sup>1</sup> Tertul. de Pœnit. cap. vii. Collocavit in vestibulo pœnitentiã secundam, quæ pulsantibus patefaciat: sed jam semel, quia jam secundò; sed ampliùs nunquam, quàm proximè frustra.

<sup>2</sup> *Ibid.* cap. ix. Hujus igitur pœnitentiæ secundæ et unius, quantò in arto negotium est, tantò operosior probatio est.

<sup>3</sup> Orig. Hom. xv. in Levit. tom. i. p. 174. In gravioribus criminibus semel tantùm, vel rarò pœnitentiæ conceditur locus: ista verò communia, quæ frequentèr incurrimus, semper pœnitentiã recipiunt, et sine intermissione redimuntur.

<sup>4</sup> Con. Eliber. can. iii. Si post pœnitentiã fuerint mœchati, placuit ulterius non eis dandam esse communionem, ne lusisse de dominicâ communione videantur.

<sup>5</sup> *Ibid.* can. vii. Si quis fortè fidelis post lapsum mœchiæ, post tempora constituta, acceptã penitentiã, denuò fuerit fornicatus, placuit nec in fine habere eum communionem.

tion in the time of his penance, he shall not have the communion even at his last hour." And a third Canon orders,<sup>1</sup> "that if a man, who has been under penance for adultery, and is admitted to communion in sickness, or danger of imminent death, shall after his recovery commit adultery again, he shall no more make a jest of the communion of peace: that is, not have the privilege of a second penance, to obtain a second reconciliation or absolution."

Neither was this only the discipline of the three first ages, but it continued to be the practice for an age or two after: for St. Ambrose and St. Austin speak of it as still in use in their time. "They who think of doing penance often," says St. Ambrose,<sup>2</sup> "are deservedly reprov'd, because they grow wanton against Christ: for if they did penance truly, they would not think it was to be repeated; because as there is but one baptism, so there is but one penance, that is performed in public. There is indeed a daily repentance for sin, but that is for lesser sins, and the other for greater." In like manner St. Austin says,<sup>3</sup> "it was wisely and usefully ordered, that there should be no room for that public and humblest sort of penance in the Church; lest it should make the remedy of sin contemptible, and so less useful to the sinner." This was the practice of the Roman Church also in the time of Siricius; and Innocent and Leo, who commonly follow his prescriptions. The Decree of Siricius about this matter runs in these terms: "forasmuch as that they, who after penance return like dogs to their vomit, or swine to their wallowing in the mire, cannot have the benefit of a second penance,<sup>4</sup> we decree, that they shall communicate

<sup>1</sup> Con. Eliber. can. xlvii. Si resuscitatus rursus fuerit mœchatus, placuit eum ulterius non ludere de communione pacis.

<sup>2</sup> Ambros. de Pœnitent. lib. ii. cap. 10. Meritò reprehenduntur, qui sapiùs agendam pœnitentiam putant. quia luxuriantur in Christo. Nam si verè agerent pœnitentiam, iterandam esse non putarent: quia sicut unum baptisma ita una pœnitentia, quæ tamen publicè agitur. Nam quotidiani nos debet pœnitere peccati; sed hæc delictorum leviorum, illa graviorum.

<sup>3</sup> Aug. Ep. liv. ad Macedon. Cautè salubritèrque provisum, ut locus illius humillimæ pœnitentiæ semel in ecclesiâ concedatur. nè medicina vilis miùs utilis esset ægrotis, &c.

<sup>4</sup> Siric. Ep. i. ad Himerium, cap. v. De his, qui, actâ pœnitentiâ, tanquam canes ac sues, ad vomitus pristinos et

with the faithful in prayer only, and be present at the celebration of the eucharist, but not partake of the Lord's feast at his table; that by this punishment they may learn to chastise their errors privately in themselves, and also set others an example how to abstain from the lusts of uncleanness. Yet for as much as they fall by the frailty of the flesh, we would have them to be allowed their Viaticum at the last, and be assisted with the grace of communion, when they are going to the Lord." It appears also from the Canons of several Councils in the same age, that such relapsers were either wholly cast out of the Church, or at least kept back from the communion all their days, without being admitted to the benefit of any formal penance to restore them: as may be seen in the second Council of Arles<sup>1</sup>, the Council of Vannes,<sup>2</sup> the first of Tours,<sup>3</sup> and the first of Orleans,<sup>4</sup> but more especially the third of Toledo, where notice is taken of the contrary custom beginning to creep into some of the Spanish Churches, and a strict order is made to correct it by reviving the ancient discipline of the Church. "We hear," say they,<sup>5</sup> "that in some of the Spanish Churches penance is not done according to canon, but after a very base fashion, that as often as men are pleased to sin, so often they require of the presbyters to be reconciled or absolved: to

ad volutabra redeunt—quia jam suffugium non habent pœnitendi, id duximus decernendum. ut solâ intra ecclesiam fidelibus oratione jungantur; sacris mysteriorum celebritatibus, quamvis non mereantur, intersint; à dominicæ autem mensæ convivio segregentur, ut hæc saltem districtione correpti, et ipsi in se sua errata castigent, et aliis exemplum tribuant, quatenus ab obscœnis cupiditatibus retrahantur. Quibus tamen (quia carnali fragilitate ceciderunt) viatico munere, eùm ad Dominum cœperint proficisci, per communionis gratiam volumus subveniri.

<sup>1</sup> Con. Arelat. ii. can. 21.

<sup>2</sup> Con. Venetic. can. iii.

<sup>3</sup> Con. Turon. i. can. 8.

<sup>4</sup> Con. Aurelian. i. can. 13. Herdense, can. v.

<sup>5</sup> Con. Tolet. iii. can. 11. Quoniam comperimus per quasdam Hispaniarum ecclesias, non secundùm canonem, sed fœdissimè pro suis peccatis homines agere pœnitentiam, ut quoties peccare libuerit, toties à presbyteris se reconciliari expostulant: et ideò pro coercendâ tam execrabili præsumptione id à sancto concilio jubetur, ut secundùm formam canonum antiquorum detur pœnitentia.—Hi verò qui ad propria vitia, vel infra pœnitentiæ tempus, vel post reconciliationem relabuntur, secundum priorum canonum severitatem damnentur.

restrain which execrable presumption, the holy Synod appoints, that penance shall be granted only according to the form of the ancient Canons: and if any, either during the time of their penance, or after their reconciliation, relapse into their old vices, they shall be condemned according to the severity of former canons." That is, they shall not have liberty of repeating public penance *toties quoties* in the church. They did not deny men private penance, either for lesser sins of daily incursion, or for relapses into greater sins; but exhorted men to repent in both cases, in hopes of obtaining mercy and pardon from God by a sincere contrition and the diligent exercise of a private repentance. No confession was taken by the priest in either of these cases: for the first did not need it, and the second was not allowed it; only at their last hour relapsers were admitted to the communion and peace of the Church, if they had exercised themselves diligently in all the proper acts of private repentance.

SECT. 2.—Some Sinners held under a strict Penance all their Lives to the very Hour of Death.

2. And this leads us to consider another instance of the great strictness and severity of the ancient discipline, which was, that for some certain sins men were kept under the exercise of public penance all their lives, and only absolved and reconciled at the point of death. The ordinary course of penance often held men for ten, fifteen, or twenty years in going through the several stages of repentance: but for some more heinous and enormous crimes no certain term of years was limited, but their lives; and perfect reconciliation and absolution was only granted them at their last hour, when imminent danger of death was upon them. Thus the Council of Eliberis orders,<sup>1</sup> that if any one took upon him the office of a *Flamen*, or gentile priest, though he did not offer sacrifice, but only exhibit the usual games or shews to the people, he should do a severe and canonical penance all

<sup>1</sup> Con. Eliber. can. iii. Item flamines qui non immolaverint, sed munus tantum dederint, eò quòd se à funestis abstinerunt sacrificiis, placuit eis sine prætari communionem, actà tamen legitimâ penitentia.

his life, and only be admitted to communion at the point of death. The like order is given about consecrated virgins,<sup>1</sup> that if any of them committed fornication, they should do penance all the time of their lives, and only have the communion at the hour of death. The Council of Neocæsarea appoints the same for a woman who marries two brothers,<sup>2</sup> that she shall be cast out of communion unto death; but at her last hour, to shew clemency toward her, if she promise upon her recovery to dissolve the marriage, she shall have the benefit of repentance. The first Council of Arles inflicts the same punishment upon those that falsely accuse their brethren,<sup>3</sup> that they shall not communicate to the hour of death. The Council of Ancyra decrees the like for such married men as are guilty of bestiality after they are fifty years old,<sup>4</sup> that they shall not be received into communion till the end of their lives. The Council of Valence in France laid the same penalty upon some that fell into idolatry,<sup>5</sup> that they should do penance to the hour of death, yet not without hopes of remission, which they were to expect more fully from God, who was the donor of it. The Council of Lerida allows the inferior clergy to do penance for a first offence,<sup>6</sup> and regain their office upon it: but if they return, like dogs, to their vomit, and as swine to their wallowing in the mire, they are not only to be deprived of their office, but of the communion to their last hour. And so Felix the third,<sup>7</sup> bishop of Rome, determined in the case of those African bishops, presbyters

<sup>1</sup> Con. Eliber. can. xiii. Si omni tempore vitæ suæ hujusmodi fœminæ egerint pœnitentiã, placuit eas in fine accipere debere communionem.

<sup>2</sup> Con. Neocæsar. can. ii. *Ἐνὴ ἐάν γήμηται ἔθο ἀδελφοῖς, ἐξωθίσθω μέχρι θανάτου, &c.*

<sup>3</sup> Con. Arelat. i. can. 14. De his qui falsò accusant fratres suos, placuit eos usque ad exitum non communicare.

<sup>4</sup> Con. Ancyra. can. xvi. *Ἐπὶ τῷ ἐξόδῳ τοῦ βίου τυγχανέτωσαν τῆς κοινωνίας.*

<sup>5</sup> Con. Valentin. an. 374. can. iii. Usque in diem mortis acturi pœnitentiã, non sine spe tamen remissionis, &c.

<sup>6</sup> Con. Herdense. can. v. Si iteratò, velut canes ad vomitum, reversi fuerint, &c. non solùm dignitate officii careant, sed etiam sanctam communionem, nisi in exitu, non percipiant.

<sup>7</sup> Felie. iii. in Con. Rom. cap. ii. Usque ad exitus sui diem in pœnitentiã jacere conveniet; nec orationi non modò fidelium, sed nec catechumenorum omnimodis interesse, quibus communio laica tantùm in morte reddenda est.



and deacons, who suffered themselves to be rebaptized by the Arians in the Vandalic persecution: that they continue under penance to the day of their death; and neither be present at the prayers of the faithful, nor the catechumens, and only be admitted to lay-communion at the point of death.

SECT. 3.—Such as were absolved upon a Death-bed, were obliged to perform their ordinary Penance, if they recovered.

3. Another instance of the strictness and severity of the ancient discipline is visible in the treatment of such penitents as were reconciled upon a death-bed. Though they were admitted to the peace and communion of the Church, when they were in extreme necessity, and imminent danger of death, that they might have their *Vaticum* when they were about to leave the world: yet if they chanced to recover, they were obliged to perform the whole penance, more or less, whatever it was, which they should have done, had not such an exigency procured them an absolution. And this is the only case, in which the ancient Church ever allowed any absolution to be granted before the penance was duly and regularly performed. Which being an extraordinary case, it is nothing to those, who think to justify the same practice now in ordinary cases: but of this more hereafter. As to the present observation, that penitents absolved upon a death-bed were, upon their recovery, reduced to the same state of penance, which they were to have been under, had not the necessity of sickness required their absolution, is evident from the plain testimony of several councils. The Council of Nice orders such upon their recovery to be placed among those that communicated in prayers only.<sup>1</sup> That is, in the fourth rank of penitents, called costanders, where they might stay to hear the prayers of the faithful, but not partake of the oblation. The fourth Council of Carthage has two Canons relating to them. The first says,<sup>2</sup> if such a penitent recover, he shall be subjected to the ordinary laws of penance, as long as the priest, who admitted him to penance, shall judge convenient. The

<sup>1</sup> Con. Nic. can. xiii.

<sup>2</sup> Con. Carth. iv. can. 76.

Si supervixerit, subdatur statutis pœnitentiæ legibus, quamdiu sacerdos, qui pœnitentiam dedit, probaverit.

other,<sup>1</sup> that penitents, who in time of sickness receive the *Viaticum* of the eucharist, shall not think themselves absolved, unless they undergo imposition of hands, if they chance to recover. That is, the imposition of hands, which was given to penitents of the third order, called prostrators, who were obliged to present themselves every day at church, and kneel down before the bishop to receive the solemn imposition of hands with the usual penitential prayers and benediction. The first Council of Orange more particularly explains the whole matter in this form:<sup>2</sup> “they who are about to leave the body, when they are doing penance, may communicate without the reconciliatory imposition of hands, which sort of communion is sufficient for the consolation of a dying person, according to the decrees of the Fathers, who call this kind of communion their *Viaticum*. But if they survive, they shall stand in the order of penitents, that they may first shew forth the necessary fruits of repentance, and then be received to communion in the ordinary and regular way, by the reconciliatory imposition of hands.” The council of Epone speaks much after the same manner:<sup>3</sup> “that no one should be repelled from or by the Church without remedy, or hopes of pardon, nor the door of returning to pardon be shut against one that repents and corrects his errors: and if any one be in imminent danger of death, the time prescribed for his condemnation or penance shall be relaxed. But if it happens, that the sick man recovers after he has received his *Viaticum*, he must observe and fulfil the time of penance that was

<sup>1</sup> *Ibid.* can. lxxviii. Pœnitentes, qui in infirmitate viaticum eucharistiae acceperint, non se credant absolutos, sine manûs impositione, si supervixerint.

<sup>2</sup> *Con. Arausican.* i. can. 3. Qui recedunt de corpore, pœnitentiâ acceptâ, placuit, sine reconciliatoriâ manûs impositione eos communicare, quod morientis sufficit consolationi secûdum definitiones patrum, qui hujusmodi communionem congruenter viaticum nominaverunt. Quòd si supervixerint, stent in ordine pœnitentium, ut ostensis necessariis pœnitentiæ fructibus, legitimam communionem cum reconciliatoriâ manûs impositione recipiant.

<sup>3</sup> *Con. Epœunens.* can. 36. Ne ullus sine remedio aut spe veniæ ab ecclesiâ repellatur; neve ulli, si aut pœnituerit, aut se correxerit, ad veniam redeundi aditus obstruatur; et si cuiquam forsitan discrimen mortis immineat, damnationis constitutæ tempora relaxentur. Quòd si ægrotum, accepto viatico, revalescere fortasse contingit, statuti temporis spatia observare conveniet.

appointed him." Gregory Nyssen's Canon is much to the same purpose:<sup>1</sup> if any one be in imminent danger of death, who has not gone through the whole time appointed for his penance; the elemency of the Fathers in that case has decreed, that he shall not take his long journey (out of the world) without his *Viaticum* or provision for it, nor without partaking of the holy mysteries. But if after participation he recover from his sickness, he must then continue the time appointed in that order or station of penitents, in which he was when this necessity and danger came upon him." To all these may be added the decree of the Roman Council under Felix III. Anno 487, which renews the determination of the Nicene Fathers,<sup>2</sup> "that if any of those, who had been admitted to communion before the fixed time of their penance was completed, because their life was despaired of by the physicians, and evident signs of death were upon them, should happen afterwards to recover, they should at least continue in the fourth rank of penitents, among those that communicated only in prayers without the oblation, till the full term of their penance was ended."

SECT. 4.—Some Sinners denied Communion at their last Hour.

But some sinners were yet more severely handled: for they were denied communion to the very last, and suffered to go out of the world without any manner of reconciliation. This discipline was generally used at first toward the three great sins of idolatry, adultery, and murder, which as learned men agree,<sup>3</sup> continued almost to the time of Cyprian. Cyprian himself assures us,<sup>4</sup> that many of his predecessors

<sup>1</sup> Nyssen. Ep. ad Letoium, can. v.

<sup>2</sup> Con. Rom. can. iv.

Quòd si ante præfinitum pœnitentiæ tempus desperatus à medicis, aut evidentibus mortis pressus iudiciis, receptâ quisquam communionis gratiâ convalescat; servemus in eo quod Niceni canones ordinaverunt, ut habeatur inter eos qui in oratione solâ communicant, donec impleatur spatium temporis eidem præstitutum.

<sup>3</sup> Vid. Albaspin. Observat. lib. ii. cap. vii. ad. 20. Bona, Rer. Liturg. lib. i. cap. xvii. n. 1. Fell. Not. in Cypr. Ep. viii. p. 17.

<sup>4</sup> Cypr. Ep. lv. ad Antonian. p. 110. Et quidem apud Antecessores nostros quidam de Episcopis istic in provinciâ nostrâ dandam pacem mœchis non putaverunt, et in totum pœnitentiæ locum contra adulteria elausurunt.

absolutely refused to admit adulterers to communion at their very last hour. And though this rigour was abated by general agreement toward penitents in his time, yet they still continued to deny communion to the very last to such apostates, as persisted obstinate and impenitent all their lives, and only desired reconciliation when the pangs of death were upon them. "They," says he,<sup>1</sup> "who do no penance, nor ever testify any sorrow for their sin from their heart by manifest professions of lamentation, though they begin to deprecate and sue for pardon when infirmity and the danger of death is upon them, such we think fit to debar absolutely from all hopes of communion and peace: because it is not repentance for their sins, but only the apprehension and terror of approaching death that compels them to ask pardon: and he is not worthy to receive consolation at his death, who would not beforehand consider, that he must shortly die." We find this rule concerning apostates some time after renewed by the first Council of Arles, where a decree was passed, "that such apostates,<sup>2</sup> as never presented themselves to the Church, nor sought to do any manner of penance, but at last, when they were seized with an infirmity, desired to have the communion, should in that case be debarred from it, unless they recovered, and brought forth fruits worthy of repentance." And Innocent, bishop of Rome<sup>3</sup>, plainly says, this was the primitive custom for the three

<sup>1</sup> Cypr. Ep. iv. ad Antonian. p. 111. Pœnitentiam non agentes, nec dolorem delictorum suorum toto corde et manifestâ lamentationis sue professione testantes, prohibendos omninò ceusimus à spe communicationis et pacis, si in infirmitate et periculo cœperint deprecari: quia rogare illos non delicti pœnitentia, sed mortis urgentis admonitio compellit: nec dignus est in morte accipere solatium, qui se non cogitavit esse moriturum.

<sup>2</sup> Con. Arelat. i. can. 23. De his qui apostatant, et nunquam se ad ecclesiam representant, nec quidem pœnitentiam agere querunt, et postea in infirmitate arrepti petunt communionem, placuit, eis non dandam communionem, nisi revaluerint, et egerint dignos fructus pœnitentiæ.

<sup>3</sup> Innoc. Ep. iii. ad Exuperium, cap. ii. Et hoc quæsitum est, quid de his observari debeat, qui post baptismum omni tempore intemperantiæ et voluptatibus dediti, in extremo fine vitæ suæ pœnitentiam simul et reconciliationem communionis exposcunt. De his observatio prior, durior; posterior, interveniente misericordiâ, inclinatio est. Nam consuetudo prior tenuit, ut concederetur eis pœnitentia, sed communicatio negaretur.—Sed postquam Dominus noster pacem ecclesiis sui reddidit, jam depulso terrore communionem dari abeuntibus placuit, &c.

first ages of persecution: "If any one after baptism spent his whole life in intemperance and pleasure, and in the end of his days desired penance and the reconciliation of communion, they only admitted him to penance, but absolutely denied him communion. For in those days persecutions being very frequent, lest the easiness of obtaining communion should make men secure of reconciliation, and retard their returning from sin, communion was justly denied them, and only penance allowed them, that they might not be deprived of the whole: the consideration of the times made their remission or reconciliation more difficult to be obtained: but after the Lord had granted peace to his Church, and the terror of persecution was over, then it seemed good to the Church to receive all such to communion, when they were going out of the world, and for the mercy of the Lord to grant it to them as their *Viaticum* or provision for their journey, lest we should seem to follow the asperity and hardness of Novatian the heretic, who denied men pardon for greater sins committed after baptism." The Canons of the Council of Eliberis do abundantly confirm this observation made by Pope Innocent upon the preceding ages of persecution. For there are at least twenty Canons in that Council, which deny communion to the very last to several sorts of sinners, whose crimes were either doubled and tripled, or single crimes of a more flagrant scandal and heinous provocation. Thus the first Canon determines<sup>1</sup>, in the case of voluntary idolaters and apostates, who without any compulsion went of their own accord to the temple, and offered sacrifice: this being a more heinous and capital offence, than bare sacrificing by the violence and force of torture, it is ordered, that such apostates shall not have the communion even at their last hour. The next Canon<sup>2</sup> inflicts the same punishment upon

<sup>1</sup> Con. Eliber. can. i. Placuit, ut quicumque post fidem baptismi salutaris, adultâ ætate, ad templum idololatraturus accesserit, et fecerit, quod est crimen capitale, nec in fine eum communionem accipere.

<sup>2</sup> Ibid. can. ii. Flamines qui post fidem lavaeri et regenerationis sacrificaverunt: cò quòd geminaverint scelera, accedente homicidio, vel tripli-

such idolaters as are guilty of a complication of crimes: as when a christian takes upon him the office of a *Flamen*, or Heathen high-priest, and therein adds to his idolatry either adultery or murder. So if a man kills another by sorcery; because there is idolatry joined with murder, he is not to have the communion even at the hour of death.<sup>1</sup> If a man whilst he is doing penance for idolatry or adultery, relapses into the same,<sup>2</sup> or any other great crime, this repetition of his crime in such a case debars him from communion at his last hour. Another Canon orders the like severity to be used towards women,<sup>3</sup> who without cause forsake their own husbands, and are married to other men. And the same is determined in case a woman is married to a man,<sup>4</sup> whom she knows to have unlawfully divorced himself from a former wife: both these sorts are denied communion to the very last. Another Canon subjects all panders and promoters of uncleanness to the same penalty,<sup>5</sup> whether it be a father or mother, or any other Christian that exercises this abominable trade: because they sell the bodies of others, or rather their own, they are not to have communion even at their last hour. The same is determined in the case of a virgin dedicated to God:<sup>6</sup> if she commits fornication, and continues in her uncleanness without reflecting upon what she has done, there is no absolution for her in her last minutes. As neither for the man,<sup>7</sup> that marries his daughter

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caverint facinus, cohærente mœchiâ, placuit eos nec in fine accipere communionem.

<sup>1</sup> Con. Eliber. can. vi. Si quis maleficio interficiat alterum, eò quòd sine idololatriâ perficere seclus non potuit, nec in fine impertiendam esse illi communionem.

<sup>2</sup> Ibid. can. iii. et vii. See these Canons before, sect. i.

<sup>3</sup> Ibid. can. viii. Fœminæ, quæ, nullâ præcedente causâ, reliquerint viros suos, et se copulaverint alteris, nec in fine accipiant communionem.

<sup>4</sup> Can. x. Si fuerit fidelis, quæ ducitur ab eo qui uxorem inculpatam reliquit, et eum scierit illum habere uxorem quam sine causâ reliquit, placuit, huic nec in fine dandam esse communionem.

<sup>5</sup> Con. Eliber. can. xii. Mater, vel parens, vel quælibet fidelis, si lenocinium exercuerit, eò quòd alienum vendiderit corpus, vel potiùs suum, placuit, eas nec in fine accipere communionem.

<sup>6</sup> Ibid. can. xiii. Virgines, quæ se Deo dicaverint, si pactum perdiderint virginitatis, atque eidem libidini servierint, non intelligentes quod amiserint, placuit, nec in fine eis dandam esse communionem.

<sup>7</sup> Ibid. can. xvii. Si qui fortè sacerdotibus idolorum filias suas junxerint, placuit, nec in fine eis dandam esse communionem.

to any idol-priest. Nor for any bishop, presbyter, or deacon, that commits adultery,<sup>1</sup> whilst he is actually in the ministry, both because of the scandal, and also the wickedness and profaneness of the crime itself. So if a woman commits adultery in her husband's absence, and murders her infant,<sup>2</sup> she is not to have communion at the very last, because she doubles her crime. In like manner a woman is to be treated,<sup>3</sup> that lives in adultery all her life with another man. And also any elergyman,<sup>4</sup> that knows his wife to be guilty of adultery, and does not immediately put her away; lest they, who ought to be examples of good conversation to others, should seem to teach others the way to sin. The same punishment is awarded to any one,<sup>5</sup> that commits incest by marrying his wife's daughter by a former husband. And to such as are conscious and consenting to their wife's adultery.<sup>6</sup> And to all that commit sodomy with boys;<sup>7</sup> and to women who commit adultery with any man, and afterwards marry<sup>8</sup> another husband and not the man who defiled them. If any one turn informer against his brethren, so that they suffer<sup>9</sup> banishment, confiscation, or death by his information, he is not to have communion at his last hour. If any one accuse a bishop, presbyter, or deacon of false crimes,<sup>10</sup> and do not make out what he alledges against them, he also is to be denied communion to the very last. I have represented these things at large, both to evidence the thing now asserted, and also to shew what sort of heinous crimes those were, for which this great severity of discipline was used toward men at their last hour. Some learned persons are offended at this Council for its extreme severity and rigour. Auxilius heretofore brought the<sup>11</sup> charge of Novatianism against Hosius and the Council together. And Suicerus asserts,<sup>12</sup> that the orthodox

<sup>1</sup> Con. Eliber. can. xviii. Episcopi, presbyteri, diaconi, si in ministerio positi, detecti fuerint quòd sint mœchati, placuit, et propter scandalum, et propter profanum crimen, nec in fine eos communionem accipere debere.

<sup>2</sup> Ibid. can. lxiii.

<sup>3</sup> Can. lxiv.

<sup>4</sup> Can. lxx.

<sup>5</sup> Can. lxxi.

<sup>6</sup> Can. lxx.

<sup>7</sup> Can. lxxi.

<sup>8</sup> Can. lxxii.

<sup>9</sup> Can. lxxiii.

<sup>10</sup> Can. lxxv.

<sup>11</sup> Auxil. de Ordinat.

Formosì, lib. i. cap. 12 et 14, lib. ii. cap. 23.

<sup>12</sup> Suicer. Thesaur.

Eccles. Voce, *Μεράνοια*, p. 357.

Church always taught, that lapsers were to be received into communion upon their repentance. Which in effect is to bring the charge of Novatianism against this council, and to make it no part of the orthodox Church. But then the difficulty will be how to clear Cyprian and the Council of Arles from the same charge of Novatianism. For it is plain they were in the same sentiments as to what concerned apostates, who neglected penance to the hour of death: and not only they, but the great Council of Sardica, which restored Athanasius, will be involved in the same condemnation. For there is a Canon in that Council, which is as peremptory in this manner as any in the Council of Eliberis. The Canon orders,<sup>1</sup> that if any bishop out of ambition or covetousness procure himself to be removed from a lesser city to a greater, without the approbation of a synod, he shall not be admitted even to lay-communion at his last hour. So that if this were Novatianism, there is no apology to be made for this Council, no more than for that of Eliberis; the decrees of both Councils being the very same, and of equal severity toward extraordinary offenders. The Novatians indeed sometimes laid hold of this practice in the Church, as an handle to justify their own unwarrantable proceedings against all great sins committed after baptism: they said, they only treated the laity, as the Catholics did the clergy, whom for several crimes they debarred from all communion to the very last. For so Socrates tells us,<sup>2</sup> Asclepiades the Novatian bishop argued with Atticus, bishop of Constantinople: when Atticus acknowledged, that communion might reasonably be denied even at the point of death to such as sacrificed to idols, and that he himself had sometimes done so; Asclepiades replied, there are many other sins unto death, as the scripture calls them, besides sacrificing to idols, for which ye shut the clergy out of the Church, and we the laity, remitting them over to God alone for their pardon.

<sup>1</sup> Con. Sardic. can. ii. Μηδέ ἐν τῷ τελείῳ λαϊκῆς γῶν ἀξιῶσθαι κοινωνίας.

<sup>2</sup> Socrat. lib. vii. cap. 25.



## SECT. 5.—How this may be vindicated and cleared from the Charges of Novatianism.

But this was only a sophistical argument and false apology for the Novatian schism; which though it has imposed upon many learned men, and driven them to strange difficulties in explaining many of the ancient Canons, and obliged them to put a forced and unnatural sense upon plain words, for fear they should seem to encourage the same error as Novatian held: yet the fallacy will easily be discerned by a right stating the matter, and setting things in a proper light before the reader. The question between the Church and the Novatians was not, whether communion at the hour of death might be denied to some sort of sinners: for in this they both agreed, and the practice of the Church in many cases was no less severe toward some great and flagrant crimes, or a complication of crimes, than was that of the Novatians, as evidently appears from what has been already discoursed. But the question was about the ministerial power of absolution, or admitting penitent sinners to the peace and communion of the Church again, after they had lapsed or fallen into any great sin after baptism. The Novatians stidly maintained, that the Church had no such ministerial power of the keys committed to her; but that all such sinners were for ever to be excluded and kept out of her communion; and that if she admitted any of them again, her communion was polluted and profaned by their contagion: and upon this principle they made a separation from the Church, as infected by the communion of sinners. The Church on the other hand asserted her own just right and power, that by the commission of the keys from Christ, she had the power to loose as well as bind: to receive penitents into the Church upon their reformation, as well as cast out flagitious men for their notorious transgressions: and though in some extraordinary cases, either where the crimes were very heinous and numerous, or where for want of time she could not have sufficient evidence of men's repentance, when they continued in their apostasy and impenitency till they were threatened by death, she sometimes suffered such men to go out of the world without reconciliation and com-

munion; yet she did not this for want of power to receive sinners into her communion, but because she judged it more proper to let her censures continue upon such to the very last, to be an example and terror to others. So that though the practice of the Church and the Novatians was in some cases the same, yet their principles were very different, and vastly wide of one another. The Novatians wholly denied this power to the Church, and made a schism upon it: the Church maintained her own just power, and used it with discretion, sometimes one way, and sometimes another, as she judged most expedient in her own wisdom for the benefit and edification of sinners, without dividing communion upon this point among the governors of the Church, whatever way they thought fit to practise. This is what Cyprian observes chiefly against Novatian,<sup>1</sup> in the case of admitting and not admitting adulterers to communion. Some of our predecessors, says he, in this province were of opinion, that peace was not to be granted to adulterers, and therefore they wholly shut the door of repentance against adultery; yet they did not depart from the college of their fellow-bishops upon this account, or break the unity of the Catholic Church by any obstinate stiffness in their censure; so as that because peace was granted by others to adulterers, therefore they who would not grant it, should make a separation from the Church. But the bond of concord remaining entire, and the mystical unity of the Catholic Church continuing undivided, every bishop managed and directed his own acts of discipline as he thought proper, being to give an account of his resolutions and management to the Lord. It appears from hence, that the dispute between the Church and Novatians was not barely about practice, but about principles and the power of the Church, in the use and management of the keys of discipline: and therefore though the Church sometime did the same thing that the Novatians did in re-

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<sup>1</sup> Cypr. Ep. lv. ad Antonian. p. 116. Et quidem apud antecessores nostros quidam de episcopis istie in provinciâ nostrâ dandam pacem mœchis non putaverunt, et in totum penitentiæ locum contra adulteria clausurunt; non tamen à coepiscoporum suorum collegio recesserunt, aut catholicæ ecclesiæ unitatem vel duritiæ vel censure sue obstinatione ruperunt, &c.

fusing communion to some sinners even at the point of death, yet she was no ways chargeable with Novatianism, because she acted upon different views and principles, and only made use of her just power in a discretionary way, to extend or contract her censures, as she judged most expedient for the benefit and edification of the whole community, or any particular member of it. And thus, I find, many learned men, such as Albaspinæus,<sup>1</sup> bishop Beveridge,<sup>2</sup> and cardinal Bona,<sup>3</sup> have accounted for this seeming difficulty in the Church's practice, which has so tortured the wits of other men for want of understanding wherein the true nature of the Novatian heresy consisted: some fancying, that the Fathers in and before the Council of Eliberis were downright Novatians; others, that they allowed men reconciliation, and peace, and absolution, but only denied them the communion of the eucharist at their last hour: whereas nothing can be plainer, than that they denied them not only the communion, as it denotes the eucharist, but all manner of ministerial reconciliation, pardon, absolution, and readmission into the society of the faithful.

SECT. 6.—The Rigour abated in after Ages without any Reflection on the preceding Practice.

This rigour indeed was abated in the practice of the following ages, but without the least reflection on those that went before them: because they were sensible, it was at the Church's liberty to order this part of discipline according to her own prudence, and act as the circumstances of times and the state of affairs required; judging the times of peace to be different from the times of persecution, and that some abatement was to be made in this matter, when all the world was become Christian. The later Councils therefore are not so stiff in requiring the execution of the ancient Canons in this particular, but allow every penitent communion at their last hour, though they would not undertake to assure them what effect an absolution in such

<sup>1</sup> Albaspin. *Observat. lib. ii. cap. 21.*  
*can. viii. Con. Nic. p. 68.*  
n. 3.

<sup>2</sup> Bevereg. *Not. ad*

<sup>3</sup> Bona, *Rer. Liturg. lib. ii. can. 17.*

extremity should have before God. The Canons are very numerous upon this head: it will be sufficient to mention one or two as a specimen of all the rest. The Council of Agde speaks in general terms without exception: <sup>1</sup> “no penitents are to be denied their *Viaticum*, or *provision for their journey*, at the point of death.” The first Council of Orange is universally, making no distinction: <sup>2</sup> “whoever accept of penance, when they depart from the body, let them be received to communion; but without the solemn imposition of hands, which is only to be given them, if they recover, upon performing their just penance in the Church.” The fourth Council of Carthage orders, <sup>3</sup> that they shall have both the solemn imposition of hands, and the eucharist also, even though they had lost their senses or were struck dumb with their disease, if any about them could testify that they desired penance in their sickness. And this was agreeable to the rule made in the great Council of Nice, <sup>4</sup> that no one at the point of death should be deprived of his final and most necessary *Viaticum*, the eucharist or oblation, as it is explained in the close of the Canon, where the bishop is made judge of his repentance. Upon this ground Synesius <sup>5</sup> says, he never let any one go out of the world bound with the bands of anathema, if they desired absolution: only if they recovered, he reserved them to the disposition of his metropolitan of Alexandria. And this confirms the remark made in general by Pope Innocent, <sup>6</sup> upon the different practices of the Church in times of persecution and times of peace. The

<sup>1</sup> Con. Agathen. can. xv. *Viaticum omnibus in morte positus non est negandum.*

<sup>2</sup> Con. Arausic. i. can. 3. *Qui recedunt de corpore, pœnitentiâ acceptâ, placuit, sine reconciliatoriâ manûs impositione communicare, quod morientis sufficit consolationi, &c.*

<sup>3</sup> Con. Carth. iv. can. lxxvi. *Qui pœnitentiam in infirmitate petit, si casu dum ad eum sacerdos invitatus venit, oppressus infirmitate obmutuerit, vel in phrenesin versus fuerit, dent testimonium qui eum audierunt, et accipiat pœnitentiam; et si continuò creditur meritorus, reconcilietur per manûs impositionem, et ori ejus infundatur eucharistia.*

<sup>4</sup> Con. Nicæn. can. xiii. *Ἐπι τις ἐξοιεύοι, τοῦ τελευταίου ἐ ἀναγκαϊοτάτῃ ἐφοδία μὴ ἀποσπερεῖσθαι.*

<sup>5</sup> Synes. Ep. lxxvii. ad Theophilum, p. 252. *Μηδεὶς γὰρ ἀποθάνοι ἐδεμένος ἔμοι.*

<sup>6</sup> Innoc. Ep. iii. ad Exuperium, cap. ii. *De his observatio prior, durior: posterior, interveniente misericordiâ, inclinatio est, &c.*

former observation was more severe, the latter more indulgent. In ancient times many sinners were denied communion at the hour of death: but in his time they granted penance to all, and admitted them to communion upon a death-bed repentance. Only they did not think this so safe, as the performance of a regular penance, in their life time: and therefore they would not pronounce any thing confidently of their condition. There goes an ancient homily under the name of St. Austin, and it is also attributed to St. Ambrose, where this matter is thus delivered: “if a man repents at his last hour, and is reconciled, and so dies, I am not secure,<sup>1</sup> that this man goes hence securely: I can admit him to penance, but I can give him no security. Do I say, he shall be damned? I do not say it; but neither do I say he shall be saved. What then do I say? I know not, I presume not, I promise not. For I know not the will of God. Would you free yourself from all doubt, and avoid that which is uncertain? repent whilst you are in health, and you will be secure when your last day finds you: because you repent in a time when you had power to sin: but if you then only begin to repent, when you can sin no longer, it is not so much you that forsake your sins, as your sins forsake you.” By all this it plainly appears that the Church used a liberty of discretion in treating sinners of the first rank, either with severity or tenderness, as she judged expedient for the ends of discipline, or the benefit and edification of the sinner.

SECT. 7.—What Liberty was allowed to Bishops in imposing Penance, and exacting proper Satisfaction from Sinners. Some Sinners allowed to do Penance twice.

Indeed we may observe that a great latitude and liberty was allowed to bishops, who were the prime ministers of discipline, to render it more rigorous or easy, as they thought fit to regulate the exercise of it in their own discretion. For though it was necessary in general for sinners to demonstrate their repentance to the Church, in order to give

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<sup>1</sup> Aug. Hom. xli. ex l. tom. x. p. 194. Agens pœnitentiam ad ultimum, et reconciliatus, si securus hinc exeat, ego non sum securus.—Pœnitentiam dare possum, securitatem dare non possum, &c. Vid. Ambros Exhortat. ad Pœnitent.

her satisfaction, and gain themselves re-admission; yet the method of doing this was not so precisely prescribed, but that bishops had power to add to, or abate something in the measures of it. Therefore though the general custom was to allow sinners to do public penance but once in the Church, yet there are some instances, in the most strict and primitive ages, of sinners being admitted twice to this privilege. For Irenæus says,<sup>1</sup> Cerdon, the heretic, more than once made confession of his heresy. Which we are to understand of his doing penance twice for his errors by making a public recantation of them. Tertullian says the same of Valentinus, and Marcion,<sup>2</sup> that they were once and again cast out of the Church for their turbulent curiosity in corrupting the brethren, before they broke out into their last dissention, when they scattered the poison of their doctrines among the people. And yet after that Marcion did penance, and was to have been received into the communion of the Church again, upon condition, that he should bring back those, whom he had led into perdition; which he intended to do, but death prevented him. It is noted also by Socrates<sup>3</sup> concerning St. Chrysostom, that though a synod of bishops had decreed, that lapsers should only be admitted once to do public penance, yet in his homilies he was used to tell men, they should do it a thousand times, if occasion required, and be received to communion. Which bold doctrine displeased many of his friends, and Sisinius the Novation bishop wrote a book against it. After this a Council was held at Constantinople, Anno 426 or 427, under another Sisinius the Catholic bishop, one of St. Chrysostom's successors, against the Massalian heretics, wherein it was decreed, that because they had often relapsed after doing penance, they should be admitted to do penance no more,

<sup>1</sup> Iren. lib. iii. cap. 4.

<sup>2</sup> Tertul. de Præscript. cap. 30. Ob inquietam semper eorum curiositatem, quâ fratres quoque vitiabant, semel et iterum ejeclî——novissimè in perpetuum discidium relegati, venena doctrinarum suarum disseminaverunt. Postmodum Marcion pœnitentiam confessus, cùm conditioni datæ sibi occurrit, ita pacem recepturus, si cæteros quoque quos perditioni erudisset, ecclesiæ restitueret, morte præventus est.

<sup>3</sup> Socrat. lib. vi. cap. 21.

though they made never so many solemn professions of repenting. The synodical epistle is recorded in Photius,<sup>1</sup> from whence we learn, that relapsers at this time were allowed to do penance again, though the Council thought fit to deny the Massalian heretics the privilege any longer, because they had so often abused it.

SECT. 8.—Bishops had also Power to moderate the Term of Penance upon just Occasion.

Another instance of the power of bishops in this matter, was the liberty which the canons themselves granted them to moderate the term of penance, and shorten it, if they observed any extraordinary degree of zeal and sedulity in any penitents, that might deserve their indulgence and commiseration. The Council of Nice, determining the term of penance for such as fell into idolatry,<sup>2</sup> says, they shall be three years hearers, and ten years prostrators, before they were admitted to communicate in prayers with the people: but if any were more than ordinarily diligent in expressing their concern and tears, and bringing forth good works, the true fruits of repentance, it should be in the bishop's power to deal more gently and mildly with them,—*ἀνθρωπότερόν τι περὶ αὐτῶν βεβηλώσασθαι*,—and bring them to communicate in prayers sooner. The like order is given by the Council of Ancyra<sup>3</sup>, that bishops shall have power, upon examination and trial of the penitents' manner of behaviour and conversion, either to shew them favour by shortening the time of penance, or otherwise to add to it at his discretion,—*ἢ φιλανθρωπεύεσθαι, ἢ πλείονα προστιθέναι χρόνον*. So St. Basil says,<sup>4</sup> he that has the power of binding and loosing, may lessen the time of penance to a penitent that shews great contrition. And Chrysostom in answer to some, who complained of the length of penance, that it continued a

<sup>1</sup> Phot. Biblioth. cod. 52.  
Ancyra. can. v.

<sup>2</sup> Con. Nic. can. 12.

<sup>3</sup> Con.

<sup>4</sup> Basil. can. lxxiv.

year, or two, or three, says, I require not the continuance of time,<sup>1</sup> but the correction of the soul. Demonstrate your contrition, demonstrate your reformation, and all is done. The Council of Lerida very expressly:<sup>2</sup> “let it remain in the power of the bishop either to shorten the suspension of the truly contrite, or to segregate the negligent a longer time from the body of the Church.” And the great Council of Chalcedon leaves it entirely in the hands of every bishop in his respective Church,<sup>3</sup> to shew favour to such penitents at his own discretion.

SECT. 9.—And this was the true ancient Notion of an Indulgence.

And this is what some of the Ancients call an indulgence; which was not heretofore any pretended power of delivering souls from the pains of purgatory, by virtue of a stock of merits, or works of supererogation, which they of the Church of Rome call now the Church's treasure, of which the pope is become the sole dispenser: but anciently an indulgence was no more than this power, which every bishop had, of moderating the canonical punishments, which in a course of penance were inflicted upon sinners, so that if the bishop saw any one to be a zealous and earnest penitent, he had liberty to shorten the time of his penance, that is, grant him a relaxation of some of his penitential exercises, and admit him sooner than others to communion. This was the true ancient notion of an indulgence. And that it was so, we may learn from one of the epistles of Pope Vigilius, who writing to a certain bishop concerning some persons, who were under penance for suffering themselves to be re-baptised by the Arians, tells him,<sup>4</sup> that it was left to

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<sup>1</sup> Chrys. Hom. xiv. in. 2. Cor. c. 846.    <sup>2</sup> Con. Herden. can. v. *Maneat in potestate pontificis, vel veraciter afflictos non diu suspendere, vel desidiosos prolixiore tempore ab ecclesie corpore segregare.*    <sup>3</sup> Con. Chalced. can. xvi. *Ὁρίσαμεν δὲ ἔχειν τὴν ἀβθεντίαν τῆς ἔπ' αὐτοῖς φιλανθρωπίας τὸν κατὰ τόπον ἐπίσκοπον.* See Martin. Bracarens. Capitula Græc. Can. cap. lxxxii. *Conversatio et fides pœnitentis compendiat tempus.*    <sup>4</sup> Vigil. Ep. ii. ad Eleutherium. cap. iii. *In æstimatione fraternitatis tuæ, aliorumque pontificum per suas dioceses relinquatur, ut si qualitas et pœnitentis devotio fuerit approbata, indulgentiæ quoque remedio sit vicina.*



his own judgment, and the judgment of other bishops in their respective dioceses, if they approved the quality and devotion of any penitents, to grant them the benefit of an indulgence, that is, a relaxation of their penitential exercises, or a speedier admission to communion.

SECT. 10.—Which was sometimes granted at the Intercession of the Martyrs, or the Instance of the civil Magistrate.

And this was sometimes granted at the intercession of the martyrs in prison, of which there are several examples in Cyprian; and sometimes at the instance of the civil magistrate. For St. Austin tells us,<sup>1</sup> that as bishops were used to intercede for criminals in the civil courts, so the magistrates sometimes interceded for penitents in the ecclesiastical. And he uses this as an argument to a certain magistrate to induce him to shew mercy to an offender. If you have liberty to intercede with us for the mitigation of an ecclesiastical censure, why may not the bishop intercede against your sword, when our sword is only drawn to make the man live better, but yours that he may not live at all? This sort of indulgences therefore had no respect to the punishments of the next world, but only to the mitigation of ecclesiastical punishment in this: which is ingenuously acknowledged by Cassander,<sup>2</sup> and several other learned Romanists, some of which have undergone the censures of the Roman inquisitors for their over liberal concessions. Particularly Polydore Virgil is put into the *Index Expurgatorius* for saying,<sup>3</sup> that the use of indulgences is no older than the time of Gregory the Great; and Franciscus Polygranus for asserting,<sup>4</sup> that every bishop of divine right has power to grant in-

<sup>1</sup> Aug. Ep. 54. ad Maedonium, p. 93. Si vobis fas est ecclesiasticam correptionem intercedendo mitigare, quomodo episcopus vestro gladio non debet intercedere, cum illa exeratur, ut in quem exeritur benè vivat, iste ne vivat?

<sup>2</sup> Cassand. Consultat. Art. xii. p. 103. Joan Roffensis. cont. Luther. art. xviii. Polydor. Virgil. de Inventor Rerum. lib. viii. cap. 1. Alphons. à Castro. advers. Hæres. lib. viii. p. 572.

<sup>3</sup> Index Libror. Prohib. et Expurgand. p. 853. Madrit. 1667.

<sup>4</sup> Index Expurg. p. 97. Salmur. 1601. Ex Fr. Polygrani Assertionibus quorundam ecclesie dogmatum. Fol. 68. deleatur glossa marginalis, quæ ait de jure divino quilibet sacerdos posset dare indulgentias.

dulgences, with some assertions of the like nature; which agree very well with the true ancient notion of an indulgence, as it has been now explained, but will not comport with the Pope's sole claim and pretence to this power, or any other innovations in the modern practice. But this only by the way: I now return to the ancient Church.

SECT. 11.—Bishops had also Power to alter the Nature of the Penalty in some Measure, as well as the Term of it.

Where we may observe further, that bishops had power to grant indulgence, not only by contracting the term of penance, but also in some measure by altering or lessening the nature and quality of the punishment itself. Of which we have a plain evidence in the Council of Ancyra,<sup>1</sup> where, in the case of deacons, who lapsed into idolatry, and afterwards recovering stood firm in a second engagement, it is ordered, that they may retain the honour of deacons, but not any part of their sacred service, either in ministering the bread or the cup, or in performing the office of the public directors in the church: yet the bishops should have power, if they found them very diligent, humble, and meek, to grant them more or less of their office, as they judged convenient; which shews, that a great deal in this whole matter was left to the bishops' discretion, to make the exercise of penance more or less severe, as well in the degrees of punishment as in point of time, according to the disposition and behaviour of the repenting sinner.

SECT. 12.—What the Ancients mean by the Term *Legitima Pœnitentia*.

And this explains to us a term or phrase which often occurs in the writings of the Ancients, especially in Cyprian<sup>2</sup> and the Council of Eliberis,<sup>3</sup> and where they require, that penitents should perform “*Pœnitentiam legiti-*

<sup>1</sup> Con. Ancyr. can. 2.  
p. 116. Ep. 55, ad Antonian, p. 108.  
3, 5, 14, 72, 76.

<sup>2</sup> Cypr. Ep. 54, al. 57. ad. Cornel.  
<sup>3</sup> Con. Eliber. can.

*nam, plenam, et justam, a legal, full, and just penance.*" Some understand by this, that they should fulfil the whole term or time of penance prescribed by the Canons; others, that they should not only fulfil the time, but regularly go through all the several degrees of penance, as mourners, hearers, prostrators, and co-standers, before they were received to communion. But neither of these hit the true meaning of this ancient phrase, which respects neither the time of penance nor the orders of penitents, but the mind and qualifications of men acting sincerely and *bonâ fide* in their repentance; and expressing their hearty sorrow for sin by weeping, and mourning, and fasting, and almsdeeds, and charity, and an entire reformation; which are proper indications of a penitent mind, and such as might incline the bishop to shew them some favour and indulgence, by shortening the time of their penance, notwithstanding which it might be called a just and full repentance, as Albaspinæus<sup>1</sup> rightly explains it.

SECT. 13.—What is meant by the Phrase *inter Hyemantes orare*.

There is one phrase more occurring in some of the ancient Canons, which may need a little explication in this place, because it relates to the severity of the ancient discipline, which we are now considering. The Council of Ancyra, speaking of those, who commit uncleanness with beasts,<sup>2</sup> or draw others into the same sin (being spiritual lepers, and infecting others with their contagion), says, they shall pray with the *Χειμαζόμενοι*, or *Hyemantes*; which denotes some extraordinary punishment, but of what sort is not very easy to determine, because learned men are not well agreed what the word *Χειμαζόμενοι* properly means. The old translators of the Greek Canons commonly under-

<sup>1</sup> Albaspinæus. Observat. lib. ii. cap. 30. It. Not. in Can. 3 Con. Eliber.

<sup>2</sup> Con. Ancyra. can 17. Τὸς ἀλογισσαμένους ἐν λεπρῶν ὄντας, ἢ τοὶ λεπρῶσαντας, τέτρες προσέταξαν ἡ ἀγία σύνοδος εἰς τὸς Χειμαζομένους εὐχεσθῆναι.

stand it of *energumens*, or demoniacs, such as were vexed with unclean spirits, and, as it were, tossed by them in a tempest. Dionysius Exiguus renders it, “*Qui spiritu periclitantur immundo, vexed with an unclean spirit.*” The other translation of Isidorus Mercator has it, “*Qui tempestate jactantur, qui à nobis energumeni intelliguntur,—those that are tossed in a tempest, by whom we understand energumens.*” And Martin Bracarenis, in his collection of the Greek Canons,<sup>1</sup> renders it “*Dæmoniosos, demoniacs.*” And that which gives some probability to this interpretation is, that the word *Χειμαζόμενοι* is so used and expounded by many Greek writers. In the prayer for the whole state of the Church, and all orders in it, related by the author of the Constitutions,<sup>2</sup> there is one petition, “*ὑπὲρ τῶν χειμαζομένων ὑπὸ τοῦ ἀλλοτρίου, for those who are tossed by the enemy,*” that is, *energumens* vexed with the evil spirit. And so Cyril<sup>3</sup> of Alexandria uses the same phrase for those, that were possessed with a wicked spirit. As also the ancient commentators,<sup>4</sup> Maximus upon Dionysius, and Alexis Aristinus upon the Canons,<sup>5</sup> and the modern Greeks in their *Euchologium*,<sup>6</sup> where there is a prayer for the “*Χειμαζόμενοι ὑπὸ πνευμάτων ἀκαθάρτων, for those that are tossed or tormented with unclean spirits.*” Upon the credit of which authorities Bishop Beveridge concludes,<sup>7</sup> that praying among the *Χειμαζόμενοι* or *Hyemantes* in the Council of Ancyra denotes the penitents praying among the *Energumens*, or those that were vexed with unclean spirits. And so Osiander, in his notes upon the Council of Ancyra,<sup>8</sup> and Mr. Dodwel,<sup>9</sup> in his observations upon Cyprian, who thinks the word *Clidomeni*, in one of Cyprian’s Epistles, is but a corruption from

<sup>1</sup> Martin. Bracar. Collect. Canonum. cap. 82. Oportet tales inter dæmoniosos orare, al. ordinare. <sup>2</sup> Constit. lib. viii. cap. 12.

<sup>3</sup> Cyril. in Esai. xlii. p. 544. *Χειμαζόμενοι ὑπὸ πνεύματος πονηροῦ.*

<sup>4</sup> Maxim. in Dionys. Hierarch. Eccles. cap. 6.

<sup>5</sup> Alex. Aristin. in can. 17. Con. Ancyr.

<sup>6</sup> Eucholog. Goar. p. 724.

<sup>7</sup> Bevereg. Not. in Can. 11. Con. Nic. n. iv. p. 72.

<sup>8</sup> Collect. Canonum. Witebergæ. 1614, 4to.

<sup>9</sup> Dodwel Dissert. 1. in Cyprian, p. 4.

*Clydonizomeni*, Κλυδωνιζόμενοι, which is of the same import and signification with *Χεσμαζόμενοι*, denoting what the Latins call *Maniaci* and *Lymphatici*, persons possessed by an evil spirit, as he shews out of some passages of Amphilocheus<sup>1</sup> and St. Chrysostom, which support his conjecture. Other learned men think the *Χεσμαζόμενοι*, or *Hyemantes*, were such penitents as for the monstrous greatness of their crimes were not only expelled out of the communion of the Church, but cast out of the very *Atrium* or courts and porch of the Church, and put to do penance in the open air, where they stood exposed to the inclemency of all weathers whatsoever. This opinion is embraced and defended by Albaspinaeus,<sup>2</sup> Cardinal Bona,<sup>3</sup> and Suicerus.<sup>4</sup> And there is a passage in Tertullian, which makes this explication look very natural; for, speaking of the ancient discipline, and distinguishing the degrees and malignity of heinous offences, he says,<sup>5</sup> there were some impious furies of lust, so far transgressing all the laws of nature, both with respect to bodies and sex, that they did not only expel them from the doors of the church, but from any covered place belonging to it, as being monsters rather than common vices. Either of these opinions, as having each their reasons and probability to support them, may be admitted. But the opinion of Balzamon here is little worth, who makes the *Hyemantes* to be no more, than the second class of penitents, called hearers. This does by no means shew any special severity against such enormous sins, assigning them only a common punishment with the rest. But if we suppose those, who were guilty of them, either to be ranked among demoniaes, or wholly to be kept out of the Church, we have some proper idea of the Church's severity against them; for which reason I have purposely mentioned it in this

<sup>1</sup> Amphiloche. Hom. de Pœnit. ap. Combefis. p. 97. Chrys. Orat. 1. ad Stagirium.

<sup>2</sup> Albasp. Observ. in can. 17. Con. Ancyr.

<sup>3</sup> Bona

Rer. Liturg. lib. i. cap. 17. n. 5.

<sup>4</sup> Suicer. Thesaur. Eccles. Voce

*Χεσμαζόμενοι*.

<sup>5</sup> Tertul. de Pudicit. cap. 4. Reliquas autem

furias impias et in corpora et in sexus ultra jura naturæ, non modò limine, verùm omni ecclesie tecto submovemus, quia non sunt delicta, sed monstra.

place, where we have been discoursing of the strictness and severity of the ancient discipline, which is the last thing considerable in the exercise of it, whilst men were under the bonds and fetters of excommunication. The next thing is to see how they were loosed from these bonds, when their penance was completed; and this brings us to the business of absolution, or the method of re-admitting penitents into the communion of the Church again, which must be the subject of the next book.

## BOOK XIX.

## OF ABSOLUTION, OR THE MANNER OF RE-ADMITTING PENITENTS INTO THE COMMUNION OF THE CHURCH AGAIN.

## CHAP. I.

*Of the Nature of Absolution, and the several Sorts of it; more particularly of such as relate to the penitential Discipline of the Church.*

SECT. 1.—All Church-absolution only ministerial, not absolute.

HAVING hitherto seen the exercise of penitential discipline in all the several parts of it, as it related to sinners under the bonds of excommunication, we are now to consider it under another view, as it denotes their absolution from those bonds by the power of the keys, and the method of restoring or re-admitting penitents, when their penance was completed, to the communion of the Church again. And here first of all we are to observe, that the Ancients challenged no power in this matter but that, which was purely ministerial; leaving the absolute, sovereign, independent, and irreversible power only to God. Of which I need give no other proof at present but only this, that they constantly made it an argument for our Saviour's divinity, that He had the sovereign power of forgiving sins: which argument could

have signified nothing, had men been equal sharers in this power with Him. Thus Irenæus argues against some of the heretics in his own time: "our Saviour," says he,<sup>1</sup> in forgiving sins both cured the man, and manifestly declared, who He himself was. For if none can forgive sins but God alone, and our Lord did forgive them, and cure men; it is manifest, that He was the Word of God, made the son of man: and as He was man, He suffered with us and for us; as He is God, He shews mercy to us, and forgives us our debts, which we owe to God our Maker." The same argument is urged by Tertullian in his books against Marcion;<sup>2</sup> and by Novatian against the Ebionites;<sup>3</sup> and Athanasius against the Arians;<sup>4</sup> St. Basil also uses it,<sup>5</sup> as one of his strongest weapons against Eunomius; and the like is done by St. Hilary,<sup>6</sup> and St. Chrysostom,<sup>7</sup> and St. Jerom,<sup>8</sup> and Victor of Antioch,<sup>9</sup> and Cyril of Alexandria,<sup>10</sup> who all argue for our Saviour's divinity from this topic, that He had sovereign and absolute power upon earth to forgive sins. And St. Ambrose uses the same argument against the Macedonians<sup>11</sup> to prove the divinity of the Holy Ghost. I produce none of these testimonies at large here, both because they all speak the same thing, and are already produced in an excellent book of Bishop Usher's,<sup>12</sup> which is common in every reader's hands: where he also shews further the general agreement of the Ancients in this assertion, that none can forgive sins but God only, that is, with an absolute and sovereign power:

<sup>1</sup> Iren. lib. v. cap. 17. Peccata igitur remittens, hominem quidem curavit, semetipsum autem manifestè ostendit quis esset. Si enim nemo potest remittere peccata nisi solus Deus; remittebat autem hæc Dominus, et curabat homines: manifestum est, quoniam ipse erat Verbum Dei, Filius hominis factus—Et quo modo homo compassus est nobis, tanquam Deus miseretur nostri, &c.

<sup>2</sup> Tertul. cont. Marcion. lib. iv. cap. 10.

<sup>3</sup> Novat. de Trinit. cap. xiii.

<sup>4</sup> Athan. Orat. iii. cont. Arianos.

Orat. iv. cont. Ar. II. Epist. de Synodis.

<sup>5</sup> Basil. cont. Eunom.

lib. v.

<sup>6</sup> Hilar. Canon. viii. in Mat.

<sup>7</sup> Chrys. Hom. xxix.

in Mat.

<sup>8</sup> Hieron. Com. in Mat. ix.

<sup>9</sup> Victor in

Marc. ii.

<sup>10</sup> Cyril. Thesaur. lib. xii. cap. 4. Item de Rectâ Fide

ad Reginas.

<sup>11</sup> Ambros. de Spir. Sancto. lib. iii. cap. 19. Vid.

Aug. Hom. xxiii. ex l. c. 7.

<sup>12</sup> Usher. Answer to the Jesuit's

Challenge, p. 79. &c.



and therefore the power of absolution in the Church is purely ministerial, and consists in the due exercise and application of those means, in the ordinary use of which God is pleased to remit sins: using the ministry of his servants, as stewards of his mysteries, in the external dispensation of them; but Himself conferring the internal grace or gift of remission by the operation of his spirit only upon the worthy receivers. These mysteries or means of grace, in the external dispensation of which the Church is concerned, and in the ordinary use of which remission of sins is conveyed, are usually by the Ancients reckoned up under these five heads: 1. the absolution or great indulgence of baptism. 2. The absolution of the eucharist. 3. The absolution of the word and doctrine. 4. The absolution of imposition of hands and prayer. 5. The absolution of reconcilment to the Church and her communion by a relaxation of her censures. The two first may be called sacramental absolution; the third declaratory absolution; the fourth precatory absolution; the fifth judicial absolution: and all of them authoritative, so far as they are done by the ministerial authority and commission which Christ has given to his Church, to reconcile men to God by the exercise of such acts and means, as conduce to that end in a subordinate and ministerial way according to his appointment.

SECT. 2.—Of the grand Absolution of Baptism. That this was of no Use in penitential Discipline to Persons once baptised.

But then all these sorts of absolution were not reckoned of equal concern in penitential discipline. For though baptism was always esteemed the most universal absolution, and grand indulgence in the ministry of the Church; as conveying a general pardon of sins to every true member of Christ, when he first entered into his mystical body by the laver of regeneration: yet this had no place in the exercise of penitential discipline. For no penitent was ever reconciled to the communion of the Church, after any lapse, or censure, or penance done for it by a second baptism. And yet the stewards of Christ's mysteries were always supposed

to have the ministerial power of conveying remission of sins to men by the administration of baptism: and so far as they were entrusted with the administration of it, so far they had power to bind or loose; to admit the worthy into the Church, or keep the unworthy out of it; that is, in the ministerial way, to remit men's sins by admitting them to baptism, or retain their sins by keeping them from it, according to the rules of Christ's institution and appointment. The Ancients upon this account commonly give baptism the name of indulgence, or remission of sins, or the sacrament of remission, as I have had occasion to shew out of the Council of Carthage<sup>1</sup> under Cyprian, and one of the Roman Councils mentioned by Cotelarius,<sup>2</sup> and St. Austin,<sup>3</sup> in a former book,<sup>4</sup> where we treat more expressly of baptism. It is also observable, that the Ancients commonly deduce this ministerial power of remitting sins in baptism from the same text, upon which the power of all other absolutions is founded, viz. John. xx. 23. "Whosoever sins ye remit, they are remitted unto them; and whosoever sins ye retain, they are retained." They say, this commission is executed by the ministers of Christ, as well in conferring baptism, as in reconciling penitents, or any other way of ministerial absolution. Cyprian argues upon this foot against the baptism of heretics and schismatics, that baptism given by them is of no benefit to the receiver, because they are not of the number of those, to whom Christ gave commission to remit sins, as not being endued with the Holy Spirit. "Seeing," says he,<sup>5</sup> "that remission of sins is granted to every man in baptism, the Lord in his gospel declares and proves, that

<sup>1</sup> Con. Carth. ap. Cypr. n. xix. p. 234  
ap. Cotelar in Constitut. Apost. lib. iii. cap. ix.  
Bapt. lib. v. cap. 21.

<sup>2</sup> Con. Rom.

<sup>3</sup> Aug. de

<sup>4</sup> Cypr. Ep. lxxvi. al. 69. ad Magnum, p. 185. Cùm in baptismo unicuique peccata sua remittuntur, probat et declarat in suo evangelio Dominus, per eos solos posse peccata dimitti, qui habeant Spiritum Sanctum. Post resurrectionem enim discipulos suos mittens, loquitur ad eos et dicit: Sicut misit me Pater, et ego mitto vos. Hoc cùm dixisset, insufflavit et ait illis: Accipite Spiritum Sanctum. Si cujus remiseritis peccata, remittentur illi: si cujus tenueritis, tenebuntur. Quo in loco ostendit, eum solum posse baptizare, et remissionem peccatorum dare, qui habeat Spiritum Sanctum.

sins can only be remitted by them, who have the Holy Spirit. For after his resurrection, when He sent forth his disciples, He said unto them, ‘As my Father sent Me, so send I you. And when He had said this, He breathed on them, saying, receive ye the Holy Ghost. Whosoever sins ye remit, they are remitted unto them; and whosoever sins ye retain, they are retained.’ In which place he shews, that they only can baptise and grant remission of sins, who have the Holy Ghost.” So again in another epistle:<sup>1</sup> “It is manifest both where and by whom that remission of sins is granted, which is granted in baptism. For the Lord first gave that power to Peter, that whatsoever he loosed on earth, should be loosed in heaven. And after his resurrection, He said to his disciples, ‘Whosoever sins ye remit, they are remitted unto them; and whosoever sins ye retain, they are retained.’ Whence we understand, that no other have power to baptise, and grant remission of sins, but they who are made rulers in the Church by the evangelical law and ordinance of the Lord.” Firmilian also follows Cyprian in the same argument,<sup>2</sup> proving from the same texts, that heretics have no power to remit sins in baptism, because they are not in the Church, nor of the number of those, to whom Christ gave that commission. Neither was it only Cyprian and Firmilian that thus asserted the power of remitting sins in baptism to belong to the ministers of Christ, but generally all other interpreters. Cyril of Alexandria expounding<sup>3</sup> those words of our Saviour, “Whosoever sins ye remit, &c.” says, “spiritual men remit or retain sins, as I conceive, two ways. For either they call those to baptism, who are worthy of it upon the account of a good life and approved

<sup>1</sup> Id. Ep. lxxiii. ad Jubaian. p. 201. Manifestum est autem ubi et per quos remissa peccatorum dari possit, quæ in baptismo scilicet datur. Nam Petro primum Dominus—potestatem istam dedit, ut id solveretur in cælis, quod ille solvisset in terris. Et post resurrectionem quoque ad Apostolos loquitur, dicens, Sicut misit me Pater, &c. Unde intelligimus, non nisi in ecclesiâ præpositis, et in evangelicâ lege et dominicâ ordinatione fundatis, licere baptizare, et remissam peccatorum dare.

<sup>2</sup> Firmil. Ep. lxxv.

ap. Cypr. p. 225.

<sup>3</sup> Cyril. lib. xii. in Joan. xx. xxiii. tom. 4.

p. 1101.

faith, or else they forbid and repel those from the divine gift, who are unworthy of it. This is one way of remitting or retaining sin. Another way is, when they punish and correct the children of the Church offending, and pardon them again upon their repentance: as Paul delivered the Corinthian over to the destruction of the flesh, that the spirit might be saved; and afterward received him, that he might not be swallowed up of overmuch sorrow." St. Ambrose in like manner ascribes the power of remitting sins to the administration of baptism, as well as penance: and upon this ground he asks the Novatians,<sup>1</sup> "why do ye baptise, if sins cannot be remitted by the ministry of man? what is the difference, whether priests assume this power as given to them in the exercise of penance, or the administration of baptism?" Gaudentius says,<sup>2</sup> "It is this key of the sacraments, that opens the gate of the kingdom of heaven." Consequently he must mean also, that so far as ministers are instrumental in conferring the sacrament of baptism, so far they are instrumental in procuring men that remission of sins which attends it. And for this reason Chrysostom magnifies the sacerdotal office upon a double account, because the priests have power to remit sins,<sup>3</sup> both when they regenerate us, and afterwards: that is, both by baptism and penance, when they first admit men into the Church, and readmit or reconcile them after any great transgression. But I mention this, not so much to explain the penitential discipline of the Church, in which baptismal absolution has no concern, as to remark a few other necessary things. As first, that sacerdotal absolution in general extends much further than is commonly apprehended: for it includes the whole transaction of baptism, whereby remission of sins is ministerially granted to every true member of Christ, when he is first

<sup>1</sup> Ambros. de Pœnitent. lib. i. cap. vii. tom. I. p. 157. Cur baptizatis, si per hominem peccata dimitti non licet? Quid interest, utrùm per pœnitentiam, an per lavacrum hoc jus sibi datum sacerdotes vendicent?

<sup>2</sup> Gaudent. Tract. xvi. Die Ordinat. Suxæ Bibl. Patr. tom. ii. p. 59. Janua quippe regni cœlorum non nisi hoc sacramentorum spirituali clave reseratur.

<sup>3</sup> Chrys. de Sacerdot. lib. iii. cap. 6. Οὐ γὰρ ὅτ' ἀν ἡμᾶς ἀναγεννῶσι μόνον, ἀλλὰ ἔ; τὰ μετὰ ταῦτα συνχωρεῖν ἔχουσιν ἐξουσίαν ἀμαρτήματα.

admitted into his Church. Whence it follows secondly that sacerdotal absolution does not necessarily require any particular or auricular confession of private sins; forasmuch as that the grand absolution of baptism was commonly given without any particular confession. And therefore the Romanists vainly found the necessity of auricular confession upon those words of our Saviour, "Whosoever sins ye remit, they are remitted unto them:" as if there could be no absolution without particular confession; when it is so plain, that the great absolution of baptism, the power of which is founded by the Ancients upon this very place, required no such particular confession. Thirdly, we may hence infer, that the power of any sacerdotal absolution is only ministerial: because the administration of baptism, which is the most universal absolution, so far as man is concerned in it, is no more than ministerial. All the office and power of man in it is only to minister the external form, but the internal power and grace of remission of sins is properly God's: and so it is in all other sorts of absolution. Therefore though baptismal absolution be no part of penitential discipline, yet by observing these things in it, we shall more easily discern the true nature of those other absolutions, which have some relation to the penitential discipline of the Church.

SECT. 3.—Of the Absolution granted by the Eucharist.

The first of these, though we may call it the second in the general consideration of absolutions, was the absolution that was given by the ministry of the eucharist. This had some relation to penitential discipline, but did not solely belong to it. For it was given to all baptised persons, who never fell under penitential discipline, as well as those, who lapsed, and were restored to communion again. And in both respects it was called the *τὸ τέλειον*, the *perfection* or *consummation* of a Christian; there being no higher mystery that an ordinary Christian could partake of. To those who never fell into such great sins as required a public penance, it was an absolution from lesser sins, which

were called venial, and sins of daily incursion: and to penitents, who had lapsed, it was an absolution from those greater sins, for which they were fallen under censure. That it was esteemed such a general absolution in both cases, we learn from the characters, which the Ancients give of it both at large, and with a particular respect to its loosing the bonds of excommunication. Cyprian says in general,<sup>1</sup> “that when we drink the blood of the Lord, and the cup of salvation, we put off the remembrance of the old man, and forget our former secular conversation; and our sorrowful and heavy heart, which before was pressed with the anguish of our sins, is now absolved or set at liberty by the joyfulness of the divine indulgence or pardon.” And more particularly, that it was esteemed an absolution, as it resolved the bonds of excommunication, without any other formality or ceremony of receiving the penitent into the communion of the Church, we learn from that order made in the first Council of Orange,<sup>2</sup> that such penitents, as are ready to leave the body, shall have the communion without the reconciliatory imposition of hands: which, as we shall see by and by, was the usual and ordinary ceremony in reconciling penitents publicly at the altar, and what these were to have afterwards, if they happened to survive. In the mean time this sort of communion, the eucharist taken without imposition of hands, was sufficient for the consolation or reconciliation of a dying person, according to the decrees of the Fathers, who congruously call this sort of communion their *viaticum*, or *provision for their journey*. The fourth Council of Carthage has two Canons implying the same thing. The first says,<sup>3</sup>

<sup>1</sup> Cypr. Ep. lxxiii. ad Cæcilium, p. 153. Epoto sanguine Domini, et poculo salutari, exponitur memoria veteris hominis, et fit oblivio conversationis pristinae sæcularis; et mœstum pectus ac triste, quod prius peccatis augmentibus premebatur, divinæ indulgentiæ lætitiâ resolvitur. <sup>2</sup> Con.

Arausican. can. iii. Qui recedunt de corpore, acceptâ pœnitentiâ, placuit, sine reconciliatoriâ manûs impositione eos communicare, quod morientis sufficit consolationi, al. reconciliationi, secundùm definitiones Patrum, qui hujusmodi communionem congruentèr viaticum nominaverunt.

<sup>3</sup> Con. Carth. iv. can. 76. Si continuò creditur moriturus, reconcilietur per manûs impositionem, et infundatur ori ejus eucharistia.

if a penitent is struck dumb in his sickness, and is thought to be at the point of death, he shall be reconciled both by imposition of hands, and by the eucharist put into his mouth. And the other grants the eucharist as an absolution by itself to penitents in sickness, if they chance to die; only providing,<sup>1</sup> that, in case they recover, they shall not hold themselves absolved without imposition of hands also: because in case they survived, they were obliged to perform the residue of their penance, which they should have done before, and then be reconciled by imposition of hands publicly at the altar; but if they died, the eucharist alone was a sufficient absolution for them. And this is confirmed by that memorable story, related by Eusebius,<sup>2</sup> out of an epistle of Dionysius, bishop of Alexandria, concerning one Serapion, an aged man, who had led a virtuous life, but happened at last to lapse into idolatry in time of persecution. He had often sued for pardon, but no one would hearken to him, because he had sacrificed to idols. Afterward falling sick, he sent for one of the presbyters to come and absolve him in the night. The presbyter himself was sick, and could not go to him: but because the bishop had given in charge, that absolution should be granted to all, that were at the point of death, if they desired it, and especially if they had earnestly desired it before, that they might have hope and consolation in their last minutes, when they were about to leave the world, the presbyter sent him a little portion of the eucharist by the boy that came for him, bidding him to dip it in liquor, and put it into his mouth. Which he did, and presently the man expired. Upon which Dionysius himself makes this remark: that it was apparent, that God preserved him, and continued him so long in life, till he might be absolved, and have his sins blotted out, and be owned by Christ for the many good deeds he had done. I need make no other reflection upon the story, since Dionysius tells us so plainly, that to minister the eucharist to men was to grant them absolution, and

<sup>1</sup> Con. Carth. iv. can. 78. Pœnitentes, qui in infirmitate viaticum eucharistiæ acceperint, non se credunt absolutos sine manûs impositione, si supervixerint.

<sup>2</sup> Euseb. lib. vi. cap. 44.

remission of sins, and peace and favour with Christ, when it was given in his name to worthy receivers. And thus it was, that the ministers of Christ, as his ambassadors, were always supposed to have the ministerial power to remit sins, and reconcile penitents to Christ, by this sacramental absolution.

SECT. 4 —Of Absolution declaratory and effective by the Administration of the Word and Doctrine.

The third sort of absolution is that of the word and doctrine, which is partly declarative, and partly operative and effective; and is of use both in penitential discipline, and out of it. For the ministers of Christ, as his ambassadors, have commission and authority to make a general and public declaration of the terms of reconciliation and salvation to men. And this is also ministerially operative in working faith and repentance in men's souls, which are the terms of salvation, whereby they obtain remission of sins. For faith comes by hearing, and hearing by the word of God. They have also power to declare to men in particular, that they are in a salvable state, when upon the best human judgment that they can make, they apprehend and discern in them the necessary conditions of salvation. This is that key of knowledge, whereby they open to men the gate of heaven, and the way to eternal life, procuring for them the remission of sins, and all the benefits of the Gospel-covenant. It is this that introduces men at first into God's favour, and ascertains them of it; and when they are fallen from that state by wilful sin, it is a means, as a part of the Church's penitential discipline, to reduce them back again to their forfeited estate and primitive condition. Upon which account hearing of the word of God, as we have seen before, was always one station of penitents in the Church, and was an initiatory sort of reconciliation of them to God, introductory to the great and last reconciliation at the altar. And in this sense, the Ancients say, Christ gave his disciples power to remit sins, "every man," says St.



Jerom,<sup>1</sup> “ is bound in the cords of his own sins: which cords and bonds the apostles have power to loose, imitating their master, who said unto them: ‘ Whatsoever ye loose upon earth, shall be loosed in heaven.’ Now the Apostles loose them by the word of God, and testimonies of Scripture, and exhortation unto virtue.” In like manner St. Ambrose says,<sup>2</sup> “ Sins are remitted by the word of God, whereof the Levite is the interpreter, and a sort of executor: and in this respect the Levite is the minister of remission.” “ It is this key of the word,” says Maximus Taurinensis,<sup>3</sup> “ which opens the conscience to confession of sins, and includes therein the grace of the mystery of salvation unto eternity. Thus ministers are said to be instrumental in reconciling men to God, and procuring them remission of sins, because to them is committed the word of reconciliation.

**SECT. 5.—Of the precatory Absolution given by Imposition of Hands and Prayer.**

The fourth sort of absolution was that of intercession and prayer, which was used as a concomitant of most other absolutions. For baptism and the eucharist were either administered in a precatory form, or at least prayers and intercessions for pardon of sins always attended them: and so they did also the great and solemn reconciliation of penitents at the altar. And to prayer they commonly joined imposition of hands, a rite and ceremony of benediction that was used in all offices of religion. By this persons were at first admitted to the state of catechumens, and by this

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<sup>1</sup> Hieron. in Esai. xiv. 17. *Funibus peccatorum suorum unusquisque constringitur: quos funes atque vincula solvere possunt et Apostoli, imitantes magistrum suum, qui eis dixerat: Quæcunque solveritis super terram, erunt soluta et in cælo. Solvunt autem eos Apostoli sermone Dei, et testimoniis scripturarum, et exhortatione virtutum.*

<sup>2</sup> Ambros. de Abel et Cain, lib. ii. cap. 4. *Remittuntur peccata per Dei verbum, cujus Levites interpres, et quidam executor.*——*Levites igitur minister remissionis est.*

<sup>3</sup> Maxim. Taurin. Hom. v. de Natali Petri et Pauli, p. 231. *Clavis quæ et conscientiam ad confessionem peccati aperit, et gratiam ad æternitatem mysterii salutaris includit.*

trained up in their preparation for baptism. By this persons were confirmed in the close of baptism. By this ordinations were given to the clergy, and benedictions to all the people. And Albaspinæus has observed,<sup>1</sup> that in the course of public penance this ceremony was at least four times used towards all that went through it, before they were completely reconciled and admitted to full communion. 1. They were admitted to penance by imposition of hands. 2. They had frequent imposition of hands whilst they were penitents in the order of kneelers or prostrators. 3. They were admitted to the lower degree of communion in prayers only without the oblation by the same rite. 4. And lastly, imposition of hands was one of the solemn rites of admitting them to the more perfect degree of reconciliation at the altar. Now though prayer and imposition of hands was not esteemed an absolution in all these cases, yet in many of them it certainly was. For Chrysostom speaking of the several powers of the sacerdotal office, and the methods of expiating sin, says,<sup>2</sup> “the priests do it not only by their doctrine and admonition, but also by the assistance of their prayers: they have power of remitting sins not only when they regenerate us in baptism, but afterwards. For St. James says, ‘Is any sick among you? let him call for the elders of the Church, and let them pray over him, anointing him with oil in the name of the Lord: and the prayer of faith shall save the sick, and the Lord shall raise him up; and if he have committed sins, they shall be forgiven him.’” Pope Leo after the same manner makes sacerdotal absolution to consist in prayer. “The assistances of divine goodness,” says he,<sup>3</sup> “are so ordained, that the divine indulgence is not to be obtained but by the supplications of the priests. And it is very useful and necessary that the guilt of sin should be loosed

<sup>1</sup> Albasp. Observ. lib. ii. cap. 31.

<sup>2</sup> Chrys. de Sacerdot. lib. iii.

cap. vi. tom. 4. p. 35.

<sup>3</sup> Leo. Ep. lxxxix. al. 91. ad Theodor. Sic divinæ bonitatis præsiidiis ordinatis, ut indulgentia Dei, nisi supplicationibus sacerdotum, nequeat obtineri.—— Item, Multum utile ac necessarium est, ut peccatorum reatus ante ultimum diem sacerdotali supplicatione solvatur.

by the supplications of the priests before the last day." Here remission of sins is plainly ascribed to the efficacy of intercession and prayer. St. Austin says, the prayers of holy men in the Church procure remission of sins both in baptism and penance. For he argues thus: "if the prayers of holy men in the Church procure remission of sins for those, who are baptised not by the dove, but by the hawk, that is, not by good, but wicked men, if they come to that sacrament in the peace of Catholic unity: why should not the prayers of the same men loose the sins of those, who return from heresy or schism to Catholic unity?" he adds<sup>1</sup> a little after, that the prayers of the saints, that is, the mournings of the dove, grant remission of sins to those that are baptised in the peace of the Church, whatever the person be that administers baptism, whether he be a covetous man or an extortioner, because he only acts in the person of the Church, by whose prayers remission of sins is obtained. Therefore he exhorts the Donatists in another place,<sup>2</sup> to return to the peace of the Church, where by the joint prayers of two people united they might obtain remission of sins. "For the Lord had said, 'If two of you shall agree on earth as touching any thing: that they shall ask, it shall be done for them of my Father which is in heaven.' If for two men, how much more for two people? therefore let us jointly fall down to supplicate the Lord: do you partake with us in unity, and let us partake with you in sorrow, that charity may cover the multitude of sins." Here again we see,

<sup>1</sup> Aug. de Bapt. lib. iii. cap. 17. An fortè per orationes sanctorum spiritualium. &c. eorum etiam peccata solvantur, qui non per columbam, sed per accipitrem baptizantur, si ad illud sacramentum cum pace catholice unitatis accedunt? Quod si ita est, cur non ergo per eorum orationes, cum quisque ab heresi aut schismate ad pacem catholicam venit, ejus peccata solvantur?

<sup>2</sup> Ibid. cap. xviii. Remissam tamen peccatorum non dabant (raptores et avari), quæ per orationes sanctorum, id est, per columbæ genitus datur, quicumque baptizet, si ad ejus pacem pertinent illi quibus datur.

<sup>3</sup> Ibid. lib. ii. cap. 13. Multùm valet ad propitiandum Deum fraterna concordia. "Si duobus ex vobis," ait Dominus, "convenerit in terrâ, quicquid petieritis, fiet vobis." Si duobus hominibus, quânto magis duobus populis? Simul nos Domino prosternamus, participamini nobiscum unitatem, participemus vobiscum dolorem, et charitas cooperiet multitudinem peccatorum.

remission of sins is ascribed to prayer. And so Cyprian understood it, when he thus addressed himself to those that had lapsed into idolatry:<sup>1</sup> “we pray you to repent, that we may be able to pray to God for you: we first turn our prayers to you, that we may turn the same to God, and beseech Him to have compassion on you.”<sup>2</sup> Eusebius after Clemens Alexandrinus, notes this to have been the method whereby St. John obtained pardon of Christ for the young man, who after a pious education in the Church was become a most notorious robber upon the mountains: he interceded with Christ by frequent prayers and fastings, and thereby restored him, a great example of repentance to the Church. And thus Tertullian,<sup>3</sup> whilst he was a Catholic, represents Christ as joining his intercession with the tears of the Church, and thereby obtaining pardon for the penitent sinner. The first Council of Orange appoints this to be the way of reconciling heretics,<sup>4</sup> who desire to become Catholics at the point of death: if the bishop was not at hand, the presbyters were to consign them with chrism, and the benediction: which benediction was the same as imposition of hands and prayer. For as imposition of hands, by a figure, always implies prayer with imposition of hands, as an outward sign or ceremony accompanying prayer: so both these together are what the Ancients always mean by a benediction. So that when the Council bids those who are rebaptised in heresy, to be reconciled to the Church, or absolved by a benediction, it is plain that prayer is understood as the proper means of their absolution. And it is the same thing as is ordered in other Canons,<sup>5</sup> that heretics so baptised should

<sup>1</sup> Cypr. de Lapsis, p. 136. Rogamus vos, ut pro vobis Deum rogare possimus. Preces ipsis ad vos prius vertimus, quibus Deum pro vobis, ut misereatur, oramus.

<sup>2</sup> Euseb. lib. iii. cap. 23.

Δαψιλέσι μὲν εὐχαῖς ἰξαιρέμενος, &c. Ex Clem. Alex. Tract. Quis dives salvetur?

<sup>3</sup> Tertul. de Pœnit. cap. x. Æque illi cum super te lacrymas agunt, Christus patitur, Christus Patrem deprecatur. Facile impetratur semper, quod Filius postulat.

<sup>4</sup> Con. Arausican. can. ii. Hæreticos in mortis discrimine positos, si Catholici esse desiderent, si desit episcopus, à presbyteris cum chrismate et benedictione consignari placet.

<sup>5</sup> Con. Arelat. ii. can. 17. Bonosiacos, quos baptizari

be received into communion by chrism and imposition of hands, that is, unction to consign or confirm them with the spirit, which was wanting in their heretical baptism; and prayer with imposition of hands, to give them the peace and communion of the Church. Of which way of reconciling and absolving penitent heretics, who were baptised out of the Church, we shall have occasion to discourse a little more distinctly hereafter. Here I only add further the testimony of St. Ambrose,<sup>1</sup> who says, the priests execute that commission, which is given by Christ, John xx. 23. for remitting of sins, as intercessors by their prayers. They make request, but God bestows the gift: the service is human, but the bounty of forgiveness is from the power above. So that if this be not the only way, whereby the ministers of Christ are empowered to remit sins as some of the schoolmen themselves have determined; yet it was certainly one way, and that of general use in the primitive Church, as is clearly evident from the present allegations, and will be made more apparent in the sequel of this discourse.

**SECT. 6.**—Of the judicial Absolution of Penitents by restoring them finally to the Peace and full Communion of the Church.

For prayer had a considerable share in the great and final absolution of penitents, when after they had performed their canonical penance, they were solemnly reconciled and received to the peace and perfect communion of the Church at the altar. This was that famous way of remitting sins, and absolving sinners, of which we read so much in the monuments of the fathers and councils, where they speak of penitential discipline and absolution of sinners. This is, what is generally meant by those ancient phrases, granting

in Trinitate manifestum esto—cum chrismate et manūs impositione recipi sufficit. Leo. Ep. xcii. ad Rusticum, cap. xvi. Per manūs impositionem, invocatâ virtute Spiritūs Sancti, quam ab hæreticis accipere non potuerunt, Catholicis copulandi sunt. Vid. Siricium, Ep. i. ad Himerium, cap. i. Innocent. Ep. i. ad Victricium, cap. viii. Ep. xviii. ad Alexandr. cap. iii. Ep. xxii. cap. 4.

<sup>1</sup> Ambros. de Spir. Sancto, lib. iii. cap. xix. Isti rogant, divinitas donat, &c.

them peace, restoring them to communion, reconciling them to the Church, loosing their bonds, granting them pardon and indulgence, and remitting their sins, which are but so many different ways of expressing this one thing, viz. the solemn manner of absolving public penitents and admitting them to full communion, when their canonical penance was regularly performed. And this comprehended all the other ways of absolution, except that of baptismal absolution. For as I noted before, no penitent that had once been regularly baptised, was ever admitted to communion by a second baptism: but they had the absolution of prayer and imposition of hands, and the absolution of the eucharist, and the declaratory absolution of the word and doctrine: for solemn prayer was made to God for them, to procure their absolution from Him; and the solemn imposition of hands was given them, to signify their reconciliation; and the eucharist was immediately given them, to restore them to the communion of the altar; and by the whole a declaration was made, that they were now again in the society and peace of the church, and in favour with God, as far as human understanding could make any judgment of them. And upon this account some ancient writers acknowledge no other sorts of absolution but only two; the baptismal absolution, which is antecedent to all penitential discipline; and this of reconciling public penitents to the communion of the altar; because this latter comprehends all the other ways of absolution in the several acts and ceremonies that were used in the conferring of it. Thus we have heard before Cyril of Alexandria expounding those words of the commission,<sup>1</sup> John xx. 23. "Whosoever sins ye remit, they are remitted unto them." "Spiritual men remit or retain sins two ways: for either they call those to baptism, who are worthy of it upon the account of a good life and approved faith; or else they forbid and repel those from the divine gift, who are unworthy of it. This is one way of remitting or retaining sins: the

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<sup>1</sup> Cyril. lib. xii. in Joan. xx. 23. See before, sect. 2.

other way is, when they correct and punish the children of the Church offending, and pardon them again upon their repentance. Now because the ministers of Christ are in a great measure the proper judges of men's qualifications both for baptism and the eucharist, therefore a great power and authority was allowed them in both these cases to examine into men's behaviour and faith, and to judge who were fit and who were not fit for the reception of them; and accordingly to minister, or not minister to them those mysteries, which were the means of conveying remission of sins to the worthy receiver; and so they were invested with a sort of absolute judicial authority in the external administration of these things with respect to the outward communion of the Church, though not with an absolute authority over the conscience in respect to God, who alone can properly remit sin and absolve the sinner. So they acted in a double capacity in these matters; as judges in respect of men's visible qualifications for the sacraments, and the proper time and season of admitting them to the participation of them; having power to shorten or prolong the time, as they judged of the negligence or proficiency of the petitioning parties: but they acted only as intercessors to God for them, as to any thing pertaining directly and properly to the purification of the conscience from sin, which is not in man's power; but only in a ministerial way, to do those things, which as means of grace may contribute towards obtaining a proper absolution and remission of sins from God, in whose power only is the absolute power of forgiving sins." This is the true state of the matter, as to what concerns the several sorts of absolution in use in the ancient Church, and particularly that absolution, which was given to public penitents upon their restoration to communion; the manner and ceremonies of which, with other incident circumstances, I shall now go on a little further to explain.

## CHAP. II.

*Of the Customs, Rites, and Circumstances anciently observed in the public Absolution of Sinners.*

SECT. I.—No Sinners anciently absolved, till they had performed their regular Penance, except in Case of imminent Death.

WHEN sinners had performed their regular penance, and carefully gone through the several stages of discipline appointed for the distinct orders of penitents in the Church, they were then admitted to complete and perfect communion by the great and last reconciliatory absolution. But this was anciently granted to none before they had orderly completed the full term of their penance, unless it was in case of imminent death, when their desperate case made it reasonable to treat them a little more favourably, and grant them an indulgence, which no consideration but that extraordinary exigence could procure them. Indulgences were not then bought and sold, as they were most shamefully in after ages: much less was bare confession sufficient to gain a man absolution, before he had done a formal and serious penance to the satisfaction of the Church. The Audian heretics indeed were very faulty in this matter, as Theodoret informs us.<sup>1</sup> For they not only assumed to themselves a despotic authority, like the Donatists, to pardon sins by their own power; but also hastily granted remission upon a bare confession, without staying<sup>2</sup> for any fruits of repentance, or prescribing any time for the public manifestation of them, as the laws of the Church always required. And there were some presbyters of the Church in Cyprian's time, who for favour or filthy lucre were much inclined to

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<sup>1</sup> Theod. de Fabulis Hæret. lib. iv. cap. 13.



admit lapsers, without any just penance done, in a very hasty and preposterous manner to communion. And the martyrs, by their artifices and frauds, were many times induced to intercede to the bishops for such sinners, and almost demand of them an immediate re-admission of the offenders. But Cyprian very sharply remonstrates against this usurpation and abuse in several letters written both to the clergy,<sup>1</sup> and the martyrs, and the people themselves, wherein he sets forth both the irregularity and the danger of the practice; telling the people particularly, that this indulgent facility in the clergy to grant them such a preposterous peace, did not really give them peace, but destroy it; nor grant them true communion, but only hinder their salvation. And St. Ambrose makes a like reflection on the vanity of those, who seek for such a sudden restoration: some men, says he,<sup>2</sup> desire to be admitted to penance only for this reason, that they may presently receive the communion again. These men do not so much desire to be absolved themselves, as to bind the priest: for they retain their evil conscience; and therefore the priest sins greatly in admitting men, who give no signs of repentance, to communion against the laws of the Church. There was one case indeed in which men might be reconciled privately, when they had not perfectly gone through their whole course of penance; which was, when they lay sick and despaired of upon a death-bed: but that was an extraordinary case, and the only exception that the general rule admitted of; and was only a private and not a solemn and public reconciliation: and even in that case, as I have shewn before,<sup>3</sup> the Canons provided, that if the sick man recovered, he should perform the residue of his penance in the regular course appointed for public penitents, before he was solemnly reconciled at the altar. So that the custom of absolving sinners in health, before any penance is

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<sup>1</sup> Cypr. Ep. x. al. xvi. ad Cler. p. 37. Ep. xi. al. xv. ad Martyr. p. 34. It. de Lapsis, p. 128.

<sup>2</sup> Ambros. de Pœnit. lib. ii. cap. 9.

Nonnulli ideò poscunt pœnitentiam, ut statim sibi reddi communionem velint. Hi non tam se solvere cupiunt, quàm sacerdotem ligare, &c.

<sup>3</sup> Book xviii. chap. iv. sect. 3.

done, must be determined to be not only a novelty, but a great abuse and corruption of the ancient discipline, wholly owing to the degeneracy of latter ages.

SECT. 2.—Penitents publicly reconciled in Sackcloth at the Altar.

As to the manner of the ancient reconciliation, it was usually thus performed. When a sinner had gone through the course of his penance, he was brought to the altar in the same habit that he had performed his penance in, that is, in sackcloth, and there with solemn prayers and tears and imposition of hands received to full communion. The circumstance of sackcloth is mentioned by the first Council of Toledo;<sup>1</sup> and the place of reconciliation said to be the altar, not only by that Council, but by Optatus,<sup>2</sup> who speaking to the Donatists, and of their way of reconciling penitents, which was the same as was used in the Catholic Church, tells them, that at the same time that they laid hands on sinners, and remitted their sins, they turned to the altar, and said the Lord's Prayer. And so St. Jerom says,<sup>3</sup> the bishop enjoins the people common prayer, when he reconciles any one, who had been delivered over unto Satan, to or at the altar.

SECT. 3.—Sometimes more publicly before the *Apsis* or *Reading Desk*.

Yet in some cases, when the crime was very public, and more than ordinarily notorious and scandalous to all the people, the criminal for example's sake received his absolution in a more public place, before the *Apsis*, or reading-desk, in the open body of the Church, and in the view of all the people. This we learn from a Canon of the third Coun-

<sup>1</sup> Con. Tolet. i. can. 2. Publicam pœnitentiam gerens subcilicio, divino reconciliatus altario.

<sup>2</sup> Optat. lib. ii. p. 57. Inter vicina momenta, dum manus imponitis, et delicta donatis, mox ad altare conversi, Dominicam orationem prætermittite non potestis.

<sup>3</sup> Hieron. Dial. cont. Lucif. cap. ii. Sacerdos—indictâ in populum oratione, altario reconciliat.

cil of Carthage inserted into the African Code,<sup>1</sup> which says, that if any penitent's crime be public, or vulgarly known to all, so as to have given scandal to the whole Church, he shall receive imposition of hands, that is, his absolution, before the *Apsis*. Learned men indeed are not exactly agreed about the sense of this Canon: Du Fresne,<sup>2</sup> after Balsamon and Zonaras, takes the *Apsis* for the Church porch; and Zonaras says, the imposition of hands means the first imposition that admitted them to penance: Albaspinæus thinks<sup>3</sup> the *Apsis* means the same as the *Ambo* or *reading-desk*; where the penitents of the third class, called the substrators, kneeled down daily to receive imposition of hands; and to this he thinks the imposition of hands, mentioned in the fore-said Canon, chiefly relates, but with this difference, that whereas ordinary penitents received their imposition of hands a little more privately behind the desk, these more notorious and scandalous criminals, which the Canon speaks of, received it publicly before the desk, in the face and view of all the people. He also is of opinion, that their final absolution was given them in the same place, and that I take to be the true meaning of the imposition of hands in the Canon now before us.

**SECT. 4.**—Absolution at the Altar always given in a supplicatory Form by Imposition of Hands and Prayer.

However it is certain, whatever the sense of that Canon be, that the great and final absolution of public penitents was always performed in a supplicatory form by imposition of hands and prayer. This is evident from the forementioned testimonies of Optatus and St. Jerom. Cyprian speaks often of it, as used both in public and private reconciliation. In one place he says,<sup>4</sup> all penitents continued a just time in

<sup>1</sup> Con. Carth. iii. can. 32. Cujuscunque pœnitentis publicum et vulgatisimum crimen est, quod universam ecclesiam commoverit, ante apsidem manus ei imponatur. Vid. Cod. Afric. can. xlili.

Commentar. in Paulum Silentiarium, p. 536.

<sup>2</sup> Du Fresne,

<sup>3</sup> Albaspin. Not.

<sup>4</sup> Cypr. Ep. xii. al. xvii. ad Plebem,

he exercise of penance; they made their confessions, and their life was examined, and then they were received to communion by imposition of hands given them by the bishop and clergy; and there was no other way of being reconciled but this. He repeats this again in other places,<sup>1</sup> and both there and elsewhere complains of some of his presbyters, who transgressed this rule,<sup>2</sup> and admitted penitents to the eucharist before this ceremony of admission was regularly performed toward them. He also shews that private reconciliation of penitents upon a death-bed was performed after the same manner: they made their confession before a presbyter or deacon,<sup>3</sup> and if they were in danger of death, imposition of hands was given them, that they might depart hence in peace unto the Lord. Which shews, that he speaks not only of the intermediate imposition of hands, which was given daily to the third order of penitents called prostrators, whilst they were doing their penance, but also of the last imposition of hands, which was given to penitents at their final reconciliation to the communion of the Church. This some Canons therefore call the reconciliatory imposition of hands, to distinguish it from all other kinds, whether in penance or out of penance. The custom continued in Afric to give dying penitents reconciliation in this manner by imposition of hands in the time of St. Austin and the fourth Council of Carthage. For so that Council appointed:<sup>4</sup> “if a man in sickness desires penance, let him receive it; and if the signs of death be upon him, let him be reconciled by imposition of hands, and let the eucharist be

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p. 39. Pœnitentia agitur justo tempore, et exomologesis fit, inspectâ vitâ ejus qui agit pœnitentiam; nec ad communicationem venire quis possit, nisi priùs illi ab episcopo et clero manus fuerit imposita.

<sup>1</sup> Cypr. Ep. x. al. xvi. p. 37. Per manûs impositionem episcopi et clerici jus communicationis accipiant, &c. <sup>2</sup> Viu. Cypr. de Lapsis, p. 136.

Ep. xii. al. xvii. p. 39. Ep. xi. al. xv. ad Martyras, p. 34.

<sup>3</sup> Cypr. Ep. xiii. al. xviii. p. 40. Si presbyter repertus non fuerit et urgere exitus cœperit, apud diaconum exomologesis facere delicti sui possint; ut manu eis in pœnitentiâ impositâ, veniant ad Dominum cum pace. It. Ep. xiv. al. xix. p. 41. Ep. xv. al. xx. p. 43. <sup>4</sup> Con. Carth. iv. can. 76. Accipiat pœnitentiam; et si continuò creditur moriturus, reconcilletur per manûs impositionem, et ori ejus infundatur eucharistia.

put into his mouth." But in other places the eucharist alone was given to dying penitents, as their *viaticum*, when they had not performed their whole penance in health; and if they happened to recover, then they were to finish their penance in their ordinary course; and when they had given evidence of a true repentance by the proper fruits of it, they were then to be received publicly to communion by the reconciliatory imposition of hands, as in this case the first Council of Orange appointed.<sup>1</sup> Now though there be no mention made of prayer in this way of reconciliation, yet it always is to be understood, according to that of St. Austin,<sup>2</sup> who says, that imposition of hands is nothing else but prayer, that is, a ceremony attending all prayers of benediction: which therefore both he,<sup>3</sup> and other writers sometimes more expressly call "*orationem manûs impositionis, the prayer of imposition of hands:*" some forms of which both for penance and other benedictions may be seen in the author of the Apostolical constitutions;<sup>4</sup> and particularly for reconciling of penitents there is an order,<sup>5</sup> that the bishop shall receive them to communion with imposition of hands, and the prayer of the whole Church for them; the form of this prayer is in the end of St. James's liturgy, under the title of *Εὐχὴ τοῦ ἰλασμοῦ, the prayer of propitiation*, which is directed to Christ in these words,<sup>6</sup> "O Lord Jesus Christ, Son of the living God, Thou Shepherd and Lamb, that takest away the sins of the world, that forgavest the debt to the two debtors, and grantedst remission of sins to the sinful woman, and gavest to the sick of the palsy both a cure and pardon of

<sup>1</sup> Con. Arausican. i. can. 3. Quòd si supervixerint, stent in ordine pœnitentium, ut ostensis necessariis pœnitentiæ fructibus, legitimam communionem cum reconciliatoriâ manûs impositione recipiant. See in book xviii. chap. iv. sect. 3. this Canon more fully recited.

<sup>2</sup> Aug. de Bap. lib. iii. cap. 16. Quid enim aliud est impositio manûs, nisi oratio super hominem.

<sup>3</sup> Aug de Peccator. Meritis, lib. ii. cap. 26. Con. Milevitan. ii. can. 12. Clem. Alex. Pædagog. lib. iii. cap. 11. Euseb. Hist. lib. i. cap. 13. lib. vii. cap. 2. Constit. Apost. lib. viii. cap. 9. *Χειροθεσία & Εὐχὴ.*

<sup>4</sup> Constit. lib. viii. cap. 9, et 30.

<sup>5</sup> Ibid. lib. ii. cap. 19.

<sup>6</sup> Liturg. Jacobi in Bibl. Patr. Gr. Lat. tom. ii. p. xxlii.

sins; remit, blot out, and pardon our sins, both voluntary and involuntary, whatever we have done wittingly or unwittingly by transgression and disobedience, which thy Spirit knoweth better than we ourselves. And whereinsoever thy servants have erred from thy commandments in word or deed, as men carrying flesh about them, and living in the world, or seduced by the instigations of Satan; or whatever curse or peculiar *anathema* they are fallen under, I pray, and beseech thy ineffable goodness to absolve them with thy word, and remit their curse and *anathema* according to thy mercy. O Lord and Master, hear my prayer for thy servants; Thou that forgettest injuries, overlook all their failings, pardon their offences both voluntary and involuntary, and deliver them from eternal punishment. For Thou art He that hast commanded us, saying, ‘Whatsoever ye shall bind on earth, shall be bound in heaven; and whatsoever ye shall loose on earth, shall be loosed in heaven:’ because Thou art our God, the God that canst have mercy, and save and forgive sins; and to Thee with the Eternal Father, and the quickening Spirit, belongs glory now and for ever, world without end. Amen.”

The like forms of absolution by prayer are still in use in the Greek Church, as may be seen in Goar’s *Euchologium*,<sup>1</sup> and Dr. Smith’s *Account of the present State of that Church*.<sup>2</sup> Bishop Usher shews further out of Aleuin,<sup>3</sup> and the old *Ordo Romanus*, and some of the Roman Ceremonials, and Pontificals, that the same form was used for many ages in the Latin Church also. And this is confirmed by the old Latin Missal published by Illyriens and Cardinal Bona,<sup>4</sup> where the absolution, under the title of *Indulgentia*, runs in this form: “He that forgave the sinful woman all her sins

<sup>1</sup> Goar. *Eucholog.* p. 666.

<sup>2</sup> Smith’s *Account*, p. 181.

<sup>3</sup> Usher. *Answ. to the Challenge*, p. 88.

<sup>4</sup> Bona, *Rer. Liturg.*

in *Appendice*, p. 763. Qui mulieri peccatrici omnia peccata dimisit lacrymanti, et latroni ad unam confessionem claustra aperuit paradisi, ipse vos redemptionis suæ participes ab omni vinculo peccatorum absolvat, et membra aliquatenus debilitata medicinâ misericordiæ sanata, corpori sanctæ ecclesiæ redeunte gratiâ restituat, atque in perpetuum solidata custodiat. Qui vivit et regnat.

for which she shed tears, and opened the gate of paradise to the thief upon a single confession, make you partakers of his redemption, and absolve you from all the bond of your sins, and heal those infirm members by the medicine of his mercy, and restore them to the body of his holy Church by his grace, and keep them whole and sound for ever."

Other forms of absolution by prayer might be added, but these are abundantly sufficient to shew, that anciently the great and formal absolution of public penitents at the altar was usually performed by imposition of hands and prayer: the one as the means procuring, and the other as the rite declaring their reconciliation to God and his Church.

SECT. 5.—Absolution in the indicative Form, *Ego te absolvo*, not used till the twelfth Century.

If it be enquired, when the use of the indicative form of absolution first began to be used in the Church, that is, the form, I absolve thee, instead of the deprecatory form, Christ absolve thee; Morinus has fully proved,<sup>1</sup> that there was no use of it till the twelfth or thirteenth century, not long before the time of Thomas Aquinas, who was one of the first that wrote in defence of it. And our learned Bishop Usher has<sup>2</sup> clearly proved the novelty of it from Aquinas himself. For he says,<sup>3</sup> there was a learned man in his time, who found fault with the indicative form of absolution then used by the priest: "I absolve thee from all thy sins;" and would have it to be delivered only by way of deprecation; alleging, that this was not only the opinion of Gulielmus Altissiodorensis, Gulielmus Parisiensis, and Hugo Cardinalis; but also that thirty years were scarce passed, since all did use this form only: "*absolutionem et remissionem tribuat tibi Omnipotens Deus, Almighty God give thee remission and forgiveness.*" This points out the time of the change so precisely, that learned men,<sup>4</sup> who allow the form

<sup>1</sup> Morin. de Pœnitent. lib. viii. cap. 8, 9, &c.

<sup>2</sup> Usher.

Answ. to the Jesuit's Challenge, p. 89.

<sup>3</sup> Aquin. Opuse. xxii.

de Formâ Absolution. cap. v.

<sup>4</sup> See Bp. Fell's Not. in Cypr.

de Lapsis, p. 136. Discourse of the penitential Discipline of the Prim. Church, chap. iii. sect. 4. Lond. 1614.

in some sense proper to be used, make no scruple to declare their opinion of the novelty of it upon the strength of the foregoing considerations.

SECT. 6.—In what Sense that Form may be allowed.

If it be asked further, in what sense the indicative form of absolution may be allowed? it is answered, that it may be allowed several ways.

1. As an act of jurisdiction, by those, who are entrusted with the power of receiving public penitents into communion, and loosing the bonds of excommunication, wherewith they were judicially and formally tied by the censure of the Church before. In this sense it is no impropriety for him, who has the key of jurisdiction, and power of relaxing, as well as inflicting Church-censures, to use the indicative form, I absolve thee. For this is only an external act of ecclesiastical power, that respects only the outward and visible communion, but does not directly or immediately affect the conscience. Therefore some learned persons not only allow the use of it in this sense, but think it was actually so used by some in the primitive Church.<sup>1</sup> As by Zephyrinus Bishop of Rome, whom Tertullian, after he was become a Montanist, upbraids,<sup>2</sup> as saying, I forgive the sins of fornication and adultery to those that do penance for them; meaning, that he admitted them again to the peace and communion of the Church, which the Montanists and the Novatians after them would by no means allow of.

2. This indicative form, I absolve thee, may be interpreted to mean no more than the declaration of God's will to a penitent sinner, that upon the best judgment the priest can make of his repentance, he esteems him absolved before

<sup>1</sup> Fell in Cypr. de Lapsis, p. 136. Discourse of the penitential Discipline of the Prim. Church, chap. iii. sect. 4. Lond. 1614.

<sup>2</sup> Tertul. de Pudicit. cap. i. Pontifex scilicet Maximus, episcopus episcoporum, dicit, Ego et mœchiæ et fornicationis delicta pœnitentiâ functis dimitto.



God, and accordingly pronounces and declares him absolved: As St. Jerom observes,<sup>1</sup> the priests under the old law were said to cleanse a leper or pollute him; not that they were the authors of his pollution, but that they declared him to be polluted, who before seemed to many to have been clean. And in another place he makes a more close remark concerning this matter,<sup>2</sup> whilst he reflects upon some bishops and presbyters in his own time, who, not understanding the true meaning of the commission to remit sins, assumed to themselves something of a pharisaical pride and loftiness, so as to imagine they had power either to condemn the innocent, or absolve the guilty: when yet before God it is not the sentence of the priests, but the life of the criminals that is enquired into. “We read in Leviticus concerning the lepers, where they are commanded to shew themselves to the priests, and if they had the leprosy, they were then to be polluted or made unclean by the priest: not that the priests made them leprous or unclean, but because they had the power of judging who were leprous or not leprous, and might discern who were clean or unclean. As therefore the priest makes the leper clean or unclean, so the bishop or presbyter here binds or looses, not properly making the guilty or the guiltless: but according to the tenor of his office, when he hears the distinction of sins, he knows who is to be bound, and who to be loosed. Upon this also the

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<sup>1</sup> Hieron. lib. vii. in Esai xxiii. De sacerdotibus in Levitico legimus, contaminatione contaminabit eum sacerdos, non quòd contaminationis autor sit, sed quòd ostendat eum contaminatum, qui priùs mundus plurimus videbatur.

<sup>2</sup> Hieron. in Mat. xvi. tom. 9. p. 49. Istum locum episcopi et presbyteri non intelligentes, aliquid sibi de Phariseorum supercilio assumunt, ut vel damnet innocentes, vel solvere se noxios arbitrentur: cùm apud Deum non sententia sacerdotum, sed reorum vita quærat. Legimus in Levitico de leprosis, ubi jubentur, ut ostendant se sacerdotibus, et si lepram habuerint, tunc à sacerdote immundi fiant: non quòd sacerdotes leprosos faciant et immundos, sed quod habeant notitiam leprosi et non leprosi, et possint discernere qui mundus, quive immundus sit. Quomodo ergo ibi leprosum sacerdos mundum vel immundum facit, sic et hïc alligat vel solvit episcopus et presbyter, non eos, qui insontes sunt vel noxii [faciens:] sed pro officio suo, cùm peccatorum audierit varietates, scit qui ligandus sit, quive solvendus. I have supplied the word, *faciens*, which the sense seems plainly to require.

master of the sentences, following St. Jerom, observes,<sup>1</sup> that the priests of the gospel have that right and office, which the legal priests had of old under the law in curing the lepers. These therefore forgive sins or retain them, whilst they shew and declare, that they are forgiven or retained by God. For the priests put the name of the Lord upon the children of Israel, but it was He Himself that blessed them, as it is read in numbers, vi. 27.

3. The indicative form, I absolve thee, may be used in the performance of any external act of the ministry, which is used as a means to obtain remission of sins of God: as in the administration of baptism or the eucharist. The priest may as well say, I absolve thee, as I baptise thee: for baptism is an absolution, as we have seen before: but then the priest's part in it is only to administer the external form; but it is God that gives the internal grace, and spiritually baptises with remission of sins. Yet forasmuch as the priest has power to minister the external form, he may say, I baptise thee, or I wash thee with water: which washing is the outward means appointed by God to convey to us remission of sins, and the internal washing of our souls in the blood of Christ by the power of the Holy Ghost. So likewise in the administration of the eucharist, a priest might say, I give thee the body of Christ, or I absolve thee by the body of Christ; meaning, that he ministered to him the outward element of bread, which is the sacramental body of Christ, appointed to be used as a means to convey the real body of Christ and all his benefits, whereof absolution or remission of sins is one, to the worthy receiver. Our Church has not appointed the indicative form of absolution to be used in all these senses, but only once in the office of the sick, and that may reasonably be interpreted, according to the account given out of St. Jerom, a declaration of the sinner's pardon, upon the apparent evidences of a sincere repentance, and the best judgment the minister can make of his condition; beyond which none can go but the searcher of hearts,

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<sup>1</sup> Lombard. Sentent. lib. iv. dist. 18. p. 334.

to whom alone belongs the infallible and irreversible sentence of absolution. But of this only by the way; I now return to the practice of the primitive Church :

SECT. 7.—Why Chrism or Unction was sometimes added to Imposition of Hands in the Reconciliation of certain Heretics and Schismatics to the Church.

Where we may observe, that besides the common way of reconciling ordinary penitents to the Church, there was something often very peculiar in the reconciliation of heretics and schismatics. For they were considered under a threefold denomination or distinction: either they were such as had been baptised in the Church, and afterward fell away from it: or secondly they were such as were baptised in heresy or schism, but with the usual form of baptism: or thirdly they were such as had been baptised by heretics or schismatics by such a corrupted form, as destroyed the true nature and essence of the thing itself, and made it altogether a null and void baptism. The first sort were reconciled much after the same manner as other penitents, only making a confession and abjuration of their errors. But the second sort, because they wanted the true effect of baptism, that is, the grace or unction of the Holy Spirit, which they could not have out of the Church in heresy or schism, were therefore reconciled not only with imposition of hands, but with the holy unction or chrism added to it, to give them confirmation, and denote their reception of the Holy Spirit of peace upon their returning to the peace and unity of the Church. And the third sort, because they wanted true baptism, were received after the manner of heathens, with a new baptism, because their first pretended baptism was altogether null and void. This was the distinction made between those several sorts of heretics, and the true grounds and reasons of the different observations in the Church's discipline in their reconciliation and reception. The two latter sorts of heretics were scarce looked upon as properly penitents in the Church, but were rather received *sub imagine pœnitentię, under the image and resemblance of*

*the penance* that was usually performed by those, who had once been members of the Church, as Pope Innocent informs us in one of his epistles; where, speaking of some, who had been baptised by the Arians and other sects, who retained the due form of baptism, he says,<sup>1</sup> “they received them under the image of penance with imposition of hands and sanctification of the Holy Spirit, to perfect their baptism, which though given in the name of the Father, Son, and Holy Ghost, yet wanted the grace of the Holy Spirit, which they could not have but upon their return to the peace and unity of the Catholic Church. Therefore then they received them with imposition of hands, and the unction of chrisin, if they had not been anointed before.” This he repeats in several other places.<sup>2</sup> And the same is confirmed by the testimonies of Siricius,<sup>3</sup> and Leo,<sup>4</sup> and St. Jerom,<sup>5</sup> and Gennadius,<sup>6</sup> and the author under the name of Justin Martyr,<sup>7</sup> and the Councils of Orange<sup>8</sup> and Epone:<sup>9</sup> all which, because I have had occasion more fully to represent them in another work,<sup>10</sup> I only just mention in this place, with this single remark, that the Council of Orange, and that of Epone, and the author under the name of Justin, expressly mention the ceremony of chrisin, or anointing with holy oil; which is also appointed by the Council of Laodicea,<sup>11</sup> and the general Council of Constantinople,<sup>12</sup> and the second Council of Arles,<sup>13</sup> and the Council of Trullo,<sup>14</sup> to be used with imposi-

<sup>1</sup> Innoc. Ep. xviii. ad Alexandrum, cap. 3. Eorum laicos conversos ad Dominum, sub imagine penitentiae ac Sancti Spiritus sanctificatione per manus impositionem suscipimus, &c.

<sup>2</sup> Ibid. i. ad Victricium,

cap. viii. Ep. xxii. ad Episcopos Macedon. cap. 4, et 5.

<sup>3</sup> Siric. Ep. i. ad Himerium Tarracon. cap. i.

<sup>4</sup> Leo. Ep. xxxvii.

ad Leonem Raven. cap. ii. Ep. xcii. ad Rusticum Narbon. cap. xvi.

<sup>5</sup> Hieron. Dial. cont. Lucifer. cap. viii.

<sup>6</sup> Gennad. de Eccles.

Dogn. cap. lii. It. de Scriptor. Eccles. cap. xxvii.

<sup>7</sup> Justin.

Quaest. xiv. ad Orthodox.

<sup>8</sup> Con. Arausic. i. can. 2. Hæreticos

in mortis discrimine—cum chrismate et benedictione consignari placet.

<sup>9</sup> Con. Epaunen. can. xvi. Hæreticis in lecto decumbentibus, presbytero chrismate subvenire permittimus.

<sup>10</sup> Scholast. Hist. of Bapt.

part i. chap. i. sect. 20, and 21.

<sup>11</sup> Con. Laodic. can. vii.

<sup>12</sup> Con. Constant. i. can. vii.

<sup>13</sup> Con. Arelat. ii. can. 17.

<sup>14</sup> Con. Trull. can. cxvi.

tion of hands in the reconciliation of such heretics as had been baptised in any heresy or schism with the true form of baptism, in the name of the Father, Son, and Holy Ghost; such are required only to renounce their errors, and learn the true faith, and make profession of it; and then they were to be reconciled with imposition of hands and chrism, which was peculiar to this sort of penitents, who had never before been united truly to the Catholic Church. They seem not to have gone through all the stages of penance, as other penitents did in the Church; but to have been reconciled in a more compendious way, more suitable to their state and condition, as strangers and foreigners now just entering within the pale of the Church. For which reason Pope Innocent styles their short penance only an image, or faint resemblance of that penance, which held other penitents often very long under the discipline of the Church.

SECT. 6.—Why some Heretics could be reconciled no other Way, but by a new Baptism.

As to others, who had been baptised by such heretics as had either wholly rejected, or greatly corrupted the true form of baptism, there was a very different way of receiving and reconciling them to the communion of the Church. For they could be admitted no other way, but as heathens, by the door of baptism; seeing their former pretended baptism was not only defective in some remoter circumstances, but in the very form and essence of it, and therefore reputed absolutely null and void, and necessary to be repeated, in order to make them members of the Church. Upon this account the Council of Nice ordered the Samosatensians or Paulianists,<sup>1</sup> upon their return to the Catholic Church, to be baptised. The Council of Laodicea made a like order for the reconciliation of the Montanists or Cataphrygians.<sup>2</sup> The first Council of Constantinople decreed the same for the Montanists, Eunomians and Sabellians.<sup>3</sup> The second Council of

<sup>1</sup> Con. Nic. can. xix.

<sup>2</sup> Con. Laodic. can. viii.

<sup>3</sup> Con. Constant. can. vii.

Arles adds the Photinians ;<sup>1</sup> and the Council of Trullo the Manichees, Valentinians, Marcionites, and all others of the like nature :<sup>2</sup> that is, all such as had not been truly baptised with due form of baptism. There was no other way of reconciling such to the Catholic Church, but by instructing and training them up to the knowledge of the true faith, first as catechumens, and then giving them the absolution of baptism, which in this case was allowed to them, as having never received any true baptism before. These were the several ways of reconciling penitent heretics according to the variety of their circumstances, and the different state and condition they were in, when they desired to be reunited to the body of the Church.

SECT. 9.—What Conditions were required in the Reconciliation of those, who fell from the Church into Heresy or Schism.

As for those who were baptised in the Church, and afterward fell away into any heresy or schism, we find no other way of reconciling them, but the common and ordinary way of reconciling all other penitents, by imposition of hands and prayer. For, as I have noted before, if the first baptism was valid, a second baptism was never allowed to be given to any penitent by way of absolution. Yet some greater hardships and severer conditions were often imposed upon such apostates and deserters, before they could be admitted to the peace of the Church again. If they were ring-leaders and broachers of the heresy, who drew others into their error and faction: it was commonly required, that they should bring back the multitude, whom they had deceived, before they obtained a perfect absolution. Thus, Tertullian observes of Marcion,<sup>3</sup> that he was promised to be absolved only upon this condition, that he should reduce those back again to the Church, whom he had led away by

<sup>1</sup> Con. Arelat. ii. can. 16.

<sup>2</sup> Con. Trull. can. xvi.

<sup>3</sup> Tertul. de Præscript. cap. xxx. Ita pacem recepturus, si cæteros quoque, quos perditioni erudisset, ecclesiæ restitueret, morte præventus est.

his doctrine into perdition : and he undertook to do this, but death prevented him. Cyprian makes a like remark in the case of Trophimus, one of the three bishops, who were concerned in giving Novatian an unlawful ordination, whereby they set him up as anti-bishop against Cornelius, and raised a flaming schism in Rome : he says,<sup>1</sup> his supplication for re-admission was accepted, because by his humility and satisfaction he brought back the people, whom he had drawn into the schism ; and it was not so much Trophimus, that was admitted again into the Church, as a great number of the brethren, who had gone aside with him, and would not have returned without their leader. And yet he was not allowed to retain his episcopal office, but only to communicate in the quality of a layman. Sometimes it was required of them, as a condition of their absolution, that they should make discovery of the remainders of their faction. St. Austin gives us an instance of this in his own treatment of one Victorinus a subdeacon, who fled over to the sect of the Manichees : when he returned again, and desired to find a place for repentance, St. Austin refused to admit him, unless he would give information of the rest of his party. Sometimes they were required to anathematize their errors, and abjure them in writing. The Council of Nice exacted this condition of the Novatians ;<sup>2</sup> and the Council of Gangra<sup>3</sup> of the Eustathians ; and the second Council of Arles of the Novatians ;<sup>4</sup> and the African Councils of the Donatists.<sup>5</sup> The Council of Laodicea insists upon the same from the Novatians, Photinians, and Quartadecimans.<sup>6</sup> And the general Council of Constantinople exacts it of the Macedonians,<sup>7</sup>

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<sup>1</sup> Cypr. Ep. lii. al. lv. ad Antonian. p. 105. Fraternalitatem, quam nuper abstraxerat cum plenâ humilitate et satisfactione revocante Trophimo, auditæ sunt ejus preces ; et in ecclesiam Domini non tam Trophimus, quam maximus fratrum numerus, qui cum Trophimo fuerat, admissus est ; qui omnes regressuri ad ecclesiam non essent, nisi cum Trophimo, comitante venissent——sic tamen admissus est Trophimus, ut laicus communicet, non quasi locum sacerdotis usurpet.

<sup>2</sup> Con. Nic. can. viii.

<sup>4</sup> Con. Arelat. ii. can. 9.

<sup>6</sup> Con. Laodic. can. 7.

<sup>3</sup> Con. Gangren. in Procem.

<sup>5</sup> Cod. Afric. can. lvii.

<sup>7</sup> Con. Const. i. can. 7.

Sabbatians, Arians, Novatians, Quartadecimans. And sometimes they were required not only to anathematise error, and subscribe the truth, but to take an oath for greater confirmation: As Socrates says,<sup>1</sup> Constantine obliged Arius to do, though he did it fraudulently and like an impostor. This was the precaution, which the Church used particularly in the case of heretical apostates, to be ascertained of their sincerity in making recantations, before she would receive them into her communion again, or grant them absolution,

SECT. 10.—Of the Time of Absolution.

There is one circumstance more to be noted under this head, which is the ordinary time of absolution: this seems to have been fixed, in the ordinary course of discipline, to the day of our Saviour's passion, or rather the day, on which he was betrayed. For so St. Ambrose says expressly,<sup>2</sup> that on the day that our Lord gave himself for us, it was usual in the Church to relax men's penance, or grant them absolution. In the Roman Church, in the time of Pope Innocent,<sup>3</sup> the custom was the same, to absolve penitents only upon Thursday before Easter, except some sickness intervened, and the penitent's life was despaired of: for then he might be reconciled at any time, when necessity required, rather than leave the world without the benefit of communion. It was at or about this time also, that the emperors, perhaps in imitation of this custom of the Church, were wont to send forth their civil absolutions or indulgences, as they called them, whereby at the paschal festival they granted pardon to all criminals, who lay bound in prison for their faults, except some that were of a more malignant and unpardonable nature. This practice was first begun by Valentinian, and

<sup>1</sup> Socrat. lib. i. cap. 28.

<sup>2</sup> Ambros. Ep. xxxvii. ad Marcellin.

Sororem. Erat dies, quo Dominus sese pro nobis tradidit, quo in ecclesiâ pœnitentiâ relaxatur.

<sup>3</sup> Innoc. Ep. i. ad Decent. cap. vii.

Pœnitentibus si nulla interveniat ægritudo, quintâ feriâ ante Pascha remittendum Romanæ ecclesiæ consuetudo demonstrat, &c. Vid. Hieron. Epitaph. Fabiolaæ.



continued by Thodosius and the succeeding Emperors; of which there is a whole title in the Theodosian Code,<sup>1</sup> to mention no other writers at present that speak of it. The monks, who petitioned in behalf of Eutyches in the second Council of Ephesus,<sup>2</sup> plainly refer to both customs, the sacred and the civil. For upon this day, say they, meaning the paschal solemnity, the holy fathers relax the punishment of many offenders: and the emperors loose the bonds of those that are in chains for their transgressions. So that this was the chief time of discharging both civil and ecclesiastical criminals, and in regard to each of them the discharge was styled (according to the nature of the thing, either in a civil, or ecclesiastical sense) an absolution or indulgence.

SECT. 11.—How the Church absolved some Penitents, or received them into Communion after Death.

We have hitherto considered the manner and circumstances of absolution, as given to all sorts of penitents whilst they were living. But besides this we are to take notice of another way of absolving penitents, and receiving men into communion even after death. For it sometimes happened, that true penitents, and very good men, by accident died under the censure of excommunication unrelaxed, and so out of the external visible communion of the Church. Which might happen in two cases, 1. When penitents chanced to die suddenly, whilst they were diligently performing their penance; or were in a journey, or at sea, where they had no minister to give them a formal reconciliation or absolution. 2. When innocent men were overborne by some great and prevalent faction, and unjustly excommunicated, and never received into the external communion of the Church by reason of the power that prevailed

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<sup>1</sup> Cod. Theod. lib. ix. tit. 38. de Indulgentiis Criminum. leg. 3, 4, &c.

<sup>2</sup> Acta Synod. Ephes. in Act. i. Con. Chalcedon. Con. tom. iv. p. 277. Vid. Action. x. *ibid.* p. 641. Another such instance out of the Council of Berytus.

against them. For both these cases the Church provided a remedy by using some ceremony to admit them into communion, or rather to acknowledge them to be in communion after death. For penitents, who died suddenly whilst they were carefully doing their penance, it was provided, that notwithstanding this accident, they should be treated as persons dying in the communion of the Church, though they wanted a formal reconciliation. To this purpose the fourth Council of Carthage made a decree,<sup>1</sup> that if any penitents, who were diligently observing the rules of penance, happened to die by any sudden accident, whilst they were on a journey or at sea, where no assistance could be given them, their memorials notwithstanding should be recommended both in the prayers and the oblations of the Church. And the second Council of Vaison has an order of the same nature, which is a little more particular:<sup>2</sup> “ If any of those, who have submitted to the laws of penance, and in pursuance thereof lead a good life in all satisfactory compunction, shall happen to be prevented by sudden death in the country or in a journey, their oblations shall be received, and their funeral obsequies and memorials be performed after the manner and custom of the Church: because it were unreasonable to exclude the commemorations of those out of the sacred service, to which service they were labouring with all diligence and fidelity to attain; and to whom the bishop (though they chanced to be intercepted from receiving the *viaticum* of the eucharist) would perhaps not have thought it improper to have granted the most perfect

<sup>1</sup> Con. Carth. iv. can. 79. Pœnitentes, qui attentè leges pœnitentiæ exequuntur, si casu in itinere vel in mari mortui fuerint, ubi eis subveniri non possit, memoria eorum et orationibus et oblationibus commendetur.

<sup>2</sup> Con. Valense. ii. can. 2. Horum, qui pœnitentiâ acceptâ, in bonæ vitæ cursu satisfactoriâ compunctione viventes, sine communione inopinato nunquam transitu in agris aut itineribus præveniantur, oblationem recipendam, et eorum funera ac deinceps memoriam ecclesiastico affectu prosequendam: quia nefas est eorum commemorationes excludi à salutaribus sacris, qui ad eadem sacra fidei affectu contendentes ——— absque sacramentorum viatico interceptantur, quibus fortasse nec sacerdos absolutissimam reconciliationem denegandam putasset.

reconciliation. The practice of the Roman Church indeed was otherwise in the time of Pope Leo, as appears from some of his Epistles:<sup>1</sup> but their practice was almost singular: for the general current was against them, inclining to the more favourable side in behalf of such penitents as died suddenly without reconciliation. Which is observed by the Fathers in the eleventh Council of Toledo, who thereupon determine,<sup>2</sup> that though there were different rules about this matter, yet it was more proper to follow the majority, which decreed on the favourable side in behalf of such penitents, that their memorial should be recommended in the Church, and that the presbyters should receive their oblations. As to the other sort of persons, who were unjustly excommunicated by the power of some prevailing faction, the way of restoring them to the external communion of the Church after death, was by inserting their names into the diptychs of the Church (as Theodoret tells us it<sup>3</sup> was done by Atticus in the case of Chrysostom) which was enough to restore them after death to the communion and fellowship of the faithful. And so I have done with the circumstances and ceremonies observed in the ancient manner of absolution.

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<sup>1</sup> Leo. Ep. xc. al 92. ad Rustic. cap. vi. Ep. 89. ad Theodor.

<sup>2</sup> Con. Tolit. xi. can. 12. De his autem qui acceptâ pœnitentiâ, antequàm reconciliarentur, ab hâc vitâ recesserint, quanquàm diversitas præceptorum de hoc capitulo habeatur: illorum tamen nobis sententia placuit, qui multiplici numero de hujusmodi humaniùs decreverunt, ut et memoria talium in ecclesiis commendetur, et oblatio pro eorum delicto à presbyteris recipiatur.

<sup>3</sup> Theod. lib. v. cap. 34. Vid. Con. C. Pol. sub Mennâ, Act. 5. in the case of Leo, Euphemius, and others.

## CHAP. III.

*Of the Minister of Ecclesiastical Discipline, and particularly of the Minister of Absolution.*

SECT. 1.—All the Power of Discipline primarily lodged in the Hands of the Bishop.

THERE remains but one thing more to be examined in this matter, relating to the exercise of discipline in the practice of the Church; and that is, by what hands it was managed? who ordinarily had the power of the spiritual sword? And who particularly was the proper minister of absolution? That all the power of discipline was primarily lodged in the hands of the bishop, as all other offices of the Church, is a matter uncontested, and evident from the whole foregoing history and account of the practice of the Church. For the canons always speak of the bishop, at least in conjunction with his ecclesiastical senate, his presbytery, as cutting off offenders from the Church, and imposing penance upon them; and then again examining their proficiency, and either lengthening their penance, or moderating it by his indulgence; and finally admitting them to the communion of the Church by absolution.

SECT. 2.—This in many Cases committed to Presbyters either by a general or particular Commission.

And this, so far as the bishop could manage it, might be retained solely to himself, and exercised at his own discretion. But because the necessities of the Church required in many cases, that part of this burden should devolve upon others, and the bishop was not able personally to discharge the whole of it to all that needed: therefore presbyters, as his proper assistants, were taken in to be sharers and fellow-labourers with him. They had a general commission to

grant the great indulgence or absolution of baptism, and that of the eucharist, and the word and doctrine to all that needed: and though they were more restrained in the exercise of public discipline, and the final reconciliation of public penitents by imposition of hands and prayer; yet the intermediate imposition of hands upon the penitents in their daily exercise was often committed to them: and by the bishop's leave they might give the final reconciliation to public penitents, either openly in the Church, or privately on a sick bed, when necessity and the fear of imminent death required a speedier absolution. This is evident from the very canons, which restrain the power of presbyters in reconciling public penitents, and reserve it solely to the bishop: they still admit of these limitations and exceptions. The second Council of Carthage has two canons, which thus divide the matter between them. The first says,<sup>1</sup> a presbyter shall not reconcile any penitent in the public service. But the other immediately adds,<sup>2</sup> that if any one be in danger of death, and desires to be reconciled to the altar, if the bishop be absent, the presbyter shall consult the bishop, and so reconcile him at his command. And so the third Council of Carthage determined,<sup>3</sup> that a presbyter should not reconcile a penitent without consulting the bishop, unless the bishop was absent and necessity compelled him. The Council of Orange made a like decree about reconciling such penitents as had been baptised by heretics,<sup>4</sup> that in case they were in danger of death, and desired to be made Catholics, if the bishop was absent, a presbyter should consign them with chrism and the benediction. And the Coun-

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<sup>1</sup> Con. Carth. ii. can. 3. Reconciliare quenquam in publicâ missa, presbytero non licere, hoc omnibus placet.

<sup>2</sup> Ibid. can. iv. Si quisquam in periculo fuerit constitutus, et se reconciliari divinis altaribus petierit, si episcopus absens fuerit, debet utique presbyter consulere episcopum, et sic periclitantem ejus præcepto reconciliare.

<sup>3</sup> Con. Carth. iii. can. 32. Ut presbyter inconsulto episcopo non reconciliet penitentem, nisi absente episcopo, et necessitate cogente.

<sup>4</sup> Con. Arausican. i. can. 2. Hæreticos in mortis discrimine positos, si catholici esse desiderent, si desit episcopus, à Presbyteris cum chrismate et benedictione consignari placet.

cil of Epone has a like order,<sup>1</sup> that if any heretics, who lay desperately sick upon their beds, desired suddenly to be converted, in that case, for the salvation of their souls, which was heartily desired, a presbyter should be permitted to give them the consolation of Chrism, that is, both confirmation and reconciliation, which those, that were in health, were only to desire of the bishop. And that this was the ancient rule of the Church, appears from the letters of Dionysius,<sup>2</sup> Bishop of Alexandria, in Eusebius, where he says, he had given orders to his presbyters to grant absolution to all that were on the point of death, if they desired it; and especially if they had desired it before, that they might have hope and consolation in their last minutes, when they were about to leave the world.

SECT. 3. — And to Deacons also.

Neither was this commission and licence granted only to presbyters, but to deacons also. For as they were allowed to give men the absolution of baptism, in cases of extreme necessity, so they were authorised to grant penitents the reconciliatory absolution in the same circumstances likewise. For so the Council of Eliberis seems to determine,<sup>3</sup> that though presbyters ordinarily had not power to admit any one to penance, but only the bishop: yet in case of infirmity both presbyters and deacons ought to receive penitents to the communion, having the bishop's command to do it. This is more plainly delivered by Cyprian, who says,<sup>4</sup> if

<sup>1</sup> Con. Epauen. can. xvi. Presbytero, propter salutem animarum, quam in cunctis optamus desperatis, et in lecto decumbentibus hæreticis, si conversionem subitam petant, chrismate subvenire permittimus. Quod etiam omnes conversuri, si sani sunt, ab episcopo noverint expectandum.

<sup>2</sup> Ap. Euseb. lib. vi. cap. 44. <sup>3</sup> Con. Eliber. can. 32. Apud presbyterum, si quis gravi lapsu in ruinam mortis inciderit, placuit agere pœnitentiam non debere, sed potiùs apud episcopum; cogente tamen infirmitate, necesse est presbyterum communionem prestare debere, et diaconum, si ei jusserit sacerdos.

<sup>4</sup> Cypr. Ep. xiii. al. 18. p. 40. Si incommodo aliquo et infirmitatis periculo occupati fuerint, non expectatâ præsentia nostrâ, apud presbyterum quemcunque præsentem, vel si presbyter repertus non fuerit, et urgere exitus cœperit, apud diaconum quoque exomologesin facere delicti sui possint; ut manu eis in pœnitentiâ impositâ, veniant ad Dominum cum pace. Vid. Ep. xiv. al. 19. p. 41.

penitents were seized with any calamity, and were in apparent danger of death, in the absence of the bishop, they might make their confession before any presbyter that was present; or, if a presbyter could not be found, before a deacon, and receive imposition of hands, that they might go to the Lord in peace. It is plain also, that the clergy had some share with the bishop in the more public and solemn absolutions: because Cyprian often complains of some forward men,<sup>1</sup> who were desirous of having the eucharist granted them, before they had received the solemn imposition of hands from the bishop and the clergy to reconcile them to the altar.

SECT. 4.—How far, and in what Sense Absolution might be said to be given by a Layman.

But as presbyters and deacons did nothing alone in this matter without the bishop, but either in conjunction with him, or by his authority and permission: so much less was this power intrusted in the hands of any layman. Only in case of extreme necessity, some canons allowed a layman to give baptism to a catechumen (which was reputed, as we have heard before, one sort of absolution) rather than he should die unbaptized. This is evident from the decree made in the Council of Eliberis,<sup>2</sup> that in a voyage at sea, or in any place where there was no church near at hand, if a catechumen happened to be extremely sick, and at the point of death, any Christian, who had his own baptism entire, and was no bigamist, might baptize him. And the sentiments of Tertullian, St. Jerom, and St. Austin, with several others that have been canvassed in another book,<sup>3</sup> shew, that this was not the singular opinion of that Council. As to the other sacrament, we no where find, that either deacons or laymen

<sup>1</sup> Cypr. Ep. 10. al. 16. p. 37. Nondum manu eis ab episcopo et clero impositâ, Eucharistia illis datur, &c. Ep. xi. al. 15. p. 34. Ante manum ab episcopo et clero in pœnitentiam impositam, &c. Ep. xii. al. 17. p. 39.

<sup>2</sup> Con. Eliber. can. 38.

<sup>3</sup> Scholast. Hist. of Lay-baptism, par. i. chap. l. sect. 8, &c.

were allowed to consecrate it; that being the office of presbyters only. Neither were laymen allowed to minister publicly either the bread or the cup, when consecrated, to the people: for that was the standing office of deacons. Yet a layman in case of absolute necessity might carry and minister the consecrated bread and wine in private to a dying person, and so far be instrumental in his absolution: as appears from that famous case related by Eusebius,<sup>1</sup> out of Dionysius of Alexandria, concerning Serapion, who had the eucharist sent him by the priest, and given him by the hands of his servant. But the remark, which Bishop Fell makes upon this, is very just:<sup>2</sup> that whatever necessity compels men to do, it defends, but only so far and so long as the necessity lasts. It is a known story in Eusebius, of the eucharist being transmitted to Serapion by a boy: yet no one may thence infer, that therefore children may dispense those holy mysteries. He thinks the same reason holds for deacons reconciling penitents in case of extreme necessity: that it was an extraordinary case; and no consequence is to be drawn from necessity and extraordinary cases, to prejudice the ordinary rules and standing measures of the Church. If men exceed their commission, and excommunicate or absolve without power, they are themselves liable to censure for their usurpation, and the Church may reverse all such irregular acts by her own just authority at pleasure. Therefore when the Council of Ephesus had deposed Nestorius and Cœlestius for their heresy, and reduced them to the state of laymen, she declared,<sup>3</sup> that she took from them all the power of the priesthood, which enabled them to do good or harm to others, that is, either to excommunicate or absolve. And whereas Nestorius after this pretended to depose some clerks from their priestly office for their orthodoxy, the synod declared his act a nullity,<sup>4</sup> and that the priests so deposed should be restored to their station again. And on

<sup>1</sup> Euseb. lib. vi. cap. 44. See before chap. i. sect. 3. Where the whole story is more fully related.

<sup>2</sup> Not. in Cypr. Ep. xviii. p. 40.

<sup>3</sup> Con. Ephes. in Epist. Encyclicâ. Con. tom. iii. p. 804.

Ephes. can. iii.

<sup>4</sup> Con.



the other hand, whereas Nestorius and his accomplices had attempted to restore those to communion, or their order, whom the synod had condemned, the synod declared, this should not profit them;<sup>1</sup> they should remain excommunicate or deposed notwithstanding. This shews, that neither laymen, nor clerks reduced to the state of laymen, had any power of binding or loosing by the ordinary rules of discipline in the Church. And so, Theodoret says,<sup>2</sup> a certain bishop told Theodosius Junior, when he was under some concern for being rashly excommunicated by a monk. The good Emperor was uneasy even under an unjust excommunication by an incompetent authority pronounced against him, and would not sit down to meat till he was absolved. For which purpose he sent to the bishop, to desire him to engage the person, who had bound him, to come and absolve him; the bishop told him, it did not belong to every one to excommunicate, and therefore he was absolved already: yet this did not satisfy the emperor, till the man was found out, to come himself, and restore him to the communion of the Church. The bishop's answer in this case was certainly very just; but the emperor, being a man of a tender conscience, could not entirely rest upon it. Perhaps he was sensible he had done the monk some personal injury, in which case personal satisfaction was to be made, and private pardon to be asked, according to that rule of our Saviour, "If thou bring thy gift to the altar, and there rememberest that thy brother hath ought against thee; leave there thy gift before the altar, and go thy way; first be reconciled to thy brother, and then come and offer thy gift." In this case every man has power to pardon the sins of his brother, and also to admonish him, and instruct him, and pray for him, which are private and remote ways of reconciling him to the altar: it is of these St. Austin speaks<sup>3</sup> in

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<sup>1</sup> Con. Ephes. can. v.      <sup>2</sup> Theodor. lib. v. cap. 37.      <sup>3</sup> Aug. Tract. 58 in Joan. tom. ix. p. 164. *Invicem nobis delicta donemus, et pro nostris delictis invicem oremus, atque ita quodammodo invicem pedes nostros lavemus, &c. Ut quod aliis etiam dimittimus, hoc est, in terrâ solvimus, solvatur et in cælo.*

conformity to that precept of the Apostle, Col. iii. 13. "Forgiving one another, if any man have a quarrel against any; even as Christ forgave you, so also do ye." "Let us forgive one another's sins," says he, "and pray for the sins of each other, and so in some measure wash one another's feet. 'Tis our part, by the gift of God, to use the ministry of charity and humility; but it belongs to God to hear our prayers, and cleanse us from all pollution of sins by Christ and in Christ, that what we forgive unto others, that is to say, what we loose upon earth, may be loosed in heaven." This is so necessary a part of Christian duty, that no one may forego this way of loosing his brother, under pain of having his own sins retained by God. "For if we forgive men their trespasses, our heavenly Father will also forgive us: but if we forgive not men their trespasses, neither will our Father forgive our trespasses." Upon which one of the Ancients observes,<sup>1</sup> that we bind ourselves the faster in our own sins, if we refuse to loose the bonds of others. And nothing is more common among the Fathers than to say, men bind themselves, or are bound by others, when they trespass against them, and never ask forgiveness: and that they loose themselves or others from sin, either by alms-deeds, or charity, or converting of sinners, or praying for them, or remitting their trespasses committed against them. With respect to binding St. Austin says,<sup>2</sup> when any brother sins against another, and he thereupon begins to esteem him as a publican, he binds him on earth; but he must take care that he bind him justly, for unjust bonds are broken by the justice of God. And for loosing, Origen reckons up seven ways, whereby Christians may obtain remission of sins, whereof five are apparently private actions of private

<sup>1</sup> Sedulius Carm. Paschal. lib. ii. Bibl. Patr. tom. viii. p. 665.  
Graviusque soluti

Nectimur, alterius si solvere vincula nequimus.

<sup>2</sup> Aug. de Verbis Dom. Serm. xvi. cap. 4. Cœpisti habere fratrem tuum tanquàm publicanum: ligas illum in terrâ. Sed ut justè alliges, vide: nam injusta vincula dirumpit justitia.

men. The first is baptism, whereby men are baptized for the remission of sins.<sup>1</sup> The second is the suffering of martyrdom. The third is almsdeeds. For our Saviour says, "give alms, and behold all things are clean unto you." The fourth is forgiving the sins of our brethren. For our Lord and Saviour says, "If ye from your heart forgive your brethren their trespasses, your Father will forgive your trespasses." The fifth is, when one converts a sinner from the error of his ways. The sixth is the abundance of charity, as our Lord says, "her sins, which are many, are forgiven, because she loved much." The seventh is the hard and laborious way by penance, when a man waters his couch with his tears, and his tears are his bread day and night, and he is not ashamed to declare his sin to the priest of the Lord, and seek a cure. The first and last of these, viz. baptism and penance, are public acts, in which the ministry of the priest is concerned: but all the rest, martyrdom, almsdeeds, forgiving injuries, converting sinners, and exceeding love of God are private actions of private men, and may be performed by any good Christian. And therefore the remission of sins, that is ascribed to them, is no peculiar act of the ministry, but may be the act of any private Christian. Consequently so far laymen may be concerned in the remission of sins without any intrenchment upon the ministry: But these being only private acts, are of no further consideration in the present discourse, which only relates to ministerial absolution, and the public discipline of the Church.

I have now gone over all that relates to the exercise of penitential discipline, so far as concerns the practice of the ancient Church. As for doctrinal points, such as the question, whether penance be properly a sacrament? And whether sacerdotal absolution be necessary to salvation? These come not directly within the design of the present undertaking, which only considers the practice of the Church. But because I have had occasion to write some little tracts upon

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<sup>1</sup> Orig. Hom. ii. in Levit. tom. i. p.111.

the latter question, and it will not be unacceptable to some readers to see them made public, I shall here subjoin them by way of appendix to the present Discourse.

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NOTE.—As my Great-Grandfather (the learned author) himself states, that the two sermons, which in the original edition formed the Appendix, “do not come directly within the design of the present undertaking;” and as this volume already contains a greater quantity of letter-press than any of the preceding; and further, as I have a third sermon to print, bearing in some measure on the same subject, I have resolved to place them, together with several other sermons on abstruse points of divinity, in one of the subsequent volumes.

R. B. EDITOR.











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