

This translation of Book IV dd.14-42 of the *Ordinatio* (aka *Opus Oxoniense*) of Blessed John Duns Scotus is complete. These distinctions fill volume thirteen of the Vatican critical edition of the Latin text edited by the Scotus Commission in Rome and published by Quarrachi.

Scotus' Latin is tight and not seldom elliptical, exploiting to the full the grammatical resources of the language to make his meaning clear (especially the backward references of his pronouns). In English this ellipsis must, for the sake of intelligibility, often be translated with a fuller repetition of words and phrases than Scotus himself gives. The possibility of mistake thus arises if the wrong word or phrase is chosen for repetition. The only check to remove error is to ensure that the resulting English makes the sense intended by Scotus. Whether this sense has always been captured in the translation that follows must be judged by the reader. In addition, there are passages where not only the argumentation but the grammar too is obscure, and I cannot vouch for the success of my attempts to penetrate the obscurity. So, for these and the like reasons, comments and notice of errors from readers are most welcome.

Note: this volume of the critical text seems to be less well edited than earlier volumes, and has some infelicities of punctuation and backward reference in particular that have had to be changed in the translation. Not all these changes seemed significant enough to need indicating in footnotes.

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Deo Gratias

THE ORDINATIO OF BLESSED JOHN DUNS SCOTUS

Book Four

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Question One: Whether Penitence is Necessarily Required for Deletion of Mortal Sin

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Book Four

Fourteenth Distinction

Question One

Whether Penitence is Necessarily Required for Deletion of Mortal Sin Committed after Baptism

1. “After this about penitence” [Lombard, *Sent.* IV d.14 ch.1 n.1].

2. After the Master has dealt with the sacraments of baptism, confirmation, and the Eucharist, here he makes determination about the fourth sacrament, namely penitence,¹ which is a common sacrament but after a lapse, because “the second plank after shipwreck is penitence” (according to Jerome [*Epistle 130 to Demetriades* n.9; also in Lombard’s text]).

3. About this distinction I ask first whether penitence is necessarily required for deletion of mortal sin committed after baptism.

4. It seems that it is not:

Because when the interior and exterior act cease, the sin ceases to be, because the privation of rectitude in the act ceases, which privation is formally the sin; therefore it is destroyed at once without penitence. The antecedent is plain, because sin is only a disorder in some interior or exterior act.

5. Second thus: a man who has been offended can remit the offense without the fact of the offender repenting; therefore much more can God, who is supremely merciful; but when the offense is remitted, the sin is dismissed; therefore etc.

6. These two arguments prove that penitence is not required for this deletion of sin.

7. Again, there is proof that penitence is of no value for this deletion of sin:

First, according to Augustine in a sermon on *Matthew* 5.7, “Be ye merciful,” [*On the Psalms*, ps.32 sermon 1 n.11], where he says, speaking of the damned, “There will then too be penitence, but fruitless however;” which he proves through the verse about the damned in *Wisdom* 5.3, 8-9, “They will speak to one another in penitence [and in anguish of spirit they will groan...What has our arrogance profited us, and what good has our boasted wealth brought us?]”

8. If you say that as long as a man is in this life penitence is of value for deletion of sin, but not afterwards – against this is the authority of Jerome [*On Matthew* IV 27, 5] and it is in the text [Lombard, *Sent.* IV d.15 ch.7 n.8; taken from Gratian, *Decretum*, p.2

¹ The Latin word is ‘poenitentia’, which can be translated as penitence or penance, or even as repentance. The word is equivocal, as Scotus himself states in nn.59-60: it signifies the willing or accepting of punishment for sin committed and connotes the punishment. In English the word ‘penitence’ more properly signifies the willingness or readiness to accept punishment, ‘penance’ the punishment so accepted, and ‘repentance’ the sorrow for and repudiation of the sin deserving punishment. As for the sacrament of confession, as it is now typically called, this signifies rather the admission itself before a priest of sins deserving punishment. In the translation here ‘poenitentia’ has been translated as ‘penitence’, since it says in English what Scotus says ‘poenitentia’ directly signifies in Latin. If ‘penance’ were used as the translation instead (which might indeed be closer to the older English use of the word), it would signify what Scotus says ‘poenitentia’ indirectly connotes.

cause, 33 q.3], “It profited Judas nothing to have done a penitence through which he was not able to emend his crime.”

9. Again, it is necessary that what mortal sin is deleted by be a good greater than the sin was bad, or as good as it; but penitence is a lesser good than mortal sin is bad; therefore etc. The major is plain, because an evil is not recompensed save by a good equal to what it takes away. The proof of the minor is that penitence is a finite good, mortal sin an infinite bad, as is plain from Anselm *Why God Man* II ch.6: sin is as great as he is who is offended or against whom it is committed, but he is infinite; because “against you alone have I sinned and done what is evil in your sight” [*Psalm*, 50.6].

10. These two arguments [nn.7-9] prove that penitence is of no value for deletion of mortal sin.

11. The opposite is proved in similar ways.

12. As concerns the first way [n.6], thus:

The Savior says, *Luke* 13.5, “Unless you are penitent, you will all likewise perish.”

13. Again, Jerome, “the second plank...” [n.2], and it is in the text. The first plank is compared to an undamaged ship, which when broken, the one shipwrecked is in peril unless he cling to some plank – this is called the second plank. Therefore, by similarity, someone who falls into mortal sin and has in this suffered spiritual shipwreck is in danger unless he cling to penitence.

14. Again, as to the second conclusion [n.10] the argument is as follows:

In *Matthew* 3.2 it is said, “Be penitent, for the kingdom of heaven is at hand.”

Therefore penitence is of value.

15. Again, *Ezekiel* 18.21, “But if the wicked are penitent,” and there follows, “I will not remember all his sins; his life will live.”

I. To the Question

16. Here there are three things to look at: First, what remains in a sinner when the act by which he is called a sinner passes away, because if nothing remains there is no need to ask what is to be deleted; on the contrary, he who has committed nothing and he who has committed sin, but has ceased from interior and exterior act of sinning, would be entirely similar. Second, that what remains is destroyed, and for this some punishment is required. Third, that not just any punishment but a penitential one. And in this the solution to the question is plain.

A. What Remains in a Sinner after Sin has been Committed

1. Preliminaries

17. About the first one needs to know that just as justice is double – habitual, namely charity and grace, and actual, namely the rectitude that is of a nature to be present in an elicited act (and the first is plain; the second is made clear because the act is of a nature to be elicited conformably to its rule, and in this conformity does rectitude consist) – so, since opposites are said in equally many ways, injustice too will be double: habitual, namely the privation of grace in him in whom grace should be present, and actual, namely privation of this rectitude in an act in which it should be present.

18. Also, after the intrinsic and extrinsic act pass away, there remains a certain habitual injustice; but not from this alone is someone said to be a sinner, because someone who had committed two thousand mortal sins and someone who had committed one would be equally sinners intensively and extensively, because the whole of grace in them as to intension, and it alone as to extension, is taken away, both in him who has committed a single less grave sin and in him who has committed two thousand very grave sins; and so the one will not be said to be less a sinner after the act has passed away than the other. The proof of the assumption is that in any mortal sin grace is so taken away that nothing of it remains, and consequently it can, through nothing that follows, become more intense or more extensive, speaking of habitual privation; because this privation deprives only one habit, just as the habit is only of a nature to be present as one.

19. And this reasoning is like the reasoning of Anselm, *On Virginal Conception* ch.22, that original sin is not of a nature to be more present in one than another, because he in whom there is no justice cannot be deprived of justice [sc. since original sin takes away the whole of justice, it cannot take more away from one than from another, but all are deprived and deprived equally, because deprived fully]. This was discussed in *Ord. II* dd.30-32 nn.51-56.

20. Now actual injustice cannot remain when the act ceases, because the proximate subject of it is the act, just as it is also of the opposed rectitude. The proof: for the soul cannot be the immediate subject of the rectitude but only of the act in the soul; but still, when the act does not remain, that rectitude does not remain nor the wrongness.

2. Opinion of Others

a. Statement of the Opinion

21. Therefore is it said [Aquinas *Sent. IV* d.13 nn.27-82] that conviction for a fault² remains in the soul, which is a kind of obligation to the penalty due for that fault; now this obligation is a certain real relation, not founded on the guilty act, but on the essence of the soul, though only with actual guilt preceding, as was often said above on how a relation is founded on action [*Ord. IV* d.13 nn.27-82].

b. Rejection of the Opinion

22. Against this there is a twofold argument: first that no real relation remains in the soul; second, that if it did remain, the soul would not be called a sinner because of it.

23. The proof of the first is that an intrinsically arising real relation necessarily follows the positing of the extremes; but the relation here does not follow. The fact is plain, because while the soul and God remain the same, or while penalty is disposed in the same way, the soul is not for this reason obligated to penalty in the same way, because it is not so obligated before sin.³ But if the relation is an extrinsically arising relation, it is necessary to give it a cause whereby it may arise on the basis of the

² The Latin word ‘culpa’ means both ‘fault’ and ‘guilt’, and is translated in both ways in what follows according to suitability to the context.

³ That is, even if we suppose the listed foundations of the real relation to remain the same (the penalty as always due for such sin, God as always decreeing such penalty for such sin, and the soul as always capable of such sin), yet no relation of obligation in the soul to the penalty follows therefrom, unless an actual sin is supposed as well.

extremes already posited (as is true of ‘where’ and the other circumstances [cf. *Nicomachean Ethics* 3.2.1111a3-6]). For a real respect that does not follow the posited extremes cannot exist unless some real action answer to it as to the term. Of this obligation [n.21] neither a real action nor a really acting agent can be given. For not the soul, because in sinning it had only a single disordered action that was related to that act of willing, which was deprived of its due circumstances, and so not to this respect [sc. of obligation] as to its term. Nor can this obligation be said to be the immediate term of divine action, because no soul is said to be a sinner precisely by the fact that it is the immediate term of divine action.

24. The proof of the second [n.21] is through this last point [n.23], because if there were in the soul such an obligation, it could not be imagined to be there save immediately from God, and thus the soul would not formally be a sinner by it, since God is not cause of sin *per se* but only permissively.

25. This difficulty the Master touches on in d.18, last chapter [*Sent. IV* d.18 ch.8 n.3-4], and he seems to solve it through this: “Until it repent the soul is polluted, just as it was while a depraved will was in it.” And he gives an example about him who has touched an animal carcass; for after the act ceases he remains unclean just as before [*Leviticus* 11.31]. And he adds: “Thus does the soul remain polluted just as it was in the act of sin itself, because it is thus by unlikeness far from God; for this unlikeness, which is in the soul by sin and is a distancing of the soul from God, seems to be a stain.”

26. Against this stands the prior deduction [n.23], because this stain, or distancing or unlikeness (with whatever name it be named), cannot be only a lack of the habit of grace, because that lack is totally present in a first sin [sc. therefore further sins would not add a further stain]; nor is it the lack of rectitude in the act, because that is not of a nature to remain unless the stain in the act remains.

27. Again, the stain of supreme hatred for *a* and supreme love of that very *a* are repugnant to each other; therefore by one the other is taken away, and consequently the stain of hatred for *a* could be taken away by extreme love for that very *a* [sc. while not paying any penalty to remove that stain of the original hatred].

3. Scotus' own Opinion

28. As to this article [n.16], then, I say that nothing real, absolute or respective, is in anyone by which he may be called a sinner after all act of sinning ceases – and this whether gravely or multiply a sinner, as one is said to be after the act passes away.

29. And if it be said that something left behind by the act remains, it is not formally sin, because it can continue in someone justified, just as a vicious habit, or a disposition for it, remains in someone justified suddenly. The fact is plain because at the beginning he is prone to follow the inclination of the vicious habit, but in fighting against the inclination of it he merits well and acquires for himself a habit to the contrary. Hence great sinners do not, as soon as they are justified, have that peace which the perfect and practiced in virtue do.

30. Also, whatever habit or vicious disposition might, from acts, be left behind, it would cease to be after passage of time unless it were strengthened by frequent acts (just as universally every disposition for a habit ceases to be when the acts perfecting that habit cease to be). But that by which a sinner is, after an act, said to be a sinner does not

cease to be through any time however much, although like acts not be added to it; for he is a sinner for ever from when he committed it. So there is not anything absolute or respective there, positive or privative, from the time of the ceasing of the act up to penance, by which he may be called a sinner, but there is only a certain relation of reason, insofar as he is an object of the intellect or will of God. Because, after he has committed the sin, the will of God ordains him to a penalty corresponding to the sin, and the intellect of God foresees this for all time until the penalty due is paid.

31. The proof of this is from Augustine on *Psalm 31.1-2*, narration 2 n.9, “Blessed are those” [whose transgression is forgiven, whose sin is covered]: ‘To see sins’, he says, belongs to God for assigning to penalty; ‘but to turn his face from sins’, this is for God not to keep for penalty. So Augustine says, therefore, that sins are not covered over by God such that God not see them, but that he not wish to attend to them, that is, to punish them; therefore, that a sinner remains in guilt after the act passes away is only that he is ordained by God’s will for penalty befitting the sin. But an object of intellect or of will has, as it is understood or willed, only a relation of reason; therefore etc.

32. This is confirmed by a likeness: let it be that God not consider, in a multiplication of merits, the habit of charity – as is possible if the merits be mild or even if they were intense – yet he who had many merits is, after the exterior or interior acts pass away, more deserving than someone else. Which is nothing other than that he is ordained to a greater glory, by which is not obtained anything real positive or privative intrinsic to him, absolute or respective, but only a relation of reason insofar as he is an object of the divine will and in order to be ordained to greater glory. For there, in the divine acceptance, merits are ordained, or the man is ordained through merits, to such or such a glory. Just as, therefore, this acceptance for transient merits is nothing really save an act of the divine will (and in this there is only a relation of reason as in an object willed), so on the other side the casting off of this man because of transient sins is only a reprobation or repulsion in the divine will, and in the sinner it is only a relation of reason (as of someone cast off or reprobate) for such or such a penalty.

33. This finally is plain from a like obvious case, that if someone offend a great prince with the sort of offense that a great penalty responds to, there is, when that act ceases, nothing in him that, before the act for which he be called an enemy now and not before, was not previously there; but the transient act in him is only in the will of the offended lord himself, and by this fact is it a relation of reason in him, as in a subject or object willed for such sort of penalty.

34. From this a corollary follows, that after the act of sin ceases the offense, stain, and fault is nothing other than this relation of reason, namely ordination to a penalty; and as this is unbecoming to the very soul, it is said to be the ‘stain’ of the soul (just as ‘beauty’ is said of it as the opposite); but as it is formally an obligation for this penalty it is called ‘guilt’; and as it is an act of divine will (which is this whole reality), by which act the soul is ordered to such penalty, it is called ‘offense’. For ‘to be offended’ or ‘to be angry’ is in God nothing other than will to exact vengeance with this penalty; and although God be said figuratively to be angry or offended, yet by taking this idea of ‘to be angry’ for ‘to will to avenge’ (excluding any accompanying passion of this ‘will’), God is formally angry and offended, because he is formally willing to avenge sin committed against his Law.

B. What Remains in the Sinner after Sin can be Deleted by some Punishment

35. About the second article [n.16] I say that that which is said to remain in the sinner after the act can be deleted and is sometimes deleted, according to the phrase ‘remission of sins’ in the *Creed*, that is, God is ready to remit sins and is sometimes remitting sins.

36. And the proof of this is as follows, that sometimes he who is predestined falls into mortal sin (it is plain about blessed Peter [*John* 18.17, 25-27] and blessed Paul [*Acts* 7.57-59, 9.1-6, *Galatians* 1.13-16] and others almost without number); but he cannot be beatified (toward which chiefly he is ordered by predestination) unless sin has been deleted, taking ‘sin’ in the way above stated [n.30], because no one is beatified while remaining obligated to paying a penalty. For either payment must be made along with glory (which is impossible, because at the least, according to divine disposition, that glory and any sin whatever are repugnant), or it must be paid after glorification, which is likewise impossible, because God has disposed that glory to be final in anyone, such that no penalty would follow; therefore it is necessary that, before glorification, this obligation to undergo penalty be at some point remitted or deleted.

37. Second I say that sin is not remitted without punishment, or the equivalent in divine acceptance, because God is offended by any sin at all, as Scripture sufficiently proclaims [e.g. *Genesis* 6.5-12, *Matthew* 5.19-48, 6.1-7, *Mark* 7.20-23, *Romans* 7.23, *Galatians* 5.19-21, *Colossians* 3.5-15, etc.]; but his displeasure or anger (as was said [n.34]) is his willing to avenge or his demanding something else sufficient for placation; so, whatever sin is posited, God wills to avenge it on the sinner. But to will to avenge is to will to punish; therefore after commission of sin, some punishment, or the equivalent in divine acceptance, is required. And although the fault that is taken away be as a rule taken away by a penalty (just as an obligation to anything is taken away by payment of it), and although sometimes it be taken away by something else (equivalent in divine acceptance) besides a penalty, yet it is as a rule put in order by a penalty but not taken away.

38. And this is what is commonly said, and it is taken from Boethius [*Consolation of Philosophy* IV prose 4 n.20-21], that penalty is an ordering of a fault, such that no fault can be left in the universe to which there corresponds no ordering penalty; and it is simply better for an uncorrected sinner to undergo penalty than be without penalty, because in the first there is something of good, namely a just correspondence of penalty to the fault, and in the second there would be only malice, namely the fault and it unpunished.

39. Nor yet do I take it that there be here simply a necessity of which the opposite includes a contradiction, because, from the fact that it is not essentially the same for God to dismiss guilt and precisely and especially to punish it (as will be plain in the question in distinction 16 [nn.60-63] about the expelling of guilt and infusion of grace), it seems that God could separate one from the other. But, of his ordained power, this is the way universally fixed by divine Law, namely putting sin in order through a penalty as through what properly corresponds to it.

C. About Voluntary Penalty or Punishment

1. About the Thing of Such Punishment or Penitence

a. The Penalty or Punishment should be Voluntary

40. About the third article [n.16] one must first see about the thing, second about the name.

And about the thing let this be the conclusion, that for the deletion of sin there is required as a rule a voluntary penalty or punishment.

41. The proof of this is that sin is deleted through some punishment, as was said in the second article [nn.36-39], and that through some punishment it is not deleted, as is plain in the damned. And about the penalty that immediately follows a fault, “You have commanded, O Lord, and so it is, that each sinner should be a penalty to himself,” according to Augustine *Confessions* I ch.12 n.19 [cf. *Ord.* II d.7 n.92].

42. Now a difference between a punishment by which sin is deleted and a punishment by which it is not deleted is not as provable as it is about what is voluntary and what is involuntary. First because the punishment of the damned is far greater, intensively and extensively, than is the punishment of a wayfarer whose sin is deleted by the punishment; and consequently being more and less intensive and extensive does not make a difference between a punishment that deletes sin and a punishment that does not.⁴ Second because we see it so in human offenses, that a voluntary penalty or distress placates the one offended, but not at all one that is involuntary and undertaken with murmuring.⁵ Therefore if deletion of offense be owed to some penalty and to some penalty not, and if the difference in this regard is not as provable by anything as it is by the voluntary and involuntary, it is reasonable that voluntary penalty be as a rule required for deletion of sin.

43. Then follows a corollary, how guilt is set in order in a double way by penalty: for guilt that remains is put in order by the accompanying penalty, but the penalty is involuntary; and guilt put in order by a voluntary penalty is deleted by it.

b. About the Ways in which a Penalty can be Voluntary

44. But if you ask how some penalty could be voluntary, since it is of the idea of penalty that it be involuntary (because just as no one commits sin in what he does not want, so no one is punished in what he does want) – I reply: this difficulty requires a rather long explication.

45. And here it must be noted that the involuntary is simply that against which the will simply murmurs back.

46. And consequently, by opposition, the voluntary can be understood in three ways: in one way that against which the will altogether does not murmur but patiently sustains; in a second way that which it voluntarily accepts; in a third way that which it voluntarily causes – and this in two ways: either as partial proximate cause and not intending the effect, or as principal remote cause and intending the effect. And thus are four members obtained.

⁴ That is, if punishment itself is supposed to be what deletes sin, a greater punishment should delete a greater sin, but it does not, as is clear of the damned whose punishment is greater and yet does not delete their sin.

⁵ That is, what makes a penalty placate the person offended is not the mere fact that it is a punishment, but that it is undertaken voluntarily.

47. And this distinction is plain, because in the first two modes sadness is only the object of the will; in the third it is only the effect and not the object; in the fourth it is the object and the effect, unless something else prevent it (these members will be at once explained [nn.49-55]). The order here is also plain, because the second makes an addition as to the idea of what is voluntary to the first, and the third to the second and the fourth to the third.

48. And penalty too can be understood either as whatever is disadvantageous or disagreeable (and that can be in a sense-part in man or in the body conjoined with act of the sense-soul), or it can be the prime disagreeable thing, which is the sadness that is the penalty properly and first, about which Augustine says, *City of God* XIV ch.15, “sadness is the soul’s dissenting from the things that happen to us against our will.”

49. Having made supposition, then, about the exterior penalties as about things that are manifest how they can be voluntary in each of these four ways of the voluntary [n.46] – let us see specifically about this first penalty, namely sadness.

50. It is plain that it can be voluntary in the first way, namely voluntary in a certain respect, that is, ‘borne patiently’, because a disagreeable evil, provided however it not be against right reason, can be undergone not only patiently absolutely but patiently in an ordered way.

51. It can also [sc. in the second way, n.46] be accepted in order to some end, as Augustine says [Ps.-Augustine, *On True and False Penitence* ch.13; in Lombard, *Sent.* IV d.14 ch.13 n.6], “Let the sinner grieve for his sin, and rejoice in his grief.”

52. But, third [n.46], as to how the will causes grief or sadness voluntarily as partial cause, a difficulty arises. I say that sadness in any will cannot be caused naturally save by two causes coming together, namely from actual willing of some existence and from actual apprehending of that existence,⁶ in line with the preceding description of sadness from Augustine [n.48]. Whatever therefore is cause of volition is partial cause of sadness, though it not intend, nor need intend, to cause sadness through the volition. Now these two causes, whenever they come together, cause (as far as it is from themselves) sadness as a naturally consequent effect.

53. From this third the fourth [n.46] is made clear, because from the fact that sadness follows, as a natural effect, on actual volition of something and actual consideration of the thing willed, then although these two proximate causes could come together in a multiplicity of ways (because coming from as many causes as such actual consideration in the intellect and such actual volition in the will can come from), yet no single one can be cause of sadness (speaking of natural causation) unless there could be a cause of the coming together of these two that are the naturally necessary proximate causes.

54. Now a common cause of this sort can the will be as commanding an act of consideration and an act of volition of the same object, and this in an ordering to the intended end, so that a punitive sadness follows; therefore the will, when bidding the intellect to consider something as existing in act and bidding the will to will it as existing in act, causes sadness as a single cause, as also intending this effect – and this not as proximate cause, because there cannot be a proximate single sufficient cause; but it causes sadness as a remote single cause, because it is cause of the proximate causes in regard to sadness, and cause of the applying of them.

⁶ Sc. the apprehension of it as not being there, or not being there as one wills it to be there.

55. Thus therefore is it plain how the first penalty, namely sadness [n.49], can be supremely voluntary and caused by the will, not only as by a partial cause (the way the will universally causes when causing what happens), but as by a total cause, namely by applying the proximate partial causes of this effect, and this in an order to causing such effect.

56. Then as to the argument that ‘every penalty is involuntary’ [n.44], it is true in itself, and this when comparing it to the will that is following love of advantage.

However, a penalty can be voluntary in the antecedent will, namely in the voluntary applying of the causes on which a penalty follows. It can also be voluntary with accepting will, and this with a will that follows love of justice, because it thus accepts whatever has an order to something that is to be justly willed *per se*; and this sadness can be toward something that is to be justly willed *per se*.

2. About the Name of the Aforesaid Penitence

a. About the Word ‘Penitence’ Equivocally Taken

57. About the second conclusion of this article [n.32], namely about the word ‘penitence’, I say that, just as in the case of the voluntary punishment [nn.49-55], it turns out there are many things to consider: First indeed, the will to punish, which is a commanding or efficacious will joining together the proximate causes of undergoing the punishment; second, the not willing to have sinned or to give displeasure, which is a proximate partial cause of the penalty, although the not willing not intend the penalty; and third, willing, that is, accepting, the undergoing of the punishment now inflicted; fourth, bearing the punishment patiently. And let these four be thus briefly expressed: to avenge what has been done; to detest what has been done; to accept the penalty inflicted; to bear patiently the penalty inflicted.

58. To these four correspond another four on the part of the term of the volition, wherein the material element is the same, namely ‘to punish’. And there are four superadded formal elements, namely what is willed by the will causing, what by the will detesting, what by the will accepting, what by the will patiently bearing.

59. Now it is plain that none of the aforesaid volitions is *per se* the same as the punishment undergone. And thus the name [sc. ‘penitence’], which *per se* signifies volition and connotes punishment, will not signify punishment univocally in connoting volition, and consequently, if any expression *per se* signify the punishment willed and the willing of the penalty, this will be done equivocally. Again, if it signify this fourfold volition, this will be done equivocally.

60. The same name, then, could be equivocally imposed on these eight elements.

b. About the Word ‘Penitence’ Taken Univocally or Properly

61. But putting the stress on the term ‘to be penitent’, since ‘to be penitent’ is ‘to hold a penalty’⁷ (according to the etymology of the word), and since ‘to hold a penalty’

⁷ In Latin ‘to repent’ is ‘poenitere’, which here is made to derive from ‘poenam tenere’, or ‘to hold a penalty’.

imports suffering with respect to the penalty (not just the suffering of it as it is present⁸), the thing signified by this term seems to consist in four primary things.

62. And so there is a fourfold description of what it is ‘to be penitent’:

First is this: ‘To be penitent is to avenge a sin committed by oneself’. And it is plain how there it is ‘holding a penalty’, because to apply a penalty to oneself is to hold it; and it can be so understood whether one apply or inflict the penalty in fact or in affection, because he who avenges no less avenges even when the penalty, because of the defect of some second cause, not follow, provided however he himself have equal intention to inflict the penalty.

The second description of what it is ‘to be penitent’ is ‘to detest or hate a sin committed by oneself’ or ‘to have displeasure about this sin committed by oneself’. And it is plain how there it is ‘holding a penalty’, because holding it in a partial proximate cause. And this is understood of the willing-against or detesting or having displeasure about this sin in its proper idea, or in general at the same time about any sin committed by oneself – and again whether of formal or virtual displeasure. And virtual displeasure is any act of the will virtually including that displeasure, the way a cause in some way includes its effect even though the effect in itself not be caused; thus since every willing-against arises from some willing, all displeasure or willing-against of sin, although it not be present formally, can yet be present virtually in one’s will, on which will such displeasure is of a nature to follow.

The third description: ‘to be penitent is to accept gladly a punishment inflicted for sin committed’. And it is plain how here it is ‘holding a penalty’, in just the way an object is held by an act of will; and this can be understood of accepting formally or virtually, namely in some acceptation in which it is included virtually, just as willing a thing for an end is included in willing the end.

The fourth description: ‘to be penitent is to suffer patiently the punishment inflicted on oneself for one’s sin’. And it is plain how here it is ‘holding a penalty’, because it is not to cast off by murmuring back; hence too it is similarly said in this sense to be ‘to sustain’⁹, as if to keep oneself under the action of the agent, or of the one doing the inflicting, by conforming oneself to it.

63. All voluntary punishment is contained under one or other of the four modes of penitence. But, for the deletion of any actual mortal sin committed after baptism, some voluntary punishment is required; so for the deletion of it is required penitence stated in one or other of the four modes.

D. Solution of the Question

64. From these results I argue briefly thus to the solution of the question: for the deletion of a mortal fault committed after baptism there is required voluntary punishment or a will for punishment; but neither of these can be without penitence; therefore etc. The proof of the first proposition is in the second article and at the beginning of this third article [nn.39-41]; the second is plain from the first part of this article [n.54].

⁸ Sc. not just suffering the pain of punishment, which the impenitent can do, but suffering the fact that it is a ‘penalty’, something one deserves for a sin one now detests, which only the penitent can do.

⁹ ‘Sustinere’, a word derived from ‘tenere’ (like ‘poenitere’) and from ‘sub’ or ‘under’; hence to sustain is to hold oneself under something.

65. And from this argument is it plain how the conclusion on which the solution to the question rests, namely that penitence is required for deletion of sin, should be understood etc. [n.40]; for it is only understood of actual penitence, that is, of an act of penitence, which is an actual ‘holding a penalty’ (so to speak); and the understanding is only about that act as indistinctly taken for any of the four descriptions stated before [nn.61-63]. But whether this act must be right or virtuous or not, or formed or not, is in the following question [nn.84-150].

66. The conclusion is also only understood of what is required simply necessarily (of which the opposite includes a contradiction), because God could remit sin without any act by him to whom he remits it. But neither is it necessarily required on the supposition of an act by the man to whom sin is remitted; for God could remit sin through some fervent act of love for God without any of the four previously stated acts in their proper idea – as in the case of an act of zeal for martyrdom that is at once to be undergone, where perhaps there would be no thought taken of any sin previously committed, nor consequently any aforesaid penitence; and this taken formally, though virtually in that motion there would be penitence in its second signification [sc. virtual, n.62].

67. And the proof of this is that no one is excluded from the Kingdom of Heaven who does what is simply necessary; but it is possible for someone who is in mortal sin up to instant *a* to be necessitated from instant *a* on to focus with his whole heart on acts distracting him for thinking of past sin, as his being at once exposed to the most straitened martyrdom.

68. And for this reason was it said in the conclusion that ‘[voluntary punishment] is as a rule required for deletion of sin’ [n.40], because that thing is said to happen ‘as a rule’ which happens according to rules determined by Divine Wisdom, of which this is one: that sin committed is not destroyed without displeasure at the sin committed. And this rule appears very reasonable, because just as sin turns one away from the end and toward creatures, so it is reasonable that it only be destroyed by an opposite motion turning one away from sin or from creatures (as being that which the sin was about) and toward God.

69. Now, to the part that is ‘to be displeased at sin committed’ [n.68] can be reduced the three other members of what it is to be penitent [sc. the second, third, and fourth descriptions in n.62].

70. But as to the special conditions about how an act of penitence is required for deletion of sin (whether as preceding or as concomitant disposition) – this will be plain in the following question [nn.130-132].

II. To the Initial Arguments

71. As to the first argument [n.4] the answer is plain from the first article [nn.29-30].

72. As to the second [n.5], the proof is only about God’s absolute power, and this was conceded in the second main article [n.39].

73. But if you argue that God can, of his ordained power, remit sin without a penalty, just as also can an irate man – I reply: the remission of sin is not by change of God’s will, because his will, both in itself and in the act of willing, both absolute and insofar as it focuses on the object, is uniform, and consequently, if God in eternity wills

someone to be punished for a certain time, he wills him always to be punished for that time, unless something in creatures changes. But it is not so with the will of an irate man, which changes as to act of willing and un-willing.

74. To the third [n.7], about the penitence of the damned, I say as before [n.42], that they do not truly repent, because neither do they ‘hold a penalty’, since it is not there voluntary but a murmuring back. And as to what is said about Judas [n.8], I reply that not just any act of being penitent suffices for deletion of sin (as will be plain from the following question [n.127]), but the act must be ordered, and ordered especially by the circumstance of the end, which is first among the circumstances of a moral act. And Judas was not penitent with that circumstance, or for love of God.

75. As to the last [n.9], it will in the following question [n.145] be plain in a way what act of being penitent is a disposition previous to deletion of sin, and what act is required formally in which sin is deleted. And this second act is as good as the sin is bad, because the malice of a sin consists in turning away from the end; therefore the good that brings one back consists in turning to the end; and thus the act of turning to the end as perfectly turns one to God as the act of sin turns one away. And just as in this second act there is not really a goodness intensively infinite, so there is not in the act of sin a malice intensively infinite. For malice is not greater than the good that it deprives; and only what is of a nature to be in the act deprives the act of good; but in the act, since it is something finite, only a finite good is of a nature to be present. There is precisely infinity, therefore, and malice in sin and goodness in the opposite act because of the infinity of the object from which sin turns away and to which a good act turns back. And this in the act is only a participated infinity, or rather an infinity in speech, because of the infinity real and simply in the object itself.

Question Two

Whether the Act of Penitence Required for Deletion of Mortal Sin is an Act of some Virtue

76. Whether the act of penitence required for deletion of mortal sin is an act of some virtue.

77. That it is not:

Because “we are not praised for passions,” *Ethics* 2.4.1105b31-32, and an act of the virtues is praiseworthy, from the same text [1106a1-2]. But to be penitent is a kind of passion, just as is also the punishment that it includes.

78. Again, an act of virtue is voluntary, because it is an act of choice, from *Ethics* 2.5.1106b36-1107a2; but penitence is involuntary, for nothing is a penalty save what is against one’s will; and then as before [n.77, cf. n.56].

79. Again, the virtues would have been present in the state of innocence, and they will remain in the fatherland, because nature will remain perfect and it would then have been perfect, whose these virtues are. But in the state of innocence there was no penitence, nor will there be in the fatherland, because neither will there be any evil there for which voluntary punishment may be due; therefore etc.

80. Again, if to be penitent were an act of virtue, it would not have been a virtue of anything other than the will (as is plain by induction); but it is not any ‘willing’, because it is in respect of evil, nor is it any un-willing save the un-willing that is ‘not

willing to have sinned'. But this is not an act of virtue because neither is it an act of choice, for choice does not regard what is impossible, and that the past had not been past is impossible even for God, from *Ethics* 6.2.1139b10-11: "From God is taken this alone, to make undone what has been done."

81. Again, it would be an act either of acquired or of infused virtue. Not in the first way because acquired virtue and its act can remain along with mortal sin, but an act of a virtue of penitence cannot, because it destroys mortal sin. Nor is it an act of infused virtue; this is plain by induction about faith, hope, and charity, and also by common proof, because infused virtue and its act have God immediately for object – not so this act, namely of being penitent [sc. which has sin for object, n.62]; therefore etc.

82. The opposite is plain from the Master in the text [Lombard, *Sent.* IV d.14 ch.1 n.2].

I. To the Question

83. In this question it is necessary first to see how 'to be penitent' could be an act of virtue, and this in any of the four ways that were set down in the preceding question in article three [n.62], and an act of what virtue; second to see whether any of these acts is required as an act of virtue. And therefore the treatment in both articles must be about all four indifferently, because one only gets from the preceding solution that any of them may suffice.

A. About 'To be Penitent' as an Act of Virtue

84. The first of these two articles has four parts, according to the four ideas of penitence touched on above about penitence [n.62].

1. According to the First Signification, which is 'To Avenge Sin'

85. According to the first signification [n.62], the first conclusion is this: to be penitent can be the mean of an act of virtue for this purpose [sc. to avenge a sin], because it can be an act conform to right reason or to rectitude.

86. The proof of this is that according to right reason any legislator avenges transgressions of law; hence the Philosopher in *Ethics* 10.11.1179b34-81b79b23, after the teaching about the vices and virtues, at once introduces positive law as avenger of vices and rewarder of virtues. But if the legislator avenges by right reason, his minister executes it by right reason, because rectitude in an act of a subordinate universally comes from its conformity with the agent it ministers to. Therefore, according to right reason someone can, as minister of the legislator, avenge sin committed against the law, and avenge it on him on whom he has received commission to take vengeance, for otherwise he would not be subordinate minister.

87. But each of us has received commission to be minister of God in enforcing his law on ourselves for sins committed, and 'to be penitent' in the first way states taking vengeance on oneself. For 'to hold', when a dative expressing for whom it is held is not

added, signifies that it is held for oneself (this is plain from common speech¹⁰). Therefore God, although he punish the sinner, is not said to be penitent, because he inflicts the penalty not on himself but on another. But ‘inflicting a penalty on oneself’ is called holding a penalty, that is, holding a penalty for oneself by applying it to oneself.

88. As to this conclusion, then, I do not say that ‘to be penitent’ in the first way is always an act of virtue, that is, elicited by virtue, but it is *of* virtue, that is, of a nature to be elicited by virtue or to generate virtue, because it is conform to right reason; and in this lies the goodness of a human moral act. But, as far as concerns the *per se* idea of moral goodness, it is accidental that it be generated by virtue or generate virtue, as was said in *Ord. III* d.9 n.12 [also d.33 nn.43-45].

89. The second conclusion is which virtue, according to the first signification of this word [n.62], this act of being penitent belongs to.

90. To solve this one needs to know that ‘to be penitent’ requires, according to this understanding, a distinct prior knowledge of that about which one is penitent. Here I say that the following things are disposed in order: (1) to command the coming together of the partial proximate causes of sadness; (2) and the conjunction of these partial causes that are the proximate effect of the command; (3) and there follows further the remote effect of this command, namely the sadness itself; (4) next contentment in the sadness can follow, which is an act of will having sadness for object; (5) and finally joy in the sadness, according to the saying of Augustine, “Let the sinner grieve over his sin and rejoice in his grief” [n.51].

91. The distinction between these is plain: the distinction, indeed, of the first one, namely the command, from the proximate cause of sadness, as of the principal and remote cause from the proximate and second cause; the distinction of the second one from the third, as of the cause from the effect and of the action from the passion; and the third one from the fourth, as of the object from the action; the fourth one from the fifth, as of the object from the passion that is desirous of this object.

92. I say, therefore, that nothing in all these five is *per se* ‘to avenge’ save the first of them, namely the imperative willing itself (the proof is that for an inferior and a superior avenger, or at least for anyone immediately avenging the same sin under the same idea and the same circumstances of avenging, there can be an act of avenging of the same idea). But to take vengeance on oneself and on another, according to right reason in both cases, cannot uniformly be any of these besides the first; therefore etc.

93. This could be proved *a posteriori*, because the actions pertaining to the second stage [n.90] can come from as many indeterminate causes as you like, but justly avenging cannot. But this, without arguing in a circle, will be shown immediately *a priori*.

94. Let it be sufficient, then, to say here that it is possible to find some act that is prior to the proximate causes of sadness and that brings them together, as was made clear in the last article of the preceding question [nn.53-54]; and consequently this act precedes the sadness, and thereby precedes the contentment and much more the joy in the sadness [n.90]. That possible first act I call ‘to avenge’ or to inflict a penalty for what has been committed, and as a result we have the distinct idea of what it is ‘to be penitent’ according to the first signification of the word.

¹⁰ For instance, to say ‘I hold it’ referring to some object one possesses, means in effect ‘I hold it for myself’. If, however, one is holding it for someone, as in safekeeping, one would say ‘I hold it for you’.

95. On this supposition, let this be the third conclusion [nn.85, 89]: ‘to be penitent’ is an act of a special virtue. The proof is that this act is of a nature to have a special object and specific circumstances, or circumstances ordered around an object, that come together in an act as the act is tending rightly to such object, namely the circumstances that are the end and manner and the like.

96. Further, in particular, let there be this conclusion: ‘to be penitent’ is not an act of any intellectual virtue.

97. The fact is immediately plain, because it is an act of appetite as appetite, for it is to command the intellect to consider and the will to detest (as was said in the preceding solution [nn.54-56, 64-69]). This commanding belongs only to appetite and will. For neither can any sensitive power give command to the intellect and to the will and join them together in their acts; nor can the intellect give command to itself and to the will, but the will alone can give command to itself and to the intellect, according to the remark of Augustine [*On the Trinity XI ch.9 n.16*], “it joins the parent with the offspring,” and this as concerns the intellect. And as concerns the will, the will gives command to itself.

98. This conclusion [n.96] is also plain as follows, that an intellectual virtue says ‘it is true or it is not true’ in matters of speculation or action. It also inclines to acting accordingly, namely to avenging, but not to giving command that one must so act. Avenging, therefore, is an act not of intellectual but of appetitive virtue.

99. Another conclusion follows, that to be penitent does not belong to an appetitive virtue putting things in order for itself, of which sort are temperance and fortitude; therefore to a virtue putting things in order for another, of which sort is justice. This argument holds on the supposition of the famous distinction between appetitive virtues, that all may be reduced to two genera [*Ethics*, 5.3.1129b31-33].

100. The proof of the antecedent is that someone can exercise the act of avenging according to right reason in the same way on another as on himself. Also, if he do exercise it on himself, he does not exercise it on himself save as on someone else, because he does not exercise it save insofar as taking vengeance on this guilty party is committed to him by the legislator.

101. But it is accidental that he to whom it is committed as to a minister of the judge is this guilty party himself, because he acts on the guilty party in the same way according to the right reason of a minister as if that party were altogether different in person. Therefore the virtue to which this act is of a nature to belong is contained under justice, to the extent that any virtue is called justice that regulates things for another, or as if for another. Nor is it an obstacle that he is, because of this, directed at himself in this act, because he is only directed at himself as at another, namely as a minister of the judge against someone guilty of breaking the law, authority over whom has been committed to him by the judge.

102. A further inquiry: for under justice is contained friendship, speaking of justice in general, because friendship is a virtue toward another, *Ethics* 8.1.1155a3-31 and 9.4.1166a1-33 – is this act of penitence, then, or punishing an act of friendship?

103. It seems that it is, because an act of reconciling with a friend is friendship, and such this act is.

104. Again, it is a mark of friendship to correct a friend so that he be worthy to be loved (with that excluded which is repugnant to an honest friendship). The avenging here is a correcting of a friend, so that he become worthily lovable; therefore etc. The proof of

the minor is that if he is only punished so that vengeance be exacted or the avenger be sated, it is cruelty; therefore avenging is according to right reason only so that he on whom vengeance is taken be corrected; but this is friendship; therefore etc.

105. There is a confirmation from the Philosopher in *Rhetoric* 1.10.1369b12-14, who says that reproof differs from punishment strictly taken in this, that reproof is for the sake of the one reproved, namely so that he be amended, but punishment is for the sake of the punisher, so that he be sated. But the second seems to belong altogether to cruelty, and this both in the minister and in the judge, for the minister ought to carry out the sentence for the same end as that for which the judge gave it, because the minister's end should be the end of the one moving him; and consequently what is of cruelty in one is of cruelty in the other.

106. I reply:¹¹ 'to avenge', even when it is an ordered act, is not an act of friendship toward him on whom vengeance is taken, because vengeance properly regards the penalty that, according to law, corresponds to the fault committed, even if reproof of the one punished not accompany it. Hence too is just vengeance sometimes done by extermination of the culprit, where it is plain it is not done by reproving him. Nor yet is it cruelty, as the second objection argues [n.104], because the proximate end of it is conservation of the law, and the further end is what the end of the law is. But the end of the positive law passed by man is not the legislator himself or his good, but the common good; therefore the law and its observance are for the sake of that end. And so vengeance insofar as it is for that end is more reasonable than if it were for the private good of a public person.

107. Now in the issue at hand it could similarly be said that the divine Law is for the common good of men, to whom also has been given punishment of anyone sinning against the Law, and this latter [sc. punishment] is for the sake of observance of the Law, and further for the sake of the common good of those to whom the Law has been given. But at last it is for the sake of the Legislator himself, and so is it here for this reason; and it is not so as to law passed by man, because the good of the Legislator in the former case is simply better than the good of the community, but not so in the latter case.

108. Now an act of friendship that commanded some punishment of a loved one as loved would precisely command it only for correction of the loved one; and though this might be the way of correcting him, yet if there were another way of more easily correcting him toward friendship as friendship, it would rather command the other way.

109. Hereby to the first objection [n.103] I say that, if someone be reconciled by penitence to God, yet God does not principally take vengeance on him to reconcile him to himself (calling 'reconciliation' his being brought back to the old friendship), but so that the one reconciled be held immune from the penalty due to sin, since the penalty has now been paid, which the avenger (because of its aforesaid correspondence with the fault committed) per se required to be paid according to law.

110. To the second objection [n.105] I say similarly that vengeance is not properly for the correction of the one punished, although that correction sometimes follow. But it is per se for setting the fault in order through the penalty, and so that the

¹¹ The arguments that follow, which reject this Aristotelian-derived idea of punishment as an act of friendship, seem more clever than decisive, and seem also to give to observance of the law qua observance a status more tidy than compelling. For the law would seem, like the Sabbath (*Mark* 2.27), to be for man and not man for the law, and fulfillment of the law is not observance but love (*Romans* 13.10). Let the arguments, however, be the judge.

punitive law against which transgression was made be observed. And when it is said that this belongs to cruelty, plainly it does not, because the further good is the common good; but it would be cruel if a stand were made in an end other than the common end, or than the ultimate end.

111. As to the confirmation from the *Rhetoric* [n.105] I say that he who corrects does it for the sake of the one reproved, but an avenger does so not *per se* for the sake of the one reproved or for the sake of himself, but for the sake of the law, and this further for the sake of the common good – and then for the sake of himself if he himself is the end of the law, as it is in the issue at hand.

112. There is this act of punitive justice, then, which is distinguished from commutative justice, and also from friendship. And perhaps this act is nobler than any act of justice in common (excepting the act of giving reward), for it is proper to the legislator and fits no one else, save by commission from the judge as to his deputy.

113. Now other acts (of exchange and of friendship and the like) can regularly belong to any person, but an act that is proper to a more excellent person is, *ceteris paribus*, more excellent. An act of rewarding, however, is more excellent still because, along with this excellence common to each (namely that the rewarding belongs to a prince alone), it has extremes that are each more noble, namely the merit for which it is done, and the reward that is conferred, and the deserving person on whom it is conferred – which excel the penalty, fault, and guilty person on whom the penalty is inflicted.

114. Another conclusion is this, that the act is an act of the will, whose job it is to give command to intellect and will, and this by a command belonging to the irascible power, or some power having in itself something similar to irascible virtue. For just as the irascible power in the sense faculty avenges in its own way, so the power that commands vengeance in the intellective part has something similar to the irascible power; but in the intellective part it now belongs only to the will.

115. From this there could be a doubt about the relation of this virtue to charity; for from the fact that by its own act it commands an act of charity, it seems to be superior to charity.

116. Yet the opposite is manifest, because the object *per se* of charity is God under his most noble objective idea, and the proper object of this virtue is a bad to be avenged or a culprit on whom vengeance should be taken.

117. From this is it plain that penitence not only is not a theological virtue, as was argued before [n.81], but that neither is it the simply most noble virtue among those virtues that concern a created object.

118. To the second objection [n.104], about the use of virtue, I say that the will can use itself circularly, as it were, according to diverse habits: from an act of love for God in himself, which is an act of charity, it can command an act of will of avenging sin, and conversely from an act commanding vengeance it can command an act of love for God in himself, on which there follows an un-willing or displeasure about some sin committed, and thus sadness about this sin. Therefore charity can use an act of penitence, and also an act of any virtue in the will or in the intellect. And penitence can use charity and any virtue, in the intellect and in the will, that can be the principle of a consideration or an un-willing of an object about which it wills to cause sadness.

119. I say, therefore, that the virtue to which, from its object, command more belongs is better simply than another virtue; but to charity, from its object, namely the

ultimate end, it belongs to use any other virtue rather than conversely, just as always in ordered arts and powers what has a higher end regularly uses inferior ones.

120. So does it appear about the first act of being penitent, or about the first signification of this word ‘to be penitent’ [n.62]: what it is – that it is an imperative willing; and of what it is the effect – that it is the effect of sadness; through what things as through what instruments – that it is through the proximate causes of sadness, namely actual knowledge and actual un-willing of some object; and about what object – that it is about sin committed; and by whom – that it is by a minister having from the legislator a commission for punishing; and for the sake of what end – that it is for the sake of observance of the law and further for the sake of the common good; and thereby that it can be the act of a special virtue – that it is of a certain special justice; and of what object – that it is of the will; and what comparison it has with the acquired and infused theological virtues.

2. According to the Remaining Three Significations, which are: To Detest Sin, to Accept Penalty Gladly, to Suffer Penalty Patiently

121. About the second signification of this word that ‘to be penitent’ is, about what of course it is to detest sin committed or to be displeased over sin committed – I say that this can be an act of virtue.

122. The proof is as before [n.85], that it can be an act of choice in agreement with right reason; for just as right reason dictates that one should be pleased with the honorable good, so it dictates that one should be displeased with the dishonorable bad.

123. From this is plain a second conclusion, namely of which virtue it can be the act, that it is not of some special virtue but of any virtue of appetite. For any virtue whatever inclines toward being pleased with the honorable good; any virtue also inclines to detesting the dishonorable bad (as chastity in respect of something disordered against chastity inclines to displeasure, humility in respect of an inordinate act of pride, and so on of the rest). However, whatever inclines toward such displeasure is an appetitive virtue, because nothing is a principle of hating or loving unless it is an appetitive virtue.

124. From this is plain that detestation of sin would be badly posited to be an act of penitence as virtue, speaking of penitence as virtue in the first way, as it is a species of justice [n.62]; because this act is much more general than what that could be which is an act proper to penitence-as-justice elicited by it.

125. About the third one, which is ‘to accept gladly a punishment inflicted for sin committed’, I say that this act can be an act of virtue because it is in agreement with right reason; and secondly I say it can be an act of many virtues, each of which however is an appetitive virtue; because whatever can be a principle of accepting some object, can be a principle of accepting another object in its order to it. And different objects can be accepted through diverse virtues, in an ordering to which a penalty inflicted for sin could be accepted; for if God is loved out of charity, a penalty can be accepted out of charity insofar as it leads back to divine friendship. But if God were, out of the virtue of hope, desired as a good for me, a penalty would, out of the virtue of hope, be accepted as ordering me to this attainable reward. If the loss of eternal life is, out of the virtue of fear, guarded against, a penalty can, out of this fear, be accepted as excluding the loss. If one

loves purity and innocence for oneself out of honorable love for oneself, one can accept, out of that love, the penalty that pays the guilt that was present.

126. About the fourth one, namely to bear patiently a penalty inflicted, it is plain that it can be an act of virtue, and of a special virtue, because of an act of patience.

B. Whether Being Penitent as an Act of Virtue is Required for Deletion of Sin

127. About the second main point [n.83], namely whether ‘to be penitent’, as an act of virtue, is required for deletion of sin, I say not as an act of one determinate virtue; and, second, not as an act of any virtue, of this or that sort indifferently; and third, if as an act with the circumstances present simply perfectly, is it sufficient as formed or as unformed?

1. For Deletion of Sin ‘To be Penitent’ is not Required as an Act of any Determinate Virtue

128. The first is plain from what was said, that ‘to be penitent’ suffices according to any of the four significations stated before – as is proved by the authority of *Ezekiel* 18.21-22, “In the hour the sinner laments, he will be saved” [in *Gratian Decretum* p.1 d.50 ch.14, *Lombard Sent.* d.17 ch.1 n.4, from *Caesarius of Arles, sermon 70* n.2: “In the day the sinner will be converted, all his iniquities will be given over to oblivion”]. The first act and two others do not necessarily belong to the same determinate virtue, but the first to justice, the last to patience, the two in the middle to any appetitive virtue.

2. For the Deletion of Sin an Act as it is First Generative of Virtue can Suffice

129. I prove the second [n.127], that an act equally perfect as to all moral circumstances is equally accepted by God for deletion of sin; but it is possible for an act equally perfect as to all circumstances to be had without generated virtue, just as it is possible for it to be had now with generated virtue. For there can be, in accord with a perfect dictate of intellect about any doable thing, a perfect choice, conditioned by all the circumstances, that is first generative of the virtue; and consequently, a right act perfectly circumstanced (which is required for deletion of sin), does not have to be an act of virtue as coming from a virtue now inwardly present, but it can come from an act of virtue as this act is first generative of the virtue.

3. Whether for Deletion of Sin is Required a Human Act that is Unformed or Formed

130. About the third [n.127] I say that the requirement of some human act for deletion of sin can be understood in two ways: either as a disposition preceding it or as one concomitant with it.

131. In the first way an unformed act is sufficient; indeed it is always unformed, because a disposition previous to deletion of sin is always without the grace and charity by whose inherence and inclination to act alone is an act said to be formed.

132. In the second way [n.130] I say that a formed act is required, because in the instant in which sin is deleted charity is present, and consequently, if an act as concomitant is required, a formed act is required.

133. To understand this one must note that when a sinner is in a state of sin (in the way stated in the preceding question, the first article, that sin remains after the act [nn.28-34]), he is able, using his natural powers with their common influence, to reflect on the sin committed as it is offensive to God, and contrary to the Divine Law, and turning away from God, and impeding reward, and inducing punishment, and under many such ideas. The will too can, under any of these ideas, detest the sin thus considered, and its motion can be continued and intensified before infusion of grace.

134. This detesting can also be conditioned fully with its due moral circumstances. For it is not likely to be necessary that any act concerning the committed sin be, because of the remaining sin within, defective in any moral circumstance. The whole movement here is called attrition, and it is a disposition, or a merit by congruity,¹² for the deletion of mortal sin, which deletion follows at the last moment of the time during which the attrition endured.

135. And it is not certain whether God wanted such attrition, if it not be perfectly morally conditioned, to be a disposition for justification. At any rate, if there is some circumstance not conditioned in proper order, such attrition is not a disposition for justice, because it is actually then offensive. But if it is lacking some due circumstance only because of inconsideration or omission by the will as to that circumstance, then there is doubt whether it be a sufficient disposition for justice.

136. However, if the attrition has all the circumstances in the class of morals perfectly, the disposition does seem to be an altogether sufficient disposition for acquiring justice at the term of the attrition – at the term, I say, which God has prefixed should be the term of the motion of the attrition that he wants to be continued up to that point. For either one must say that a sinner is justified without any disposition on his part that is sufficient by congruity (and it is consequently difficult to save the fact that there is with God no acceptance of persons, as was said in *Ord. II d.7 n.47ff. [Rep IVA d.7 qq.13]*).¹³ Or that there can be no disposition more sufficient for this justification than this attrition perfectly circumscribed in the class of morals, and that then in the final instant (or in some instant up to which God has determined the attrition should last so as to be a merit by congruity for justification), grace is infused and sin is then simply destroyed.

137. And if the movement against sin remain the same in being of nature and of morals as it was before, the same motion that was attrition before becomes, in that instant, contrition as well, because in that instant it becomes concomitant with grace and so is a formed act, because it has charity along with it, which is the form of the act as we are here speaking of it.

¹² Merit by congruity is not a merit that deserves deletion of sin (the only such merit is Christ's, not the sinner's). It is the congruity that if the sinner does what he can (namely to be sad with natural sadness for sin committed), then God does what he can (namely forgive sin and infuse supernatural grace).

¹³ If there is no disposition at all on the part of a sinner for which God, by congruity, gives charity and deletes sin, then that sinner receives charity and that other does not bears no relation to any difference in the sinner but is arbitrary on God's part, so that God engages in acceptance of persons, choosing this one and not that one regardless of presence or absence of disposition.

138. One must, however, distinguish moments¹⁴ of nature there: between the act as it is the sort of thing it is in being of nature and of morals, and between charity, and between the act as it is formed – because in the first moment of nature an act of the above sort is there; in the second there is charity; in the third an act formed by a charity now inclining inherently from within. And in this way does attrition become contrition without any real change in the act itself.

139. To the contrary: therefore guilt is not destroyed by contrition, because there is only contrition in the third moment of nature, and guilt is destroyed in the second moment; nor even is it destroyed by this contrition as by merit, because it follows the deletion.

140. One can say, therefore, that God disposes to give, through attrition over time (as through a merit by congruity), at some instant grace; and he justifies for that attrition, as for a merit, in the way it is the merit of justification. And although the act concerning the sin not be continued the same as before in genus of nature and morals, yet in that instant grace would be infused, because now sufficient merit by congruity has preceded. For let it be that in the final instant the intellect and will cease from the act just done by turning themselves to some other inappropriate act, why will he not be justified in that final instant as someone else will be who in that instant has the act he had before? For he who has the act in that last instant is not justified in that last instant by that sort of act, but by the act as it has gone before in time, and in this way did the former have that act.

141. And one would, according to this, say that it is not necessary for deletion of sin that some act of penitence is concomitant, neither formed nor not formed, but only that an unformed act of penitence precedes in time up to that instant.

142. But what if in that or some other moment he put an obstacle in the way? For just as he can have an inappropriate act then, so can he have an opposite one.

143. One would say that he cannot put an obstacle in the way, because he has already merited that in that instant grace be given to him.

144. But this is nothing, for although one could not put an obstacle in they way in the instant of being rewarded after merit by congruity, namely one cannot demerit in the instant of death (for then impeccability must be rendered for his merit), yet he who has merited by congruity can put an obstacle in the way in the instant in which he would receive the term of merit if there were no obstacle; and just as in the term of merit by congruity he is able not to have that which he did not merit (because he puts an obstacle in the way), so it is likely that unless he continue in that instant an act in the class of morals of like sort, he will not have that for which such an act by congruity meritoriously disposes him.

145. And therefore the first way [n.138] seems more reasonable, namely that by an unformed act of penitence but one that is fully or half fully circumstanced in the class of morals, sin is deleted as by preceding disposition and merit by congruity. And by an act of penitence that is formed and is called 'contrition' sin is deleted as by concomitant act [nn.130-132].

146. And when it is argued that contrition as contrition follows deletion of sin [n.139], I reply: the act that is contrition is, in the same instant of time, prior in nature to the deletion, even though as contrition, that is, as formed, it follow the deletion of sin in

¹⁴ Strictly 'signs', but these signs are as it were distinct moments of understanding, succeeding each other progressively not in time but in completeness of analysis.

order of nature. And thus should it be conceded, in the sense of division, that by the act that is contrition sin is destroyed as by an altogether proximate disposition; nor is it unacceptable, rather is it acceptable, that the proximate disposition exist at the same time as the form for which it is the disposition.

147. If a question be asked about the four acts above stated [nn.62; 57, 120-126], by comparing them with each other as to which is simply a disposition more fitting for deletion of sin – I reply: the more an act is elicited from more virtues and from virtues more perfect, the more is that act better; therefore if the first act be elicited by justice alone, mediately or immediately, and if the second act and the third be elicited by a more perfect virtue, that is, by charity, it is plain that the second or third is more excellent than the first. The same way of understanding must be taken about the fourth; for it is simply most imperfect, both because it has less of the idea of the voluntary and because it is from a less perfect virtue [sc. patience].

148. But if justice, when commanding an act in the first way, be moved to give its command by an act of charity, as is above said to be possible [n.120], then the first act has a double goodness: both from the justice proximately commanding the act and from the charity remotely commanding the act. Similarly, if justice in the first way command the use of charity as proximate cause with respect to sadness, the act of charity is thereby more perfect (because coming from two virtues) than if it come from one alone.

149. But if it be asked which of these acts is more efficacious with respect to the inhering of sadness, I reply: the last two presuppose a sadness already inherent. And the other two can be mutually excellent in inducing sadness. For sometimes, from love or contemplation of God, there is at once present a certain detestation of sin, and there follows a very strong sadness when still no act of justice with respect to sadness is in place. And sometimes the first act of justice is present and intense in itself, and yet the proximate causes (namely the intellect in considering and the will in detesting) are not efficaciously moved by command of justice, perhaps because they lack the habits that would be the principles of perfection in their acts. And although these are sometimes moved, sadness does not follow, because, although this could be for many causes, it is sometimes for this cause, that just as the intellect is conformed in us to the sense part, so too the intellective appetite, as far as concerns being easily delighted or saddened, is conformed to the sense appetite. Therefore, his will is not easily saddened whose sense appetite is not of a nature to be saddened or grieved.

150. And from this follows that there is someone who has a very great act of penitence in the first way and yet no or little effect; and some others, without any act of penitence in the first way, have an effect very great, an effect of the same idea as that which is of a nature to be the effect of penitence. And the fact that the effect is greater or lesser is indeed an excellence in the order of deletion of sin. But greater simply is the excellence of act over act, on which acts follows the sadness on this side and on that, because the act causative of sadness destroys sin meritoriously more than does the sadness itself.

II. To the Initial Arguments

151. To the first initial argument [n.77] I say that although sadness is a passion, yet to command it is an act; and, as was said before [nn.52-53], to be sad is not an act of

the virtue of penitence, however one takes penitence; but sadness is the remote effect of the virtue of penitence taken in the first way, and it is the proximate effect of the cause immediate to that very sadness.

152. As to the second [n.78], it was said in the preceding question how a penalty can be voluntary according to the affection of justice [n.56]; and let it be that the penalty were involuntary, it does not follow that the act elicited by the will not be voluntary.

153. As to the third [n.79], a twofold response can be made:

In one way that [penitence comes] from the fact virtue in us supplies for a natural deficiency in us; hence some do not posit moral virtues in the angels, and [moral virtues] in the state of innocence would not have been such in nature as they are now; nor would there then have been need to have all the virtues that there is need of now. And this holds especially of the virtues that do not have good for object but bad, as penitence does, because in the state of innocence that bad would not have existed, just as neither would there have been patience then, nor matter for patience.

154. It can be said alternatively that penitence is a habit inclining to avenging easily a guilty party; and that this party is oneself is the material for it, because the formal idea of the virtue would be the same if it were committed to oneself to take vengeance on some other guilty party. And the blessed and innocent can have a habit for promptly taking vengeance on another guilty party; therefore on themselves too, provided however a fault were present. And thus can it be conceded that in the state of innocence and in beatitude penitence would remain a justice-virtue; and no wonder since in God there remains vindictive justice, although not against himself, because he cannot be guilty.

155. To the final one [n.81, the fifth]¹⁵ I say that penitence is not a theological virtue, but concerns a created object.

156. And when argument is made that it cannot be unformed, I deny it; indeed, from many acts of justly avenging oneself as culprit, a habit can be acquired that may abide with mortal sin; and it could be acquired before deletion of mortal sin, save perhaps that the Lord justifies before sufficient acts could be obtained for generating penitence.

157. And when proof is given first that it destroys sin, so it does not stand along with sin, I reply that a virtue does not destroy sin, even meritoriously, but the act does that is of a nature to be an act of the virtue, whether it be elicited by the virtue or not but is generative of it; and along with this act can [sin] very well stand, indeed it necessarily does so, since the act is unformed; and consequently the habit of it, if it is present, will be unformed.

158. And if argument to the contrary is made through authorities, one of which is Augustine *On Patience* ch.23 n.20, “without charity in us there cannot be true penitence,”¹⁶ and another of which is [Ps.]-Augustine *On True and False Penitence* ch.17 n.33, “Since fruitful penitence is a work of God, he can inspire it whenever his mercy wishes,” and in the same place [ch.9 n.24], he considers it unacceptable that someone obtain pardon without the love of God, and unacceptable in the same way that true

¹⁵ No response is given by Scotus to the fourth argument [n.80], but a response can be constructed from what he says in answer to the question of what remains after an act of sin to stain the sinner. For he says there that such a stain can be the object of a choice, because it can be removed by an act of penitence that is chosen [nn.34-43].

¹⁶ Augustine’s text reads ‘patience’ for ‘penitence’, but ‘penitence’ is given in the citation of it by Gratian, *Decretum* p.2 cause 33 q.3, and Lombard, *Sent.* d.15 ch.7 n.1.

penitence exist without love of God¹⁷ – all these authorities have a single response, that penitence, whether the act or the virtue, is not a true virtue as to attaining the end of penitence without charity. And this is what the second authority says about fruitful penitence. For penitence can, absolutely, arise from man's natural faculties, but fruitful penitence cannot, that is, penitence bearing fruit; indeed, as fruitful, it exists in the final instant. But the third authority, that without love no one obtains God's pardon – 'pardon' there can be taken not only for mercy but for the end of penitence; and thus do we commonly say that pardon is acquired through penitence, and the pardon is when someone is through grace accepted for God's mercy or friendship.

Question Three

Whether Penitence as Virtue is Inflictive of a Single Penalty Only

159. Whether penitence as virtue is inflictive of only a single penalty:

160. That it is:

It inflicts a penalty as the penalty is a putting of the fault in order; but of one fault there is one penal putting in order, as there is one ordering of one disorder; therefore etc.

161. Again, penitence is a sort of justice, as said in the preceding question [n.112]; but justice returns equal for equal; but to one fault there can be only one equal penalty corresponding to it; therefore etc.

162. Again, of one virtue there is one act and one object; therefore of penitence, which is one virtue, there is one act, namely to inflict penalty, and one object, namely the penalty inflicted.

163. On the contrary:

Joel 2.13, "Rend your garments etc.," *James* 5.16, "Confess your sins to one another;" *Matthew* 3.8 [*Luke*, 3.8], "Bring forth fruits worthy of penitence."

164. From these the argument goes as follows, according to [Ps.]-Augustine, *On True and False Penitence*, ch.9 n.23, "True penitence for baptism strives to bring back innocence;" but it is not brought back save through those three things [n.163].

165. Or better as follows: penitence is punitive justice according to Divine Law; but according to Divine Law it is necessary to inflict several penalties, as is proved by the authorities [n.163]; therefore etc.

166. Again, [Ps.]-Augustine, *On True and False Penitence*, chs.14-15, nn.29-31 (and it is put in Lombard's text d.16 [ch.2 nn.1-6, as taken from Gratian, *Decretum* p.2 cause 33 q.3, d.5 ch.1]) – an extended authority about very many things that are required in a true penitent; and there is added: "these are the fruits of penitence;" therefore etc.

I. To the Question

167. It is said here that to every virtue in the appetite there corresponds a rule in the intellect, either different rules for different virtues or one rule for several virtues (about this in *Ord. III* d.36 nn.43-59, 72, 92, 95-100 [the opinions of Henry of Ghent and Scotus respectively]); penitence, according as it is a virtue and a certain particular justice

¹⁷ Ps.-Augustine *ibid.* "For true penitence makes an effort to lead the penitent to the purity of baptism... Let him know that he remains hard in guilt who laments the ravages of time or the death of a friend, and does not with tears show grief for sin."

(from the solution in the preceding question [nn.85-88, 112]), has a proper act of ‘being penitent’ in the first of the four significations set down before [nn.57, 62, 120]; therefore one must look in the intellect for a rule of the virtue, and according to that rule does an act of choice follow inflictive of one penalty or of several.

168. Now one particular rule of it is said to be naturally knowable, namely that one ought to be displeased at sin (and this would be known to an angelic intellect if an angel had been a wayfarer after commission of sin and could, consequently, have had something in his will correspondingly inclining him to this rule as regard act of avenging or displeasure). And this penitence, as also its rule, could be unformed at every stage because, if knowledge natural and fitting to human nature did not fail, it could reach knowledge of this rule at any stage and could, as a result, equally have in the will something inclining it proportionally to this rule.

169. In another way, the rule regarding detestation of sin is only known from Revelation, namely that sin is to be detested insofar as it is offensive to God or turns away from God or impedes acquisition of beatitude or insofar as it leads to final misery. And under these ideas there corresponds in the will some rule of justice, a different justice even as its rule is different.

170. To the issue at hand:

Penitence in the first way [n.168] is inflictive of only one penalty, just as its rule shows that only one penalty is to be inflicted, namely the displeasure on which sadness follows, which is a penalty single and first.

171. The second penitence [n.169] is inflictive of anything which its rule dictates, and its rule, namely the knowledge had from divine Scripture, dictates several penalties to be inflicted, which the Author of this law, whose minister the penitent is, wanted to be inflicted for purpose that he be sufficiently placated; and of such sort of penalties there are many, as is gathered from Scripture [nn163-166].

172. I say therefore to the question that penitence in the first way, as having a rule naturally known, is inflictive only of one penalty, and thereby of the sadness that is consequent to it; but penitence in the second way, namely as having a rule received from Sacred Scripture, is inflictive of several penalties, namely as many as the Legislator has in the same place revealed he wills sufficient for total expiation of guilt.

173. But an objection is made [Aquinas, *Sent.* IV d.14 q.1 a.2, ST *IIIa* q.85 a.5], that penitence in the second way is not an acquired virtue, because that for whose generation something supernatural is required is not an acquired virtue; but penitence in the second way is of this sort because the knowledge that is its rule is not natural, since it is only to be had from Revelation; therefore etc.

174. I reply: in all ordered teachings, both speculative and practical, and both of action and of making, the higher knows something in a way in which it cannot be known to the lower. The fact is plain from *Metaphysics* 1.1.980b29-982a3 and *Ethics* 1.1.1094a1-1906a13, and from manifest examples; because in speculative teaching the higher knows the ‘reason because of which’ where the lower knows only the ‘fact that’; and in practical teachings of action the higher intends the higher end and knows it in its proper idea; and the lower does not but only its own end; likewise in the case of the arts, when speaking of the subordinate arts, *Ethics* 1.5.1097a15-30.

175. As to the issue at hand, we cannot know naturally the supreme speculative truths but only from Revelation, as that ‘God is triune’ and all the truths universally that are immediate about God, as is plain in *Ord. prol. nn.60-65, I d.42 n.9.*

176. Similarly with practical truths, we cannot know that God in his proper idea is the end of the intellectual creature except by Revelation.

177. Similarly, if an art so excellent could be found, whose proper end would not be naturally knowable, there would be need to have knowledge of its end through Revelation.

178. Now among the virtues some that are possible for human nature can be ordered to an end under a higher idea than the knowledge of this state of life extend to: as that all things are to be abandoned for Christ’s sake, obedience in all licit things is to be for Christ, and the like. Therefore in such things there is need for directive rules known by Revelation, and such are universally all the rules of the Evangelical virtues (as poverty, chastity, and the like), because the principles or practical conclusions on which, as on their rules, these virtues rest cannot be known naturally.

179. Nor for this reason are these virtues lesser; rather are they more excellent: first because these truths are truths the more excellent the more the natural light of the wayfarer does not attain to them, and second because these truths are more certain than many other truths that the natural light of the wayfarer does attain to, because they are true with the Truth that “cannot deceive nor be deceived” [Augustine, *On the Psalms* ps.123 n.2]. Hence, to him who has faith that God has inspired the whole of Sacred Scripture and that he is Truth infallible – to him must whatever has been revealed by God in Scripture be more certain than what any intellect can by natural light attain to.

180. Nor from the fact that the rule of this virtue is only known from Revelation, or faith, does it follow that this appetitive virtue is not a moral virtue; because, according to the Philosopher *Ethics* 2.1.1103a17, 25-26, a virtue is called moral from the fact that it is generable by habit or custom. And by any knowledge at all, whether had by natural light or by faith, is the appetite able to incline frequently in accord with it and generate in itself, from the frequent action, a habit that thus inclines, which will be a habit of choice, because it is appetitive and according to right reason, though not according to natural right reason but another one more right.

181. And in this way are poverty and humility and chastity and the like moral virtues, because they are, in accord with perfect and right reason (though not purely natural right reason), generated by habit, that is, by being thus frequently elicited. Thus, on the supposition of this rule known from the Gospel ‘Do penance’ [Matthew 4.17], the will is able, by frequently eliciting an act conformed to this rule, to generate in itself a habit inclining to similar acts; and it will truly be a virtue, because consonant with right reason (indeed with the most right reason), and yet a moral virtue, because generated from habit and custom.

182. Against these points doubt arises: first, how it can be known by natural reason that some sin¹⁸ falls under the idea of sin in human acts; second, how it can be known that sin is offensive to God; third, how it can be known that sin turns away from God; fourth, how it can be known that sin is dispositive as demerit preventive of eternal beatitude; fifth, how it can be known that sin is dispositive as demerit for final penalty.

¹⁸ Sc. some sin, say, against the Evangelical virtues [n.178]. For how can such a sin be known to be a sin in *human* acts (as opposed to acts transcending human acts) if it is not known to be so by natural reason?

All these doubts rest on this, that ‘none of these things seems to be knowable by natural reason’.

183. I reply: whatever be the way it is naturally knowable that sin is to be detested and punished, it is possible to obtain from that same reason a rule of penitence in the first way stated, namely as naturally knowable [n.168]; but if as supernaturally knowable, then it has for rule penitence in the second way stated [n.169].

II. To the Initial Arguments

184. To the first argument [n.160] it can be said that a penalty putting guilt per se in order can be one penalty for one fault; but when putting it in order for a second whom the fault offends, the penalty is multiple according to the will of him in relation to whom the penalty does the ordering. The fact is plain in human actions, where a penalty making satisfaction to someone offended is as great and as multiple as suffices the one offended for amends. But penitence, as a penalty subordinate to the justice of the judge, is a virtue that inflicts penalty corresponding to the will of the one offended; and it is multiple, speaking of penitence in the second way [n.169], as is plain from Scripture [n.163] where the justice of the Chief Judge in avenging fault is expressed.

185. To the second [n.161] the answer is plain from the same point, that what is equal as to the nature of the thing can be given back and yet it would not punish sufficiently, because the punishing here regards someone else, in relation to whose acceptance the punishment is done.

186. And if you argue that it is cruel if a punishment in itself sufficient is not sufficient for him – look for the response.^a

a. [Interpolated text] It can be said that all the penalties are equivalent to one perfect punishment; for attrition is often insufficient; therefore something else is required, as was said [nn.171-172].

187. As to the third [n.162] the answer is plain in the same place, in the preceding solution [nn.118], that to command is an act of penitence as virtue – and this to give command to what is, as it were, next to it about acts causative of penalty [n.90], which acts are consideration in respect of sadness and willing-against of some object. But the subsequent sadness is a remote effect, and it can well be multiplied while the act of penitence as virtue continues single; and someone can, through one act of avenging or commanding of punishment, command all the punishments corresponding in justice to this fault.

Question Four

Whether Guilt is Deleted by the Sacrament of Penitence

188. Fourth I ask whether guilt is deleted by the sacrament of penitence.

189. It seems that it is not:

Because in *Psalm 31.5* is said, “I have spoken, I will confess my injustice to the Lord.” Cassiodorus, *Exposition of the Psalms*, 31.5, says there, “The great piety of God is that he dismisses sin for promise alone; for the wish is judged enough for the deed.” And Augustine on the same place, *Narratives on the Psalms*, Ps.31 nar. 2 n.15, “He does not

yet pronounce [his confession], but he promises that he will pronounce it, and God dismisses [his sin]” [But without pronunciation [of confession] penitence is not a sacrament. [Citations taken from Lombard’s text, *Sent. IV* d.17 ch.1, and Gratian, *Decretum* p.2 cause 33 q.3.]

190. Again, Augustine, *Sermon 67* ch.1 n.1, on *John 11.43-44*, about the resuscitation of Lazarus: “No one can confess unless raised up.” And he proves it in three ways [*Narrations on the Psalms*, psalm 87 n.10-11]: first from the raising of Lazarus, who is raised before led out of the tomb; second by *Ecclesiastes 17*, “From among the dead,” as from him who is not, “confession perishes;” the third by *Psalm*, “Will the cured rise and confess to you?”

191. Again, if sin is dismissed by the sacrament of penitence then, since the priest ministers the sacrament, the priest would dismiss sin. The consequent is false, from Jerome *On Matthew III*, 16.19, “I will give you the keys of the Kingdom etc.;” he says, “Some, not understanding this place, take something from the pride of the Pharisees, so as to think the innocent are condemning or the guilty paying [sc. some priests in the confessional think they, as innocent, are judging the guilty penitent, and imposing payment], although with the Lord not the judgment of the priests but the life of the condemned is what is asked for.” And the proof of this he points to when he adds, “In *Leviticus* [14.2] the leprous were bidden to show themselves to the priests; and the priests do not make them leprous or clean but discriminate those who are clean and those who are unclean.” So also here [in the sacrament of penitence. – Texts taken from Lombard, *Sent. IV* d.18 ch.6 n.2.]

192. *Matthew 16.19*, “Whatever you bind on earth will be bound in heaven.”

193. Again, *John 20.23*, “Whose sins you remit, they are remitted.”

I. To the Question

194. Here three things need to be seen: first, the idea of this name ‘sacrament of penitence’; second, that there is something contained under this name; third, the solution of the question.

A. About the Idea of the Name ‘Sacrament of Penitence’

195. About the first point [n.194] I set down this idea of the name: ‘Penitence is the absolution of a penitent man, carried out in certain words, with due intention, pronounced by a priest, who possesses jurisdiction from divine institution, signifying the absolution of the soul from sin’.

B. Something is Contained under the Idea of the Aforesaid Name

196. As to the second point [n.194], I show, first, that it is possible for something to be contained under this idea of the name; second, that it is fitting for something to be contained under it; and third, that something is contained under it.

1. It is Possible for Something to be Contained under the Idea of the Name

197. The first is shown by this, that it is possible for God to absolve from sin, according to the article in the *Apostles' Creed* 'remission of sins'. And consequently it is possible to institute some sign for the absolution, and this an efficacious sign, the way 'efficacious' was expounded before in the material about the sacraments in general [*Ord. IV d.2 nn.14, 27-32*]; and, by parity of reason, to institute whatever words, and pronounced by whatever minister; and then the total possibility of the name is clear.

2. It is Fitting for Something to be Contained under the Idea of the Name

198. The proof of the fittingness [n.196] as to the individual particulars is:

First, that it is fitting for something to be a sensible sign of this absolution from sin, for the same reasons as those for which the fittingness of a sacrament in general was spoken of, in *Ord. IV d.1 nn.225-234*.

199. And for the same reasons is it fitting that the sign is a sign instituted by God, because this will move and lead the intellect more to certitude, and incline the affection more to promptitude in taking up the sign.

200. It is fitting too that, in the issue at hand, the sign of interior absolution is instituted in words signifying absolution, the way a sign represents the thing signified. This then is what is meant in the idea that penitence is an 'absolution' [n.195], that is, a certain definitive sentence absolving the guilty party. But it is not a sentence of the Principal Judge, but of a secondary judge or commissary; for someone can take cognizance of a cause by commission, and so by commission pronounce sentence either for condemnation of the guilty party (if he is unworthy) or for his absolution (if he is worthy).

201. It is also fitting that this exterior absolution be done by a priest, because it is fitting to bring extremes through the middle back to the extreme;¹⁹ and so, in the ecclesiastical hierarchy, the extremes, namely sinners, are brought to God through the hierarch, that is, the priest, as is in the Church triumphant.

202. It is fitting too that it be done by one having jurisdiction, because a sentence not passed by the judge of it is null.

203. From this follows a corollary, that the doctrine about the sacrament of penitence is like or sub-alternate to the doctrine about judgments and also to the doctrine about sentences. For to the extent there is in the Church a double forum, to that extent there is a double judgment; and as concerns rules of justice, there must be acceptability on this side and that, just as each definition on this side and that is an act of justice. And to that extent can the sacrament of penitence be called a judicial sacrament or a sacramental judgment, and from this that the sacramental one is firmer and more irrevocable than the other public judgment.

204. Hence appears the reason why it is not necessary that here the words in this sacrament are as precise as in baptism or the Eucharist, because it is enough that the act of the absolving sentence be expressed, just as also in a public judgment it is not necessary that the words are limited; for one judge says about the Martyr Theodore "I command you to be committed to the flames;" another says of St. Cyprian, "It pleases us to turn attention to the sword" [*Acts of the Martyrs*, Augustine, *Sermon 309 ch.4 n.6*].

¹⁹ Sc. the extremes are sinners on the one side, alienated from God, the extreme on the other side, to whom the sinners, through the middle of the priest, are brought back.

However commonly the words “I absolve you” are appropriate, whatever other words precede or follow, according to diverse custom in diverse Churches.

205. It is fitting too that due intention be required, as was expounded above in the other sacraments [*Ord. IV* d.6 nn.102-112, d.7 n.7, d.13 n.185].

206. It is fitting too that, on the part of the recipient, he be penitent, that is, have some disposition about the sin committed; for this we see also in secular judges, that they condemn the impudent in their sentencing, but the penitent they in their own way absolve, that is, they pass sentence or judge as if about someone not guilty or not to be punished.

3. Something is Really Contained under the Idea of the Name

207. Third [n.196], I say that this has been done.

208. The foundation for this is taken from the authorities adduced for the opposite [nn.192-193].

209. And that it can be dispensed by a priest only is had from Gregory IX, *Decretals*, I tit.1 ch.1.

210. And from this follows a corollary, that nothing pertaining to the sacrament of penitence can be dispensed by a layman, just as neither can the confection of the Eucharist; and therefore confession (which is preparatory to the sacrament of penitence, as will be said later [d.16 n.26]), when made to a layman, has no value by virtue of the work worked.

212. And further, it is doubtful but that this be to the detriment of salvation, because this revelation [sc. to a layman] cannot be confessional.

C. Solution of the Question

213. As to the third article [n.194], the opinion of the Master [*Sent. IV* d.18 ch.6 n.3] seems to be: “In pardoning and retaining guilt,” he says, “the Gospel priest works and judges as the priest of the law [of Moses] did in the case of those who were infected with leprosy, which signifies sin.” And he proves it from the remark of Jerome, which is there adduced [n.191].

214. But this seems to take too much from the sacrament of penitence. For, according thereto, sin would never be deleted by the sacrament of penitence but it would have to be deleted by confession first so that the sacrament of penitence might be worthily received, because no one is shown to be clean of sin unless he is free from it first. And a further unacceptable result would follow, that never could the sacrament of penitence be a second plank [n.13], because the one shipwrecked would never be free from danger of sinking.

215. Therefore is it said that thus does God require a disposition by congruity, so that he may confer grace on the sinner – and this such that he not bind his power to the sacraments, but that it may, without the preparatory and fitting disposition that would suffice, confer grace through the sacrament. And this is a mark of greater mercy, namely to institute a double way by which the sinner may be justified, than to restrict it to one way. Just as therefore an adult can have the first grace, which destroys original sin, in a double way, namely from a good movement disposing him for grace by congruity, or from receiving baptism, so also in the issue at hand.

216. This is made clear as follows: that for the first reception of grace [sc. in baptism] there is required in adults some motion meritorious by congruity [sc. being a catechumen]; but for the second [sc. in penitence] there is required only a [sc. preceding] reception of baptism, voluntary and without pretense, and with the intention of receiving what the Church confers, and without will or act of mortal sin; so that in the first way there is required some intrinsic work that is somehow accepted as meritorious by congruity; in the second way there is only required an extrinsic work, with removal of exterior impediment.

217. Not only, then, does someone exercising attrition for some time up to a certain instant receive, in the final instant, the grace that destroys sin committed (as if by virtue of merit by congruity, as was made clear in the preceding solution [nn.134-138]), but he who does not have such an act as may suffice for merit by congruity, but has only the will of receiving the sacrament of the Church and without obstacle of mortal sin inhering in him either in fact or in will – he receives the effect of this sacrament, not by merit but by divine pact [*Ord. IV* d.1 n.308, 315, 323, d.4 n.103, d.8 n.146], as thus having done little attrition, even with the attrition that does not have the idea of merit for remission of sin.

218. He however who wants to receive the sacrament of penitence as it is dispensed in the Church, and without obstacle and will of mortal sin in act at the last moment of the pronouncing of the words (wherein is the force of the sacrament) – he will receive the effect of the sacrament, namely penitential grace; not indeed by merit (because this interior disposition was not enough by way of merit), but by pact of God who aids his sacrament to this effect for which he instituted the sacrament. Otherwise it would not appear how the sacrament of penitence is ‘a second plank’ [n.13], if through it (as it is a sacrament) can never be recovered a lost second grace, but only through attrition as a preparatory disposition, and through contrition as through a compleative disposition.

219. If you ask whether penitence is a sacrament, I say that what you want is done in the word ‘penitence’ if this word is taken as it is in the two preceding questions, namely for actual ‘holding a penalty’ according to any of the above significations [nn.62-65]; or also taken for habitual ‘holding a penalty’, which is a certain special virtue whose act is actual ‘holding a penalty’ [nn.120-126]. According to the first signification penitence is not a sacrament, because it is not a sensible sign; but in the latter ways it could be called a sacrament of penitence, when taking that in a transitive and not intransitive sense [n.189] the way ‘creature of salt’²⁰ is taken, unless the name ‘penitence’ is here used equivocally.

II. To the Initial Arguments

²⁰ ‘Creature of salt’ in the intransitive sense is, ‘creature that is salt’, and in the transitive sense, ‘creature that comes from salt’. In several rites, including that of baptism, the words ‘I exorcize you, creature of salt’ are used for blessing salt. One could speak instead here of objective and subjective genitive, as in the case of ‘love of God’, which in the objective sense means the love we have for God, and in the subjective sense the love God has for us. So ‘sacrament of penitence’ in the transitive or objective sense is the sacrament that has penitence for object (namely the penitent sinner receiving forgiveness), and in the intransitive or subjective sense it means the sacrament that penitence is (namely the sacrament in which the penitent, by confessing, receives the sacramental grace).

220. To the first argument [n.189] I concede (according to the authorities from Augustine and Isidore) that sin is frequently dismissed by some motion of attrition or contrition, as through merit by congruity, before reception of the sacrament of penitence, just as in an adult original sin is frequently dismissed before reception of baptism. But it does not follow that it not be dismissed through the sacrament, because if that other dismissal sometimes not be present, this one does not fail; and this one requires less, namely the intention alone of receiving baptism or the sacrament of penance without any obstacle in the way of its effect.

221. To the second argument [n.190] I say that confession is double: of praise or of crime. No one confesses worthily by confession of praise unless he is first raised up – from Jerome in the *Epistle* ‘You think that I’ [in fact Paschasius Radbert, *Epistle on the Assumption of the Holy Virgin Mary*, n.36], “Praise in the mouth of a sinner is not seemly” [*Ecclesiasticus* 15.9]. But confession of crime in the mouth of a sinner is accepted, that is, of a sinner who is still a sinner in the way that, in the first question of this distinction [nn.28-34], exposition was given how sin remains after the act – provided, however, that the sinner not be a sinner in desire (whether in interior or exterior act). I concede therefore that, before worthy reception of penitence, the sinner must be raised up: either simply so, and then the sin is not destroyed by penitence as sacrament [sc. because it was already destroyed in the ‘raising up’, n.220], but the grace that was there before is increased; or raised up in a certain respect, so that he have some displeasure about his sins and a proposal to be wary as to the rest, and should want to receive the sacrament of penitence, wherein attrition becomes contrition and he is, through the sacrament, simply raised up – and this indeed is necessary, as will be stated in d.17 n.50, just as was also said above that for someone justified by the baptism of desire the baptism of water is necessary [*Ord. IV* d.5 nn.43, 48-51].

222. When argument is made about Lazarus [n.190], that he was raised up first before being loosed of his chains, I reply: the guilty party is obligated to the debt of an eternal penalty, and when this chain is loosed he is obligated to a temporal penalty. But he is raised up first before the first obligation is commuted to the second; or, what is truer, he is raised up first before he is loosed from the second obligation. And in this way does it belong to the priests to loose, not simply, but on the part of the penalty, which they can relax by virtue of the keys (which will be spoken of below [dd.18-19 nn.107-110]). And thus Lazarus, having been vivified by Christ (that is, the sinner is resuscitated by grace from the death of guilt), and having been loosed from the prison of the tomb (that is, the sinner is loosed from the debt of the penalty of hell), is left to the disciples for being loosed from the grave-clothes (that is, from the temporal penalties to which the eternal penalty is commuted, which temporal penalties the priest can relax, the key not being in error).

223. As to the final argument [n.191], I concede that the priest dismisses sin in penitence just as in baptism, and so he absolves just as he baptizes, because on both sides it is simply true that he administers the sacrament; and he causes the effect of the sacrament ministerially, because he causes something on which (according to the disposition or pact of God [cf. n.217]) the effect of the sacrament according to rule follows.

224. To the comment of Jerome [n.191] I say that the affirmative is true, that just as the priest of the Mosaic Law made manifest lepers who were cleansed, so the Gospel

priest makes manifest sinners who are justified. But the negative, namely that the Gospel priest is not disposed differently to the spiritually leprous than the priests of the Mosaic Law were to the bodily leprous (namely by making uncleanness manifest on this side as on that), is false. And the reason is that God did not in the Old Law give a ceremony or purification, which, when administered by a suitable minister, he would, as a matter of rule, be present to for cleansing bodily leprosy. But he did in the New Law give a sacrament, which, as a matter of rule, he is by pact present to for cleansing the spiritually leprous, unless the obstacle of a contrary will stand in the way.

Fifteenth Distinction

Question One

Whether to Every Mortal Actual Sin there Correspond a Proper Satisfaction

1. “And just as with the aforesaid authorities” [Lombard, *Sent.* IV d.15 ch.1 n.1].
2. The fifteenth distinction – about which I ask first whether to every mortal actual sin there correspond a proper satisfaction.

3. It seems not:

Because then satisfaction could be made for one without making satisfaction for another, for the satisfaction could be paid proper to one without the satisfaction proper to another. But the consequent is false, because in this way someone in making satisfaction for one would be reconciled to original friendship, and in not making satisfaction for the other would remain an enemy; therefore, he would be a friend and an enemy at the same time, which is impossible.

4. Again, satisfaction could then be made for one sin, with the other sin remaining, because what is proper to the former sin could be paid, although the will for the latter sin remained.

5. Again, if to every sin there is a proper satisfaction, then prayer alone would be due for one sin, fasting for another, and almsgiving for another. The consequent is false, because then none of these penalties could be imposed indifferently for any sin, and so in some case no satisfaction could be imposed for sin; because it is possible for a poor man to sin with the sin to which almsgiving responds, and he would not be able to do it. Similarly, never in that case would all such things be imposed together for one sin.

6. Again, according to the Master, *Sent.* IV d.20 ch.1 nn.5-6 (and it is taken from [Ps.-]Augustine *On True and False Penitence* ch.18 n.34), sometimes contrition is so great that it destroys the whole of the penalty; therefore contrition can be a common satisfaction that is sufficient for any sin. It is also required for any sin, because without it no sin is destroyed.

7. On the contrary:

Satisfaction for a fault is payment of the penalty, because satisfaction is the giving back of that which, according to justice, should be given back. But according to justice, penalty puts a fault in order, and a proper penalty corresponds to a determinate fault as putting its disorder in order; therefore etc.

8. Again, in *Revelation* 18.7 it is said of Babylon, “Give her as much torment and grief as she gave herself glory and was in delights,” and according to the number of her sins will the number of her beatings be also.

I. To the Question

9. I reply: satisfaction is in one way taken generally, in another way properly and strictly.

A. About Satisfaction Taken Generally

10. As to the first, there are five things that need looking at: first, what is the idea of the name; second, whether satisfaction for guilt in this way is possible for man; third, in what it consists and from whom; fourth, whether, as to the question, a proper penalty corresponds to every sin; fifth whether, following the difficulty touched on in the first two arguments [nn.3-4], one satisfaction can be separated from another.

1. About the Idea of the Name ‘Satisfaction’ Taken Generally

11. About the first point, one needs to note that the idea of satisfaction taken generally is this: satisfaction is the voluntary giving back of the equivalent of that which is otherwise not due.

12. The first point, namely ‘giving back’, is plain, because it is not an absolute gift; for the term ‘satis-’ [‘enough’] states commensuration with something correspondent that precedes.

13. As to the term ‘voluntary etc.’, this is plain, because if the giving back were involuntary it would not be ‘satis-faction’ [‘doing enough’] but ‘satis-passion’ [‘suffering enough’], and in this way he from whom the penalty due for a fault committed is unwillingly exacted suffers enough but does not do enough (= ‘satisfy’).

14. As to the term ‘equivalent etc.’, this is plain because the verbal element ‘satis-’ implies this; justice also requires this, giving satisfaction back for that which it corresponds to.

15. The fourth part, namely ‘otherwise not due’, is plain, because if it were otherwise due, satisfaction would not be made for it, for there would not be correspondence in justice with it but with something else.

16. And this idea of satisfaction applies to any contract and obligation whatever. For in this way can he who receives a benefit make satisfaction to the benefactor, and in this way can he who is loved to the lover, by recompensing equal love. And thus can this idea be found both in free acts of the will and in acts in any way necessary, namely contracts, where there is a sort of obligation necessitating the making of a return. Likewise, since guilt makes the delinquent a debtor to him against whom he sins, this idea of satisfaction can be found there, namely that he should return to him what is equivalent and otherwise not due, up to the amount he took away by sin.

2. Whether this Sort of Satisfaction for Guilt is Possible for Man

a. Anselm’s Solution

17. About the second [n.10] it is said [Anselm, *Why God Man* I ch.23] that it is not possible for man to make satisfaction to God for sin – to God, I say, whom he has offended.

18. First [Anselm, I ch.13], because by sin the honor due to God is taken away; but nothing equivalent to the honor of God can be returned to him by us.

19. Second [Anselm, I ch.21], because mortal sin is an infinite evil; for it is an evil as great as he against whom the sin is committed; nothing but a finite good can be given back to him by us; therefore, it is not equivalent; therefore etc. [it does not make satisfaction].

20. Again, from another middle term, namely from what is otherwise due [Augustine, *86 Diverse Questions* q.68 n.6, Bernard, *On Loving God* ch.6 n.16, cited by Richard of Middleton, *Sent.* IV d.15 princ.1 q.2], argument is made thus, that whatever we can pay out to God of obeisance and honor is all due to him by reason of creation, governance, and redemption; therefore, we cannot pay out to him what is not due to him, even from the innocent, and consequently it is due to him otherwise than for sin.

21. It is said, therefore [Anselm, II chs.18-19], that the sinner can make satisfaction in virtue of the passion of Christ, because that passion is so far accepted by the Triune God that, by virtue of his passion, the satisfaction is accepted that, accepted by itself, would not be satisfaction.

b. What Should be Said of Anselm's Solution

22. But if this opinion is taking its understanding about God's absolute power, because God could not accept any act of a penitent as a just satisfaction for sin save insofar as this act is conjoined with the merit of Christ's passion – here is disproof of it [cf. also Scotus, *Lectura III* d.20 nn.12-39].

23. First, because it is not impossible for the Son of God not to have been incarnate and, consequently, not to have suffered; and it would have been possible, along with this, for God to have brought the predestined to beatitude, and to have done so justly (without however excluding mercy). Therefore, it would have been possible for the penitent to have made satisfaction for himself – for God cannot beatify the sinner justly without satisfaction.

24. This is confirmed by Augustine, *On the Trinity* XIII ch.10 n.13, "There was also, indeed, another way possible for our redemption, namely other than by the incarnation and passion; but none was more agreeable to the healing of our misery." Therefore, our fall could be healed in a way other than through the incarnation and passion of Christ.

25. Again the passion of Christ only destroys our fault as a meritorious cause, and consequently as a second cause, which is not of the essence of the thing; indeed, it is reduced to the genus of efficient cause. But whatever God can do through a second efficient cause he can do immediately; therefore he could, without it, justly and in ordered manner remit guilt.

26. But if it be said to these two arguments [nn.23, 25] that God could, without the mediation of Christ, have destroyed the fault of the wayfarer, and so have led him to beatitude (according to the first argument [n.23]), and have immediately justified him

(according to the second argument [n.25]); yet not by way of satisfaction (because there would not have been anything equivalent then to give back), but now there is a whole equivalent through the passion of Christ (but with this passion being such as to be a satisfaction for it) – On the contrary: satisfaction is a returning of equivalent for equivalent; but the sin turning away from God was as evil as the turning back to God out of charity was good; also, my sin took away as much good (and not more), and as much good can be in my act, as was of a nature to be in my act; so through that amount of good, therefore, can something altogether equivalent be given back.

27. If it be said that my act is not the equivalent in good of the evil in displeasure [sc. caused to God] unless the act be elicited by grace, but the first grace would only be given to a sinner by the passion of Christ – on the contrary, because the first grace can very well, by the absolute power of God, be given without the merit of the passion of Christ.

28. The proof is:

Because the supreme grace given to a creature is given to the soul of Christ, and without any merit; for in no way was his passion either displayed or foreseen in respect of the grace to be conferred on him; rather, it was foreseen that he was going to have grace first before his passion was to be accepted.

Again, the passion of Christ was a finite good, even when taken according to the whole idea of merit in it; because it was not an uncreated good, nor consequently was it accepted by God infinitely on the part of the object, because God was not blessed by willing or loving that passion as he is by loving his essence. If infinity in sin, therefore, would prohibit possible satisfaction, it will also prohibit it after the passion of Christ is in place.

c. Scotus' own Solution

29. As concerns this article [n.10], it can be said that God could, of his absolute power, have given the sinner after attrition, as through a fitting disposition and merit by congruity, a grace by which the sinner's movement would become contrition, and thus, by satisfaction, have destroyed sin, because by an act returning to God the equivalent of the good that sin took away.

30. This act could also be otherwise not due, because although (if God wished to obligate us) we be bound to God whatever we are and do, yet he, of his very great mercy, considering our weakness and difficulty in respect of good, did not wish to obligate us by way of rule save to the Decalogue; and he could then have ordained to obligate man only to the Decalogue, without incarnating Christ. Man, therefore, could then do some works of supererogation that would otherwise not be due from him, and then the whole idea of satisfaction would be saved.

31. However God, of his ordained power, has not disposed to give the sinner the first grace save in virtue of the merit of him who was without sin, namely Christ; because, as was touched on above [nn.27-28], he did not dispose to reconcile the enemy to himself save through an obedience more welcome to himself than the offence of his was displeasing to himself; and such obedience of his is the passion of Christ and its merit. And thus did he not dispose to give grace to the sinner without the passion of Christ, without which grace there cannot be satisfaction at all, because not equivalent in any way

either simply or in divine acceptation. Therefore, much more of ordained power is it not possible for satisfaction to be made to God save in virtue of the passion of Christ.

3. What Satisfaction Consists In

32. About the third point [n.10] I say that in this understanding satisfaction consists more in penal acts or voluntary sufferings than in other non-penal good acts. Although sometimes satisfaction could be made through some non-penal good act, because God can well accept a great act of charity for the punishment due to a single crime; because though it not be punishment proper, it is yet a greater good and gives honor to God more than does what would be its proper punishment. But, as a matter of rule, just as guilt is put into order by penalty and not by anything else of greater good than the guilt is, so satisfaction said in this way consists in actions or sufferings having the idea of penalty.

33. And this is what [Ps.-]Augustine says, *On True and False Penitence* ch.15 n.31 (and it is in Lombard's text, *Sent.* IV d.16 ch.2 n.6), "There are worthy fruits of the virtues that do not suffice for the penitent; for penitence demands weightier fruits, so that he who is dead may by grief and groans win life."

34. Now these penal acts or voluntary sufferings are reduced, in genus, to an interior act of displeasure or passion of sadness, and to an exterior act of confessing sin (which is very penal) or to a concomitant passion (namely shame), and to an act or passion simply exterior, namely vexing of flesh (and all such vexing should be contained or reduced to fasting) or raising the mind to God (and this is done through prayer) or expending of one's temporal goods (which is done by almsgiving).

4. Solution of the Question

35. From this the fourth article [n.10] is clear, namely the solution of the question: for whether the satisfaction be understood to be proper as determinate, that is, in species, or proper as determinate, that is, in number, a proper satisfaction does not necessarily correspond to each sin; because both the same satisfaction in species and the same in number can correspond to this sin and to that.

36. That the same in species can correspond is plain, because contrition can correspond to this sin and to that, and it is the same in species, especially if the objects be the same in species.

37. That the same in number can correspond is plain, because contrition about several sins together in general can on its own correspond to those several sins; but then, for the satisfaction to be total, it must not be lessened, because let something of it suffice for one sin and something for another, the something and the something of it, I say, are not of parts really in act, but of degrees of intensity, namely such that the contrition be in so great a degree of intensity that in a far lesser degree it would suffice for one sin, and in the degree it super-adds it would suffice for another sin beyond

38. Several satisfactions too, whether total or partial, can correspond to a single sin: Total indeed because there is no sin that cannot be remitted through contrition alone, and then the contrition alone is a total satisfaction. The same sin can also be remitted through a weak contrition and through other penalties supplying for the imperfection of

the contrition. But a contrition intense on one side, and the same weak on another (along with other penalties), differ also in species, though they be equivalent in divine acceptation.

39. Briefly, then, I say that a proper satisfaction does not belong to every sin, as if, forsooth, it correspond to no other sin, and not any other sin correspond to it. But to every sin a satisfaction proper for the moment now corresponds, even though another could be proper to it. I understand by ‘proper for the moment now’ either as in itself a distinct satisfaction or as something virtually included in satisfaction.

5. About the Separation of Satisfaction from Satisfaction Taken Universally

40. As to the fifth article [n.10], I say that satisfaction, taking it in this way (which however is total and not lessened satisfaction), reconciles the one making satisfaction to him whom he has offended, because either the offense is implacable, which is contrary to mercy, or, if it is placable, it is so through nothing more than through satisfaction said in this way. But it is impossible for anyone to be reconciled to God and yet remain in some sin.

41. Hence [Ps.-]Augustine *On True and False Penitence*, ch.9 n.24 [in Lombard’s text, *Sent.* IV d.15 ch.7 n.4, and also in Gratian, *Decretum*, p.2 cause 33 q.3 d.3 ch.42], “I know that God is enemy to every criminal; how then would he who keeps back his crime receive pardon from another, and without the love of God obtain pardon, without which no one ever found grace? An enemy of God is he while he perseveres in his offense. It is a sort of impiety of infidelity to hope for half a pardon from him who is Justice.” It follows, then, that it is impossible to satisfy God about one sin while remaining impenitent in act about another mortal sin.

42. But if the separation of this satisfaction from another satisfaction be understood such that, while a man is actually returning to God some sort of contrition or satisfaction for this sin, indeed sufficient for this sin, he is not actually returning satisfaction sufficient for another sin – I say that the satisfaction proper to this sin can be separated from the satisfaction proper to that sin, and this as to the effect, though not as to the affection, at least in habit. For as to the effect this is plain, because just as it is not necessary for the intellect to consider simultaneously this sin and that one, so it is not necessary for the will to be penitent simultaneously about this sin and that one, and this when taking ‘to be penitent’ for any of the four significations set down in the preceding distinction, question one [d.14 n.62]. But nevertheless, while he considers one sin and is penitent about it, he does at least in habit satisfy for the other, that is, he is ready in mind, should he think about it, to make satisfaction at some time for it.

B. About Satisfaction Taken Properly and Strictly

43. About the second main point [n.9], namely satisfaction taken strictly, four things need to be seen, proportionally to what was said [n.10]: first, the idea of the name as before; the second, about possibility, does not have here any difficulty, so what was third before will here be second, namely in what the satisfaction consists; and from this comes, third, the solution of the question whether to every sin there correspond its proper satisfaction; fourth whether one proper satisfaction is separable from another.

1. About the Idea of the Name ‘Satisfaction’ Taken Strictly

44. On the first point [n.43] I say that ‘satisfaction is an exterior operation, laboring or penal, voluntarily undertaken, for punishing a sin committed by oneself, and this for placating divine offense’; or it is ‘a passion or penalty voluntarily borne in its order to sin or the remission of sin’. This is much stricter and more particular than satisfaction in the first way [nn.11-16], because that one can consist in an interior or exterior penal act of voluntary suffering.

2. What Such Satisfaction Consists In

45. The second point [n.43] is plain, because as an exterior act or suffering is distinguished from an interior act or suffering of mind and from an act of speech or concomitant suffering, the satisfaction consists only in three difficult works, namely fasting, prayer, and almsgiving (which were spoken of in the third preceding article [n.34]), or in voluntary sufferings concomitant to these three difficult things.

3. Whether to Every Sin there Correspond its Proper Satisfaction

46. From this I say about the third article [n.43] that to sins in their kind distinguished into three members, namely into sin of the flesh, sin of concupiscence of the eyes, and the pride of life [*I John 2.16*], there correspond by congruity proper satisfactions in their kind, namely: to the sin of the flesh corresponds fasting, or universally any pain of the flesh more directed to repressing such sin of the flesh (and under this I comprehend vigils, pilgrimages, rough clothing, nakedness, going barefoot, indeed universally any fatiguing labor). And to the sin of pride and the other spiritual sins there more appropriately corresponds prayer, which humbles the spirit before God and strengthens the spirit against spiritual sins. And to sins in temporal goods, as to avarice or any cupidity (as rape, theft, unjust removal), there corresponds more appropriately the giving away of alms. The reason for all these is because of the greater correspondence of the penalty to the crime, because “what a man sins in, in that will he also be punished” [*Wisdom 11.17*]. Such is the statement about this correspondence in general and by congruity.

47. But about the necessary or the congruous in special cases it is not so, because it is not possible for one of these penal works to fit someone who has sinned, however, with a sin to which by congruity such penalty or such satisfaction belongs, as to a pauper who has committed theft is almsgiving not fitting, and so on in other cases; and then, if contrition not suffice, the sin ought not to remain entirely unavenged.

48. It is possible, then, and congruous to the moment, to impose as proper satisfaction on this sin something that yet is not proper to it with a universal correspondence by congruity; and for this is required the discretion of the priest, so that he not impose on anyone a penalty too inappropriate, but one that more agrees with him and that perhaps he will complete better.

49. For example, a pauper can neither give alms nor pray but must labor continually for his necessary sustenance; nor can he fast because then he would not be up

to the labor necessary for continually acquiring his necessary sustenance. What then? The labor itself is for him a continuing fast, because it is a continuing pain of the flesh. He need only be induced to undergo that labor in remission for his sins, intending to refer it to this end, at least until the opportunity arises for him to pay some other satisfaction – and other things can be imposed as mildly and lightly as to be possible for him.

50. Likewise, a rich man who has fallen into a sin of the flesh, if he is so delicate that he not wish to fast or to undergo any notable pain, or it is presumed that, if it were imposed on him, he would quickly throw it off and would thus sin with a new sin – he is to be induced to prayer and almsgiving, and that thing is to be imposed on him which he receives gladly and which he is believed more perseveringly to fulfill. Or if he not wish to receive any penitence imposed on him by the priest, yet says he is displeased with the sin he has committed and has a firm purpose of not backsliding, he must be absolved and not dismissed, lest he fall into despair; and the penalty must be announced to him, the penalty that was to be done and imposed for his sins, and that he should, without imposition, study to fulfill it in itself or in its equivalent, otherwise he will pay it to the full in purgatory.

51. This mercy sufficiently accords with the prophecy about Christ that Matthew repeats [Matthew 12.20, from *Isaiah* 42.3], “The bruised reed he will not break, the smoking flax he will not quench.” The bruised reed is the sinner bruised with temptations and sins; the smoking flax is flax overly dank with sins, but having something of the fire of charity. He is quenched were he obligated by the harshness of the priest to a thing too difficult; but he will not be quenched if it is preached to him that he must either here or elsewhere pay the penalty, and that he should study to pay as much of the penalty here as is due for his sins, lest a harsher penalty be exacted elsewhere.

4. Whether One Proper Satisfaction is Separable from Another

a. Opinion of Others and its Refutation

52. About the fourth [n.43] it is said [Gratian, *Decretum*, p.2 cause 33 q.3, d.3 chs.39-49; Lombard, *Sent.* IV d.15 chs.1-3; Richard of Middleton, *Sent.* IV d.15 princ.1 q.5] that although exterior satisfaction for one sin could be separated from satisfaction for another, as when someone prays then does not give alms, yet exterior satisfaction cannot be so done for one sin that he remain in some other sin. And the proof is that he would please God as to one sin and still be God’s enemy. And, to this extent, the satisfactions must be conjoined at any rate in the will, at least in habit though not in effect or as actually in the will.

53. But this opinion seems too hard against sinners, and an to be occasion for greater obstinacy. For if someone who is truly repentant today, and who is humbly taking on the satisfaction (let it be a fast of three days), falls back tomorrow into mortal sin and, not being penitent about that sin, fasts on the third day because it was imposed on him – if you say that the fast on the third day is not an exterior satisfaction, there is much occasion for inducing the one who has lapsed not to fast on the third day, and so occasion for new mortal sin, because in his transgressing this penitence received from the priest there seems to be mortal sin, since there is transgression of a precept of the Church and of the vicar of God in this act.

54. Herefrom can the following argument be formed: if after a lapse, and before complete penitence, someone not carry out the original satisfaction imposed on him, he sins mortally with a new sin; therefore if he do carry it out he does well, because he does an act of obedience; but he only does an act of obedience insofar as it is imposed on him as part of his satisfaction.

b. Scotus' own Response

55. I say without prejudice, therefore, that he who is once truly penitent, and who receives a satisfaction or wholly fitting penitence imposed on him by the Church (the keys not erring), will, however much he backslide, only ever be held to fulfilment of that single penitence or satisfaction. And if he fulfill it in charity, it is better, because he not only pays the penalty but merits grace. But if without charity he fulfill it willingly he pays the penalty indeed, but he does not merit grace; and if it is from him without charity exacted, the penalty is paid, though he himself not pay it.

56. And in the first case there is satisfaction simply, because satisfaction that reconciles and pleases; in the second case there is a certain satisfaction, because there is 'a voluntary giving back etc.' [n.11], but not reconciling or pleasing satisfaction; and in the third case there is a satisfaction beyond which a further penalty is not exacted.

57. And from the second case [n.55] it follows that if he has in mortal sin fulfilled a great part of the satisfaction imposed on him and if afterwards he is again penitent about the new sin, penitence for the first sin that he has made satisfaction for (albeit without charity) is not to be imposed on him again, but only for the new sins that were the cause that the former satisfaction was dead.

And if you argue, 'it is dead, therefore it is not satisfaction' – this does not follow, but only that it is not a satisfaction that pleases and reconciles to friendship.

And if it be said, 'therefore it is not satisfaction' – this does not follow, because it suffices God that one by will pay the penalty due in punishment for the sin committed, because (as is less apparent) to do enough or to suffer enough also suffices. The fact is plain in human acts: for if to some offense against a king there precisely correspond according to law the cutting off of the hand, if the hand be cut off against the offender's will, the offender suffers or does enough, and so far does this suffice the king, because the king should not in law and justice demand further penalty from him, and yet such a one is not received into the grace and friendship of the king. Much more then could it suffice for punishment of guilt if someone inflict on himself the due penalty, though he not be in the grace and friendship of the offended judge himself.

58. From the third case [n.55] it can be said that if such a one, because of the new sin that he has fallen back into, were damned before he had completed the whole penalty imposed on him, he would be punished in hell with a penalty corresponding to that which was not paid here; and when, after some time, it has been paid, it would not be punished further with any penalty – just as is also the case with venial sin, because someone dying in venial as well as in mortal sin would not be punished eternally for the venial sin (as will be said below, d.21 nn.29-31). And it is the same way in the matter at hand; for from the fact that, according to full punitive justice, a temporal penalty has been once imposed on this man for a sin he truly repented of, never from this man will a penalty for this sin save a temporal one be due, and when it is paid, there is no penalty.

II. To the Initial Arguments of Both Parts

59. To the arguments:

To the first two [nn.3-4] the answer is plain from the fifth article of the first member [nn.40-42] and the fourth member of the second article [nn.55-58].

60. To the third [n.5] the answer is plain from the third article of the second member [nn.46-51].

61. To the fourth [n.6] the answer is plain from the fourth article of the first member [nn.35-39].

62. And if you argue that contrition can destroy any sin, therefore to no sin does any other proper satisfaction correspond – this does not follow. However, because contrition does include some satisfaction, in desire at least (as will be said in d.17 nn.77-78), and although sometimes a contrition so intense may suffice or make satisfaction for any penalty to be inflicted, yet the precept about inflicting some penalty is not unreasonable, because contrition as a rule is only a partial satisfaction, and general precepts are for general remedy and accord with the conditions that are found in men for the most part.

63. To the first argument for the opposite [n.7], I concede that some penalty corresponds in some way to the guilt, either a penalty distinct in itself or a part contained virtually in another penalty; and thus there is a satisfaction proper to it, whether actual or virtual, and so a penalty proper to it, because no other now corresponds to it, speaking of total satisfaction, even if another could correspond to it. Also this penalty does not now correspond to another guilt, though it could correspond to another one.

64. To the authority from *Revelation* [n.8], I say that it is speaking of the penalty of the damned. The thing is plain from the text, 14.8: “Babylon the great has fallen, has fallen etc.” And it is true there that very precisely and properly is the penalty commensurate with the guilt; but neither as great a precision nor as great a commensuration exists or is required in a penitential penalty.

Question Two

Whether Anyone Who Has Unjustly Taken Away or Retains Another's Property is Bound to Restore it such that He cannot be Truly Penitent without such Restitution

65. Second I ask whether anyone who has unjustly taken away or retains another's property is bound to restore it, such that he cannot be truly penitent without such restitution.

66. That he is not:

Because restitution is no part of penitence; so there can be penitence without it. The proof of the antecedent is that restitution is not contrition nor confession (as is manifest); nor is it satisfaction, because that is ‘voluntary giving back of something otherwise not due’, from the preceding question [n.11]. This restitution is otherwise due, because if a man had not sinned and was in possession of another's property he would be bound to restore it; therefore etc.

67. Again, this could be proved through satisfaction's parts [nn.12-15], under none of which is restitution contained; therefore etc.

68. Again, no one is bound to what is impossible, because ‘let him be anathema who says that God has prescribed the impossible’, as Jerome says [in fact Pelagius, *Book on the Faith to Pope Innocent*, n.10; Lombard *Sent.* II d.36 ch.6 n.3]. But sometimes it is impossible to restore someone else’s property to him whose it is, as when it is not known whose it is. This can happen either because one does not know where he from whom one had it is, or where anyone close to him is to whom one may restore it in his stead, or in some other case – as when one finds another’s property and not know whose it is.

69. Again, no one is bound to a restitution more damaging to himself than the thing is useful to him to whom restitution should be made. But sometimes, if he to whom restitution is to be made is doing business in far off places, no restitution can be made to him unless a greater expense than the whole of what is to be restored be laid out in sending it; therefore, in that case he is not bound.

70. Again, *Ethics* 1.1.1094a9-10, “the common good is more divine and to be preferred than the particular good,” but it is possible that a restitution to be made to Peter is damaging to Paul who restores it, and in this more damaging to the Republic, namely because Paul is more necessary to the Republic than Peter; therefore in this case he is not bound to make restitution.

71. Again, everyone is bound to love himself more than his neighbor, according to the remark in *Song of Songs* 2.4, “He has ordered me in charity;” therefore when restitution is damaging to oneself (as when one is in extreme necessity), one is bound rather to hold it for oneself than, out of love for another, restore it to the other.

72. Again, restitution is to be done in favor of him to whom it is done; therefore it is not to be done when it leads to his loss, nor either when it would lead to loss for the republic; but a sword returned to someone mad would be to the loss of him to whom it is restored, because he would use it badly, and also to loss for the republic, because it would harm the peace of the city; therefore etc. And likewise can it be argued in cases when restitution involves either a loss attached to him for him it is done, or a loss attached to the republic.

73. Again, when an adulteress conceives a son from adultery, the supposed son of the husband defrauds the true heir of his heredity, and yet the woman is not bound to restore the heredity to him; therefore etc. The proof of the minor is that she could not do it without infamy to herself, which no one is bound to, rather bound to its opposite, and more evil would follow, namely wife-killing, if the husband were to learn of the crime.

74. Again, someone can procure an ecclesiastical benefice for himself by taking it away, through his looking after it, from another; but he is not bound to restore it to that other; therefore etc.

75. On the contrary:

Augustine *Epistle 153 to Macedonius* ch.6 n.20 (and it is in Lombard’s text, *Sent.* IV d.15 ch.7 n.9 [from Gratian, *Decretum* p.2 cause 14 q.6 ch.1]), “As long as the thing, for which the sin was, is not given back, if it can be given back, penitence is not done but feigned.”

76. And (from Gratian, *ibid.*, from the same *epistle*), “Sin is not dismissed unless what is taken away is restored.”

77. Again, *Exodus* 22.1-13, where the precept is given for things unjustly taken to be returned; and a penalty is added, *ibid.* 21.16, where it is said as follows: “Who has stolen a man and sold him, and is convicted of harm, let him die the death.”

I. To the Question

78. Here four things are to be looked at: first, whence it is that the ownership²¹ of things is distinct, so as for this to be called ‘mine’ and that ‘yours’, because this is the foundation of all injustice in handling another’s property, and consequently of all justice in restoring it; second how ownerships made distinct at the beginning may justly be transferred; third, from this will be plain what the unjust taking of another’s things is, or what causing loss to another in temporal matters is; fourth, how such a person is bound to restitution.

A. Whence it is that there is Distinct Ownership of Things

1. First Conclusion

79. On the first point [n.78] let this be the first conclusion, that by the law of nature or the divine law there are, for the state of innocence, no distinct ownerships of things; on the contrary, all things were then common.

80. The proof is from Gratian, *Decretum* p.1 d.8 ch.1, “By the law of nature are all things common to all men.” And for this is adduced Augustine *On John’s Gospel* ch.2 tr.6 n.25, who says “By what right do you defend the villas of the Church, by divine or human right? The first right we have in the divine Scriptures, the human right we have in the laws of kings. Whence does each possess what he does possess? Is it not by human right? For by divine right ‘The Lord’s is the earth and its fullness’ [Psalm 23.1]. Surely the one earth by human will bears both poor and rich? Therefore, also by human right is it said, ‘This house is mine’, ‘This villa is mine’, ‘This servant is mine’.” Again in the same place, “Take away the laws of the Emperor. Who will dare say, ‘This villa is mine?’” And later in the same place, “By the laws of kings are possessions possessed.” And Gratian, *Decretum* p.2 cause 12 q.1 ch.2, “Common to everyone should have been the use of all things that are in this world.”

81. The reason for this is double:

First, because the use of things according to right reason ought so to belong to men as befits peaceful conversation and necessary sustenance; but in the state of innocence common use without distinction of dominions was of more value to each of them than the distinction of dominions, because no one would then have seized what would have been necessary for another, nor should that need to be wrenched away from him by violence, but each would have taken for necessary use what first confronted him.

82. But also, there would have been there a greater sufficiency for sustenance than if the use of something were precluded from someone by an appropriation of it made to another.

2. Second Conclusion

²¹ The Latin is literally ‘lordship’ or ‘dominion’, that is, what belongs to the ‘dominus’, the lord. Since in context the discussion is about a lord in the sense of an owner of property, and not in the sense of someone with a special status of political or ecclesiastical dignity (or even less in the sense of God as Lord), the word has been translated accordingly.

83. The second conclusion is that ‘this precept of the law of nature about having all things common was revoked after the Fall’.

84. And reasonably, for the same two reasons:

First because the community of all things would be against peaceful conversation, since a greedy bad man would seize more than would be necessary for himself, and this too by inflicting violence on others who might want to use for necessity among themselves the same common things, as is read of Nimrod [*Genesis* 10.9], that “he was a mighty hunter in the presence of the Lord,” that is, an oppressor of men.

85. Again, it would be against necessary sustenance for the same reason, because the stronger fighters would deprive others of necessities.

86. And therefore the polity of Aristotle, *Politics* 2.1-2.1260b27-61b15, because not all things are common, is much better than the polity of Socrates (which Aristotle blames) about all things common – according to this condition that Aristotle finds among men.

3. Third Conclusion

87. The third conclusion is that ‘when the precept of the law of nature about having all things common was revoked, and when, as a result, the license to appropriate and make distinction between common things was conceded, no actual distinction was made by the law of nature or by the divine law’.

88. Not by the divine law, as is proved by the remark of Augustine adduced above [n.80], “By what right...”

89. Not by the law of nature, as seems to be probable, because it does not appear that the law of nature may make opposite determinations, and that law has made determination in the case of human nature to the fact that all things are common.

90. Nor may it be said that the proposition in the *Institutes of Justinian* (II ch.1 n.12, ‘About the division of things’, ‘Wild beasts’), that “What among goods is no one’s, is conceded to him who occupies it,” belongs to the law of nature. But although, immediately after natural apprehension of the fact that things are to be divided, that proposition arises as probable and manifest, yet it is more reasonable to say that it is not of the law of nature but of the positive law. And from this follows that distinction of ownerships was first made by some positive law.

4. Fourth Conclusion

91. Therefore, so that this law may be just, one must see how such positive law may be just.

92. Let the fourth conclusion be then that ‘a just positive law requires in the legislator prudence and authority’.

Prudence, so that the legislator command according to practical right reason what must be established for the community.

Authority, because ‘lex’ (law) comes from ‘ligando’ (‘binding’), but no sentence at all of a prudent man binds the community, or anyone, if there is no one presiding.

5. Fifth Conclusion

93. Now as to how prudence for thinking out just laws will be obtainable is sufficiently plain; but as to how just authority (which is required along with this for a just law) will be obtainable follows as the fifth conclusion, because there is a double principality or authority, namely paternal and political – political authority being double, namely in one person or in the community.

94. The first, namely paternal authority, is just by the law, surely, of nature, whereby all sons are bound to obey parents. Nor is this law revoked by any positive law, Mosaic or Evangelical, but rather confirmed by it.

95. Now political authority, which is over those outside [sc. the family], whether it reside in one person or in the community, can be just by the common consent and choice of the community itself.

96. And the first authority [sc. parental] regards natural descent, though not those living together in a civic community.

97. The second authority [sc. political] regards those living together, however much they are not conjoined to each other by any consanguinity or closeness – for example, if certain unrelated people came together for building or inhabiting a city, they could, on seeing themselves unable to be well ruled without some authority, agreeably consent to commit the community to one person or to the community, and to one person either as to himself alone (and a successor would be chosen as he was), or as to himself and all his posterity. And each of these political authorities is just, because anyone can justly submit himself to one person or a community in things that are not against the law of God, wherein he can be better directed by him to whom he submits himself than by himself.

98. Therefore we get completely how a just positive law can be founded, because founded by one who has prudence in himself or in his counsellors, and who has, along with this, an authority that is just in one of the ways stated in this [fifth] conclusion.

6. Sixth Conclusion

99. From these follows a sixth conclusion, that distinction of ownerships can be just by just positive law, whether passed on by a father or a prince justly sovereign, or by a community justly directing or ruling.

100. And that it was done in this way is probable, for either Noah after the Flood distinguished lands for his sons, which they were singly to take for themselves or for their sons and posterity; or the sons themselves, by common agreement, divided lands among themselves, as is read in *Genesis* 13.8-9 about Abraham and Lot, because Abraham gave to Lot himself the choice as to which part he wanted to choose, and he would take the rest.

101. So some law was promulgated by the father, or by someone chosen by them as prince, or by a community to which the community itself committed this authority – which law, I say, was or could be that things then not occupied would belong to the first occupier; and then afterwards they dispersed themselves over the face of the world, and one of them occupied one place and another another.

B. How Ownerships, Distinct at the Beginning, are Justly Transferred

102. About the second article [n.78] I say that the transfer of things can be either as to ownership (namely so that things pass from the ownership of one to the ownership of another), or as to use or right of use while yet ownership remains with the same man (and justice or injustice in transfer of use have rules of different form from just transfer of ownership). This transfer of ownership, therefore, can happen either by public or princely authority, or by the authority of the law, or by the private authority of the owner himself who is in immediate possession.

1. First Conclusion

103. About the first transfer [n.102] let this be the first conclusion in this article, that transfer of ownership by authority of just law is just.

104. The proof is that, if a just law could have justly determined the first ownerships, and the authority of the law or the prince is not lesser (which I hold here to be the same after the division of ownerships as before), therefore can ownership be for the same reason and the same effect justly transferred after it has been appropriated to someone.

105. And from this I say that prescription in fixed property, and long use in movable property, is just transfer.

106. The proof is from Gregory IX, *Decretals*, with glosses, II tit.26 ch.5, 'On Prescriptions', 'To the Vigilant', gloss on 'Others' Property'.²²

107. There is proof also through reason, in two ways:

First as follows: justly can that be established by the legislator which is necessary for the peaceful conversation of the subjects; but the ownership of something neglected, as it is neglected in prescription and long use, must be transferred to the occupier of it for the peaceful conversation of the citizens; because if ownership were not transferred to this occupier but were to remain with the former one, who treats the thing as abandoned then, after a time however long, there would be lawsuits undying, for, after a time however long, he who neglected the thing or his heir would ask for the neglected thing back, however long occupied by some other or others; and the lawsuits would be such that it would be impossible to cut them off, because impossible even to get sufficient proof; and from such perpetual lawsuits would arise disputes and perhaps feuds between the litigants, and thus the whole peace of the republic would be overthrown.

108. The second reason is that the legislator can punish justly by law a transgressor whose transgression turns to the detriment of the republic – and if he can punish with a bodily penalty, much more so with a monetary penalty, and do this by applying it to the treasury. Therefore he can, for equal reason, punish him with this sort of penalty and do so by applying what he is punished in to someone who is, in this regard, a minister of the law. But he who is for so long a time negligent about his own property transgresses in such a way that his transgression is to the detriment of the republic, because it is an impediment to peace. Therefore, as the law can justly apply the neglected thing to the treasury, so can it, for greater peace, transfer it to him, as to someone serving as minister of the law, who is for so long a time in occupation of it.

²² "Others say, which seems truer, that he who possesses another's fixed property by prescription is no longer bound to give it back, because it would not now be another's but his own, and he possesses it justly."

109. And from this is plain how one should understand the presumption of right and from right against which no proof is admitted, namely because someone thus negligent of his own property treats it as abandoned. For even if this not be true in fact, yet the legislator did punish him as if he had treated it for abandoned; because he is in some respect like one who treats it as abandoned, and that respect, wherein he is like someone who abandons it, justly requires a like penalty.

110. This also appears probable by the fact that, if anyone at all be able to transfer his ownership to another, the whole community can transfer to anyone the ownership of anyone from the community (because I am supposing that in the factual reality of a community the consent of everyone is included). Therefore, the community, which possesses this consent as having been in a way already offered to it (by the fact that everyone has consented to the just laws that need to be passed by the community or the prince), can transfer, through a just law, anyone's ownership [of property] to anyone.

2. Second Conclusion

111. Secondly, transfer can be done by act of a private person possessing ownership immediately over a thing [n.102]. And this can be either through an act purely liberal or through an act liberal in a certain respect. The first is when the transerrer expects no return; the second is when he does expect for what he transfers something to be returned to him.

112. About the first let there be this conclusion, which is the second of this article [n.103]: the owner of a thing who is not prohibited by law, or by a superior on whose will he depend in giving or transferring or donating, can donate his property to another willing to receive it.

113. The proof of this is that, because he was owner by an act of his own will, therefore by will he can cease to be owner; and there is someone else willing to receive it, therefore can he start to be owner. And no superior cause prohibits the first from ceasing to be and the second from starting to be owner. Therefore, by this donation, a transfer of ownership truly and justly takes place.

114. From this is plain what is required for a just donation: that there is liberal transferring on the part of the giver, and will of receiving on the part of him to whom the donation is made, and freedom on the part of both (of the former's giving, of the latter's receiving), and that by no superior law is the former or the latter prohibited, nor prohibited by act of another on whom in this transfer they may depend.

115. On account of defect of the second [sc. willing receiver] no one can give money to a Friar Minor, because he does not will to be an owner. On account of defect of the first [sc. free transfer by the giver] a monk cannot give without permission of the abbot, nor the son of the family without the will of the parent or parents, nor even a cleric in some case without the will, or at least against the will, of the Lord Pope, as is contained in Boniface VIII, *Book Six of the Decretals*, III tit.20 ch.1, 'On Censuses', 'Roman', for the observance of which chapter Gregory X set down a penalty, the chapter about which penalty is today in *ibid.* ch.2 ('It demands'), namely that clerics making visits do not receive little gifts from those visited, and if they do, they are obliged to restore double – or let them not be absolved of the curse they *ipso facto* incur, as is said, Innocent IV, *ibid.* ch.1.

116. Now to this corresponds, in the case of transfer of use, liberal accommodation.²³ And in order to be just it has similar laws, because it requires free will in him who accommodates, and it requires in him who receives that he has a will to receive the thing accommodated for his use, and that there is no will of law or prince standing in the way of the accommodation.

117. There is another transfer that is not purely liberal but where the transferrer expects an equivalence for that which he transfers, and it is properly called a ‘contract’, because the wills of the parties are there drawn together;²⁴ for the former is drawn to transfer to the latter by the gain he expects from the latter, or that he expects to be transferred to himself.

118. Of this sort of contracts, wherein ownerships are transferred, some are transfers of a useful thing immediately for a useful thing, as wine for grain and the like, and it is called an interchange of things, ‘I give so that you give’ or ‘I give if you give’. Some transfers are of a useful thing for coin or conversely; for because it was difficult to exchange things for use immediately, therefore a medium was invented through which such exchange might be facilitated, which is called ‘coin’, and the exchange of coin for a useful thing is called ‘buying’, and the converse is called ‘selling’. But some transfer is of coin for coin and is called giving a loan, or accepting a loan. There are therefore six contracts in which ownership is transferred.

119. To these contracts correspond some contracts where the use, or the right of using, is transferred while ownership is retained. For to exchange of things corresponds mutual or interchanging accommodation, to buying corresponds leasing and to selling corresponds renting out. To the accepting of a loan there does not properly correspond anything in the transfer of the use of a thing.

3. Third Conclusion

120. As to the first transfer, namely exchange of things [n.118], let the conclusion be this (which is the third conclusion of this article): that the owners of things justly exchange them if they preserve, without fraud, the equality of worth in the things exchanged according to right reason – meaning here the conditions for a just giving expounded above [nn.114-115].

121. Explanation of the other conditions that are proper to just exchange [n.120]:

As to what is first added, ‘without fraud’, it excludes fraud in substance, and quantity, and quality: in substance, so that brass is not exchanged for gold, nor water for wine; in quantity, namely so that whether quantity is measured by weight or some other measure, namely by a rod or something of the sort as to length or some bodily measure, as namely a sixteenth [of a peck], a peck, or the like, whether in the case of liquid or of dry goods – so that the just weight and, universally, the just measure be kept. Similarly in the case of quality, so that what is received from the other exchanger as pure wine not be exchanged for sour wine. And all these things are proved in Gregory IX, *Decretals* V tit.36 ch.9, ‘On Injuries and Damage Given’, ‘If by your fault’, “He who gives occasion for a loss, seems to have given a loss.”

²³ A term that in the legal context means ‘bailment’, which is a relationship where the owner transfers to another the physical possession of personal property for a time, but retains ownership.

²⁴ ‘Contract’ comes from the Latin *contraaho* which literally means to draw (‘traho’) together (‘con’).

122. But he who defrauds in substance him who thinks that, in making the exchange, he is receiving a different substance, or in quantity him who thinks he is receiving a different amount, or in quality him who thinks he is receiving a different quality, gives occasion for loss, because the other would not make the exchange if he did not think he was receiving a different substance, quantity, and quality; therefore he seems, not only according to the book on *Refutations* [Scotus, *Refutations*, q.39 nn.5-6, q.40 nn.13-16; Aristotle, *Sophistical Refutations* 4.166b10-14], but by presumption of law and in truth, to have given a loss.

123. There follows in the rule [n.120; inferred from *Ethics* 5.8.1133b18] that ‘the equality of worth is to be preserved’, which is proved by Augustine *On the Trinity* XIII ch.3 n.6, “To want to buy cheaply and to sell dearly is truly a vice.” And I understand this about a cheap and dear thing as concerns use, because often what is in itself a nobler thing in natural being is of less value and less useful for men’s use and, for this reason, less precious, according to Augustine, *City of God* XI ch.16, “Bread is better in a home than a mouse,” although however a living thing is simply nobler than a non-living thing in being of nature.

124. And for this reason there is added [to the rule, n.120] ‘in accord with right reason’ – namely reason that pays attention to the nature of the thing in relation to the human use for which exchange takes place.

125. Now this ‘equality in accord with right reason’ [nn.123-124] does not consist in what is indivisible, as a certain doctor says [Henry of Ghent], who was moved by this, that justice keeps only the mean of the thing but the other virtues only the mean of reason; for this is false, as was made clear in *Ord. III* d.8 nn.58-62 [there citing Henry of Ghent].

126. On the contrary, in this mean, which justice in exchange has regard to, there is considerable latitude, and within this latitude (without reaching the indivisible point of equivalence of thing with thing, because, as far as this is concerned, it would be almost impossible for exchangers to reach it), justice is done to whatever degree it may, as to the extremes, be done.

127. Now what this latitude is, and how far it extends, is sometimes made known by positive law, sometimes by custom. For the law rescinds a contract where a contracting party is deceived above the mean of the just price; however if injustice below that mean appear on the other side, corresponding restitution should be made.

128. But sometimes it is left to the contracting parties themselves so that, after weighing their mutual necessity, they may reckon they are mutually giving and receiving the equivalent on this side and on that; for it is hard for there to be contracts among men where the contracting parties do not intend to return to themselves mutually something of the indivisible injustice, so that, to this extent, some giving away is concomitant to every contract. And if this is the way of people exchanging, which is founded as it were on this remark of the law of nature, ‘Do that unto others which you want to be done to you’ [Matthew 7.12, Luke 6.31; equivalent negative formulation in *Tobit* 4.16], it is probable enough that when they are mutually content, they wish to make return to themselves mutually, if in any respect they fail of the requisite justice.

129. There is an altogether like conclusion [sc. like the third conclusion, n.120] about justice in buying and selling [n.118], because it is as necessary to consider the coin there on one side as to consider here the thing exchanged.

130. I add that in both these contracts it is licit for the exchanger or seller to weigh his own loss, but not to weigh the gain of the buyer himself, or of the one he is exchanging with – I say this in the case of selling or exchanging at a dearer price.

131. And I understand it as follows: if someone is in great need of his own property and is induced, with great insistence by another, to sell it or exchange it for something else, since he could keep himself without loss and since by this selling or exchanging he suffers a great loss, he can sell it at a higher price than if he were otherwise selling or exchanging it without such a loss.

132. But if the buyer obtain a great advantage from the thing sold or exchanged, it cannot be sold or exchanged [sc. by me] at a higher price because a greater advantage will follow from the thing when sold to him. For neither is my property, because of his greater consequent advantage, more expensive in itself, nor is it better for me, and so it should not bring me a greater price. But it is otherwise when I suffer a loss, because then the thing is more expensive for me, though not in itself.

133. With these contracts, as was said [n.119], agree mutual accommodation, and leasing, and renting out. And justice must in like manner be kept as to the conditions already set down [n.114], considering it in respect of use there as in respect of ownership here.

4. Fourth Conclusion

134. About the last type of contract, namely the giving of a loan [n.118], let the fourth conclusion of this article be as follows: for justly contracting a loan, it is necessary to keep equality in number and weight simply (with the exception of certain cases that will be spoken of at the end [nn.144-150]). The reason for this is assigned by some [Thomas Aquinas, *ST* IIa IIae q.78 a.2 ad 2, Richard of Middleton, *Sent.* IV d.15 princ.5 q.5] as follows, that the use of money is its consumption, therefore he who yields it as a loan consumes it.²⁵

135. Against this is an objection made through ‘On the signification of words’, and it is today in [Boniface VIII], *Sixth Book of Decretals* V tit.12 ch.3, that the use of certain things is perpetually separated from ownership.²⁶

²⁵ Richard: “Now the reason why nothing beyond the principal can be demanded for a loan but can be for something rented, is that a loan is of things whose principal use cannot be handed over without the thing itself, because the use of them is the using up of them...as is plain of money, which was principally invented for this purpose, that it be expended in the buying of other things; for this reason, when such sorts of thing are handed over to others, ownership of them is transferred to the latter.”

²⁶ The argument of Richard, and Aquinas, is that lending money is different from renting a house, say, because a house can be used without being used up, so that the owner of the house can retain ownership of it while selling the use of it (as by renting it). Consequently, after the rental period is over, the owner gets the house back and keeps the rent in addition. The same cannot be said of money because to use money is to use it up and so to possess it at the same time. There is no difference between use and possession that would allow charging ‘rent’ for the ‘use’ of the money. One gets back everything one lent when one gets the same amount of money back, and to get back extra for ‘use’ is ‘usury’ and wrong, because it amounts to selling the same thing twice. Scotus’ response is to deny, relying on Boniface VIII, that the use and ownership of money necessarily go together, or to deny the validity of the inference: money is used up in being used, therefore possession cannot be separated from use. However, as he explains in nn.136-137, usury is still wrong. For either (n.136) to loan money is to give possession, so that to get the loan back is to get possession back, and to get something extra back for ‘use’ as well would be to suppose one still somehow owned the money while it was being used when precisely one did not.

136. It is possible, then, to assign the following reason, that in the giving of a loan ownership is transferred; for this is what the words indicate 'I give you what is mine as loan'; therefore he who allows it as a loan does not remain owner of the loaned money, and consequently if he receives for the money something beyond the principal, he receives something for what is not his, or he sells what is not his.

137. The other reason is: let it be that the money remained his, yet the money does not of its own nature have any fruit, as some other things have that germinate from themselves; but only from someone's industry, namely the user's, does any fruit come. Now the industry of the user is not the industry of him who allowed the money; therefore, when he receives fruit from the money, he wishes to have the fruit of someone else's industry, which however that other did not give him by the fact that from that other he accepted a loan exchange. And this is the reason why, by contrast, the fruit of pledges that do germinate is computed in the principal.

138. Excepted in this matter of loaning are two cases in general: for sometimes one can licitly receive more than the capital by agreement, sometimes not by agreement.

139. The first [by agreement] in three ways:

Namely by reason of conventional penalty, though however it may not be done for the fraud of usury. For example: suppose you need my money for trading, but I allow it to you up to a certain day, adding a conditional penalty that if you do not pay it on such and such a day (because I will otherwise be greatly harmed) you will pay afterwards so much more. This added penalty is licit, because it is licit for me to keep myself from damage by thus forewarning him with whom I contract. Now the sign that it is not for fraud of usury is this manifest one: when a merchant more want the money to be paid to him on a predetermined day than on the day after with added penalty; and by contrast it is for the fraud of usury when he wants the day to be missed rather than the money on that day to be paid.

The second is by reason of interest; for a debtor from whose non-payment the creditor is notably harmed, is held by justice to satisfy the creditor with interest. And although this creditor could not have an action in the external forum against the other, because for example pacts have perhaps not been entered into or have changed, yet in the forum of conscience the debtor is bound for interest beyond the principal.

The third condition is when both, namely the capital and what is superfluous, are put under uncertainty. This is proved from Gregory IX *Decretals* V tit. 19 ch.19, 'On Usury',²⁷ and also by reason, using the argument from similarity, because just as uncertainty is an excuse there, so is it also here.

140. Also is [receiving more than the capital] licit without any agreement [n.138], because the mind alone without any verbal agreement, or other equivalent sign showing to the debtor that the lender would not lend without hope of gain, does not, when receiving more than the principal, make the lender to have what is another's without agreement, and therefore he is not bound to restitution.

Usury is wrong, therefore, because one sells what one no longer owns. Or (n.137) one can suppose that the lender still owns the money but that the gain that comes from the use of it comes from the borrower's industry and not from the lender's, so that the lender has no claim to the fruits of that use, or to extra payment because of it.

²⁷ "By reason of this doubt [sc. about greater and lesser valuation] is he also excused who sells bread, grain, wine oil, or other merchandise so as to receive for the same, within a certain time limit, more than they then are worth – provided, however, that at the time of the contract he had not been about to sell them."

141. One needs also to understand that money has some useful use from its own nature, as for looking at or for decoration or for displaying possibility, as if one were rich, and for this end can it be rented like a horse or something rentable; and for this use can, while ownership is retained, money be received. And then is it in its totality a contract for renting or hiring (and not borrowing or lending), and a weight numerically the same should be returned, unless perhaps something equal in weight and value satisfy the renter.

142. These aforesaid rules show what is just and what unjust in exchanges immediately made, that is, when each exchanger at once gives or receives that for which he exchanges.

5. Two Other Conclusions or Rules

143. But when an exchanger does not receive immediately that for which he does the exchanging, but reception of this sort is deferred, the question is what is right or of law?

I reply: besides the aforesaid rules [nn.139-142] pertaining to the just and unjust in individual contracts for present time, I add here these two rules: the first is that the exchanger not exchange or sell time, because time is not his; second, that he not put himself in surety of making a gain, and him with whom he exchanges in surety of making a loss (I mean by 'in surety of', always or for the most part).

144. From these rules [n.143] are plain many particular cases; for example, let the feast of the Lord's Nativity [December 25] be called *a*, and the feast of St. John the Baptist [June 24] be called *b*. A given exchanger hands over his property to another at *a*. Either he was going to sell it then, or was not but at *b*:

145. If so [sc. at *a*], either he determines the price then according as the time is running at *a*, and he does an act then of mercy, because he is supplying then the need of his neighbor (before he is bound to supply it), namely when waiting until *b* for payment of it. Or he determines a price greater than is just at *a*, and then he is a usurer, because he is, against the first rule, selling time [n.143]; this is proved from Gregory IX, *Decretals* V tit.19 ch.10, 'On Usury'.

146. But if he was not going to sell now but at another time when it would seem that, according to the run of time, he could make more gain – either, therefore, he sets down a fixed price then, or he does not but leaves certitude about the price to depend on something in the future.

147. If in the first way [n.146], then if he lays down a price according to what the thing is now worth, there is no doubt but that he does a great mercy. If, however, he lays down a price greater than it is now worth, but not so immoderate a price but that at the time of payment the thing sold would likely sometimes be worth more sometimes less, he is, by reason of the doubt, excused, because he is doing nothing against the aforesaid rule [sc. the rule not to sell time, n.143]. This is proved from *ibid.* ch.19 [see n.139 fn. 26]. – And if objection be made against this from what is said there [*ibid.*]: "provided that at the time of the contract he had not been about to sell them"], I reply: what is contained there is a useful warning, not a necessary precept.

148. But if he abandon determination of a price dependent on the future value of the thing, then either for the determinate time of the payment, or for another time when it is not as a rule customary for the thing to have a greater value than when he gave that

thing of his – and then he does an act of mercy, for example: “I allow it to you at as great a price as it will be worth at *b*, or at some time before *b*,” although however the thing will be commonly accustomed to be dearer at *b* than at any preceding time.

149. But if he want the price to be determined for some indeterminate time, so that, in this way, he put himself for the most part in surety of gain and the other in loss, as for example ‘I want you to pay me as much for it as it will be worth at any time up to *b* when it sells more dearly’, it is usury, because he sets himself up or his party for the most part for gain, and him with whom he contracts for the most part for loss; and then he has for himself what happens for the most part, and against himself what happens for the least part.

150. And another injustice is there as well, because on some determinate day and not at some vague particular time must he set out his property for sale, and it might at that time happen that it would be sold less dear than in a day between *a* and *b* that was dearer; and consequently, in such a pact he makes himself certain of a gain further than human industry could attain.

151. These then are the stated rules about the just and unjust in any selling and lending for the time now or in the future – and saying this about household [‘economic’] exchange, which is when the exchanger intends to accept the thing for which he does the exchange, because he buys it not to trade it but to use it.

6. Two Final Conclusions or Conditions

152. What follows concerns business exchange, where the exchanger intends to trade with the thing he acquires, because he bought it not to use it but to sell it, and this at a dearer price; and this business exchange is called pecuniary or lucrative.

153. On this question I add, beyond the rules above set down, two things as to what is just [nn.154-156] and what unjust [n.157]: the first is that such exchange is useful for the republic; the second is that such an exchanger, in proportion to his diligence and prudence and risks in exchanging, may receive a corresponding reward.

154. The exposition of the first condition is that it is useful for the republic to have those who keep things for sale, so that these things can be readily found by the needy wanting to buy them. At a level beyond too, it is useful for the republic to have those who import necessary things that the country does not abound in, and yet the use of them is useful there and necessary. From this it follows that the merchant, who imports a thing from the country where it abounds to another country where it is deficient, or who keeps the thing he has bought so that it may be readily found for sale by him who wants to buy it, is performing an act useful for the republic. This as to the exposition of the first condition.

155. The second condition follows, that everyone who serves the republic in an honest work should live from his labor (‘honest’, I said, because of prostitutes and others who live dishonestly); but he who imports things or keeps them is honestly and usefully serving the republic; therefore, it is necessary for him to live from his labor. – And not this only, but everyone can justly sell his industry and care. He who transports things from country to country needs considerable industry in order to consider what things a country abounds in and needs; therefore, he can, beyond necessary sustenance for himself and his family, justly receive for this deputed necessity a wage corresponding to his

industry. And beyond this, third, he can justly receive something corresponding to his perils; for from the fact that he transports things at his peril, if he is a transporter, or guards at his peril, if he is a guarder, he can, because of this sort of danger, unconcernedly receive something corresponding, and especially if sometimes, without his fault, he suffers loss in such service of the community (for example: a merchant when transporting sometimes loses a ship weighed down with the greatest goods; and another merchant, from a chance fire, loses the most precious things he is guarding for the republic).

156. In confirmation of all this is that a merchant can, if a legislator from the republic is not present, take for himself, without extortion, as much as a just and good legislator ought to repay a minister of the republic. But if there were a good legislator in a poor country, he ought to hire for a considerable wage such sort of merchants, so that they may import necessary things and conserve them after they have been imported; and not only should he find necessary sustenance for them and their family, but also compensate their industry, peril, and skill. Therefore, they can do this themselves as well when selling.

157. From these two conditions, required in just business, it is plain how some are blamable in doing business, as namely those who neither transport nor conserve nor improve things for sale by their industry. Nor is any other simple person made certain of the value of the thing to be sold. But he [the blamable business dealer] only buys so as at once to sell without any of these required conditions. He would need to be exterminated or banished from the republic. And he is called in Gallic a ‘regratier’ (‘regrater’ or ‘huckster’), because he prevents direct exchange between those willing to buy or exchange in economic manner, and consequently he makes anything that is sellable or useful more expensive for the buyer and cheaper for the seller than it should be, and thus he inflicts a loss on both sides.

C. What Unjust Taking of Another’s Things is, or What Causing Loss to Another in Matters Temporal is

158. About the third article [n.78] the answer is plain from what has been said, because “the straight is judge of itself and of the bent,” *On the Soul* 1.5.411a4-6; and therefore, from the justice (determined in the other preceding article [nn.102-157]) in the transfers of ownership or of the use of things, the injustice that happens in such things is made apparent.

159. This can be briefly explained by running through them:

For, in the case of giving, there is no justice if the giver does not give purely freely, or gives against the will of someone on whom he depends in giving, as is plain in the case that is alleged there [n.115, and reference]. And he does not give purely freely if he is deceived, or if he gives when dragged, as it were, or compelled by necessity; because ignorance and any sort of compulsion exclude the simply voluntary, *Ethics* 3.1.1109b35-1110a18. From this follows that one who, as to the reason because of which he gives, is deceived about him to whom he gives, simply does not give; and therefore, if he gives to someone as to a neighbor, who, however, is not a neighbor, he does not simply give; likewise, if he gives to someone as to one in need who is not in need. And so, let them look at every case, namely those who, as being rich, nevertheless receive alms as

if they were needy, lest they are receiving everything of this sort unjustly; because voluntariness is not in the giver there, on account of his ignorance of the condition that he is having to regard to in his giving. Likewise, if he is dragged in, as in giving usury, there is no purely free giving.

160. Likewise must it be said about accommodation, although the defect there is not, because of equal vice, equal, because the transfer of use for a time does not require as much liberality as the transfer of ownership.

161. About permutation (barter) there is injustice from the same causes, namely from deception, from what is voluntary, and from prohibition by a superior to whom the one exchanging is subject in his exchanging. And from this can the exchanging that goes on in games of dice and the like be called unjust, according to Justinian *Digest* XI ch.5 n.4, Gregory IX, *Decretals* III tit.1 ch.15, Gloss on the *Decretals* III *ibid*.²⁸ However this law only binds those who are politically subject to imperial law, who perhaps are none today, because where precisely this law was wont to be in place, town laws take precedence over imperial ones (it is plain in Italy).

162. Injustices in buying and selling were touched on before [nn.129-132], when touching on injustice in their case; and next to these, about leasing and renting out [n.119] the matter is plain. About the giving and paying of loans the chief injustice is usury, the censuring of which is contained in Gregory IX, *Decretals* V tit. 19 ch.4.

163. The crime of usury is detested in the pages of both *Testaments*; in the *Old* it is plain from *Ezekiel* 18.8-9, “You will not accommodate yourself to usury etc.,” and in the *New* from *Luke* 6.35, “Lend without expecting anything in return.”

164. And if argument is made against this that it is licit for anyone to keep himself from loss in contracts, as was said before [nn.129-132], because the seller can sell for a dearer price, paying attention to his loss in selling, especially if he be induced by the one to whom he sells; therefore, in the same way, if he be induced by the one to whom he lends, it is licit for him to keep himself from loss, which he cannot do save by receiving something beyond the principal –

165. Similarly, he who gives usury gives it voluntarily, because no one compels him to accept a loan at usury, but by his own will he takes the money and returns more than the principal; and not otherwise can ownership be transferred to another; therefore he transfers ownership; therefore the other, namely the usurer, does not have what is another’s –

166. To the first [n.164] I say that if he does not want to suffer loss, he should keep back the money that is necessary for himself, because no one is compelling him to show mercy to his neighbor; but if he wants to show mercy, he is compelled by the Divine Law not to vitiate the mercy.

To the second [n.165]: although he transfer ownership, yet the receiver is bound to make restoration; just as, in the giving of a loan, ownership is transferred and use, and yet the debtor is bound eventually to restore it to the creditor.

167. Similarly the point is plain about injustice in exchanges, where a delay happens in the receiving; for there is injustice in the selling of time, or in making oneself certain of making a gain, either simply or for the most part.

²⁸ “Clerics are prohibited here not only from playing but even from being present at games, so much so that he who is publicly a player of dice is rejected for promotion; and they should not be inspectors of such sort of games.”

168. There is injustice likewise when doing business, if one's act is a hindrance to the republic, or if one receives from the republic immoderately beyond one's industry, diligence, worry, and perils.

169. Again, besides these partial injustices in these contracts or exchanges, there is a general injustice when someone takes another's property against the will simply of the owner – and this both as to the proximate owner and the remote owner, namely the legislator, who does not wish, indeed prohibits, seizing the thing without the owner's will, save in cases of prescription or long established use. But in the following cases there is no transfer of ownership, namely in theft, rapine, and the like, although there is violent seizure of something of which there is an owner; and this injustice is more manifest than any other one where injustice in the transfer or exchange is only because of a defective condition, as in the cases above stated.

D. How the Holder of Another's Property is Obligated to Restitution

170. About the fourth article [n.78]: first, for what reason restitution must be made; second, who is bound to make restitution; third, what; fourth, to whom; fifth: when.²⁹

171. [About the first] – About the first I say that just as to take away what is another's is a mortal sin against a negative precept of God, “Thou shalt not steal” [*Exodus 20.15*], so also to hold on to what is another's. And therefore, just as it is necessary to hold to and keep the negative precepts, so it is necessary not to hold on to what is another's when the owner is unwilling, and consequently it is necessary either at once to give it back in actuality or at any rate to want to give it back when the opportunity will have arisen.

172. Hence restitution is not necessarily to be made as some part of satisfaction, either when taking satisfaction generally or when taking it specifically.

For, taken generally, satisfaction renders to him against whom one sinned the equivalent of the sin. The restitution here is not so, because a return to a neighbor of that which is his own could be made without any return for sin, just as in loans too a return is made to the creditor without any satisfaction pertaining to reconciliation of a sinner.

Similarly, there is no specific satisfaction (which is the third part of penitence [d.16 n.26]), because restitution is by congruity required before every part of penitence, just as is voluntary cessation, actually or in fact, from sin. But the satisfaction that is the third part of penitence is not required before the other two parts of penitence, indeed it follows the contrition and confession as enjoined by a priest.

173. Restitution, however, is not enjoined by a priest but by Divine Law. And the like holds of other sins: if someone were to keep a fornicatrix, or rather an adulteress, restoring her to her husband is only to cease from one's sin or from the transgression of this precept, “Thou shalt not commit adultery,” *Exodus 20.14*; and this precedes every part of an accepted penitence. And therefore, just as he who keeps an adulteress is not capable of penitence but is a mocker and therefore, when he comes to penitence, he adds sin to sin, so he who keeps back another's property in both will and fact is not, while he is such, capable of any part of penitence.

²⁹ The order of topics in this fourth article by Scotus follows the order of circumstances given in Aristotle's *Ethics* 3.2.1111a3-6.

174. [About the second] – About the second [n.170], ‘who is bound to make restitution’, there are two verses:

Command, advice, consent, recourse, coaxing
Partake, silent, not stop, not revealing³⁰

The assertion of these rests on this maxim: ‘whoever takes away or detains what is another’s is bound to restore it’.

175. Now, one can take away as superior cause, namely by prescribing; or as proximate cause, by directly taking away; or as aiding cause, if one is an ally in taking away; or as inducing cause, if one counsels or favors or praises with the sort of advice, favor, or praise on account of which the taking away is done and would not be done without it.

176. Likewise as to the detainer: he who immediately detains, or by whose command a thing is detained, whether positively, or privatively, or interpretatively (as, namely, that he does not act to have it restored, although this belong to him of his office), or by offer of aid or favor (as if he is silent when asked in court, where restitution could be made to its owner by judicial sentence, and yet no danger, by his speaking the truth, threatens status or person).

177. Hence, in brief, all obligation for restitution is reduced to taking away or detaining – and this whether as principal or as proximate cause, whether aiding or inducing or not preventing, when preventing would be for the good of the republic and without danger to the person prevented.

178. And all these things, because they are reduced to effective consent, true or interpretative, are proved through Gratian, *Decretum* p.2 cause 2 q.1 ch.10, where it is said that “equal penalty restrains him who does and him who consents;” and this is taken from the statement of Paul, *Romans* 1.32, “Not only those who do such things, but those too who consent to those who do them.”

179. Each of all these is bound to restitution in full; but when one of them restores, all others are freed of the debt as regards him who suffered the loss; but the others are bound, pro rata, to the portion that joins them to him who made satisfaction for them all.

180. [About the third] – About the third, ‘what [restitution, n.170]’, I say he is bound not only for restoring the thing taken away or the use of the thing, but also for the interest or fruit received from it (if the thing was fruit-bearing), but not the fruit that comes from the industry of him who uses the thing.

181. From this it follows that the usurer is not bound to restore the gain sought from money borrowed at usury, otherwise he who received it could be a usurer justly, for to receive the fruit of one’s money that comes from the industry of another is to make usury.³¹ And this perhaps is what would be able to induce men more to usury, for, in making profit from usury, they are not bound to restore the profit they make. On the

³⁰ These verses were offered by jurists to aid memory about who is under obligation to make restitution. They are cited by many scholastics, as Albert the Great, Thomas Aquinas, Richard of Middleton, among others.

³¹ Here one must understand the usurer to be the one who borrowed the money at usury, not the one who lent it. A borrower is, of course, bound to return the borrowed money to the lender, but not to return the gain he makes from it. If he were bound in justice to return the gain as well, the lender would justly get that gain and so justly get the profit of the other’s labor, which is usury. The problem now, as Scotus immediately remarks, is that if borrowers are only bound to restore the amount borrowed and not any gain they make from using it, then men will be more induced to borrow money, because they will never have to pay back any gain they make from it.

contrary, it is the person's own because acquired through his own industry – whether that of which he acquired it was also another's or to be justly restored to another.

182. [About the fourth] – About the fourth, 'to whom' [n.170], I say to the one who underwent the loss, if however it be possible. I say 'possible', namely if he knows him or has, or can have him, in his presence (so that restitution may be sent to him without the sender suffering a disadvantage greater than what has to be sent), it would be useful for him to whom it is sent. And I mean this about him himself, or about some of those close to him (if he be dead or absent), because it is a presumption of the law of nature that he would prefer restitution to be made to those close to him.

183. And therefore in two cases is return not made either to him or to his: namely because to whom is not known, or suppose him known but dead, and those close to him are not known; in the other case, if greater expenses would have to be laid out in sending it than it is worth to him to whom it is sent.

184. If in these cases you ask, 'to whom do I give it?', I say that you give it to the poor in his stead, because let what cannot be returned to him temporally be returned to him spiritually; spiritual return at its greatest is done by returning it to the poor on his behalf.

185. If you ask by whose hands it should be returned to the poor, I reply: I have not found who is the necessarily designated mediator in distributing these things to the poor.

186. One doctor says [Richard of Middleton, *Sent.* IV d.15 princ. 5 q.4 ad 2] that it is one's confessor, or someone in whose faithfulness one trusts.

187. It seems to me that it should be distributed to the poor by oneself, but with the counsel of some good man. For one could give the sort of mediator to make restitution whose faithfulness one might presume on, and yet he might apply it to other uses than he should. Hence, where the divine or ecclesiastical law does not bind a person, natural reason should be followed. But natural reason dictates that the person who is bound should restore it to the poor through himself rather than through another, though not by excluding but including the counsel of a good man.

188. [About the fifth] – About the fifth, 'when' [n.170], I say: it is not at any time licit to retain another's property against the will of the owner, that is, when he does not will it and should according to right reason not will it. And consequently restitution must, as a rule, be made at once, just as at once must one cease from the act of any mortal sin, not only exterior but interior.

189. But sometimes in such cases it is licit to defer exterior restitution – however with interior restitution already in place, namely the will to restore when opportunity and opportune circumstances occur. But those cases are contained universally under this maxim: It is licit to detain another's property when he, whose it is, should reasonably want it to be detained. But in certain cases anyone should rationally want this, namely his property to be detained by another in fact, when already in place is the will, along with opportune circumstances, to restore. For everyone should want restitution not to be made to him when restitution is to the prejudice of the community or of the recipient himself; because he ought to want his own good and the common good, and thus to want some sort of deferring of the restitution of a useful good, so that a greater good may be preserved. He should also not want restitution then to be made when it is to the prejudice and disrepute of the restorer, because he should more want the repute of his neighbor than

the moderate advantage of his own, and this at once. Similarly, he should want what would avoid a great disadvantage to his neighbor restorer than the moderate or no advantage of his own in the moderate deferment of restitution.

190. From these points follows that when restitution would bring loss to the republic, or to him to whom it is made, or bring disrepute to the restorer or a notably too great loss, he is not bound to make restitution at once, but it suffices that in desire he restore it at once, and that he restore it in act when the inconveniences on this and that side cease.

191. If it is objected that restitution is an act of a negative precept, because it is not to retain another's property, and to the observance of a negative precept everyone is bound always and at all times – I reply: to keep another's property unjustly, that is, against the will of the owner, is always prohibited; and therefore always and at all times he ought not to keep it in this way; but when someone has the will to make restitution at an opportune time, from then on he is keeping it with the will of the owner, although not with the owner's elicited act but with the act he should have, because the owner should want him who has what is the owner's to keep it until he can opportunely return it.

192. But if you say that the owner here is unwilling, because he does not want his property to be kept for any length of time – I reply that when an owner wants in a bad and disordered way to have his property back at once, and consequently does not in ordered way want his neighbor to keep it, the one who is keeping it is not unjust, because a deposit too, about whose return the law is always most strict, can licitly be kept when the owner is with disordered will unwilling.

193. And to this term 'when' [n.188] can be reduced many other cases besides the aforesaid.

One special case (which can also be reduced to the term 'who' [n.170]) is when, of course, the taking away will have been secret. The one who took it away is not bound to betray himself, nor consequently to restore it himself directly, but through some other secret and faithful person; and it is expedient that it be through a confessor, because the crime is uncovered to him in confession, and his trustworthiness as to restoring what is committed to his trust should be credited enough. Therefore, restitution can here be deferred until the will of such a person and opportunity may be obtained.

194. There is also another case when making return can be deferred (which could also be reduced to the term 'who' [n.170]): for one is not bound for the time when one is incapable; however one is bound afterwards "when one will have reached a fatter fortune," as is proved in Gregory IX, *Decretals* III tit.23 ch.3; as also is it noted in the gloss that the action does not expire through the want of the debtor, but sleeps – hence the remark [taken by the gloss from Justinian's *Digest* IV ch.3 n.9], "Vain is the action which the want of the debtor excludes." But the right to action remains against the debtor, just as does the obligation, though it does sleep.

II. To the Initial Arguments

195. To the initial arguments:

To the first [n.66] the answer is plain from the first part of the last article [nn.171-172], as to what the reason is that one is not bound to restitution as to satisfaction properly speaking (which is the third part of penitence [d.16 n.18]); but one is bound to

restitution as to cessation from sin, and this in act and in effect, with the due and opportune circumstances.

196. To the second and third [nn.67-68] the answer is plain from what was said in the fourth article, that he who does not know is bound to make return to the poor [nn.184-185]. But as to what is said there about not knowing the owner of a thing that has been found [n.68], I say that a thing found should be handed over to a public person to look after, and proclamation should be made in public places so that the owner who has lost it can thus get hold of it. But if, after such proclamation no owner appear, one must do as one does about unfixed restitution [sc. give to the poor].

197. To the next [n.69], it is plain that a greater sum is not to be laid out in sending than what the thing sent is worth, but one must wait for the person to be present, if this may be credited to be the case at some point. But if it not be credited, and if a messenger not go between save at extreme expense, the thing is to be handed over to the parents and, if they not be there, it is to be given to the poor. For, universally, bestowing alms on the poor on someone's behalf is to give him a spiritual good; and hereby, when a temporal good cannot be returned to him, does restitution to him become possible.

198. To the fifth [n.70], if the person holding another's property is very necessary to the republic, and if he were in pressing necessity, and likewise the person to whom he was in debt, the argument would have some evidence on its side; but this matter will be spoken of at once in the response to the argument that follows [n.199]. But if that which is unjustly detained by a person very necessary for the republic is not necessary for him simply, but only for preserving his dignified status, I say that it is not licit for someone to hold a dignified status on the basis of another's goods, and his dignified status (which he has through non-restitution) is not worth as much to the republic as his justice and fidelity and common justice.

199. To the sixth [n.71]: or the one detaining [the other's property] is in extreme necessity and he whose is the property is not, but has something less than extreme necessity – and then I say that this property belongs to the detainer by the “right of heaven,³² by which right a way to provide for the support of nature in a time of extreme necessity is conceded to everyone detained by the extreme necessity;” and it is today in Boniface VIII, *Sixth Book of Decretals*, V tit. 12 ch.3. But if both, namely detainer and he whose property is detained, are in extreme necessity, then if the owner comes to this necessity before the detainer does, the property must be returned to the owner by a double right: both because it is his first, and because it is now made his by this necessity. But if the detainer comes first to this extreme necessity, it is made his, and then it should not be returned to the owner who comes to this necessity afterwards, because his ownership over the thing has ceased, and has become the other's by the ‘right of the pole’. But if both come together to extreme necessity, I say that it should be returned to the owner, because it never fell away from his ownership.

200. And if you argue that each should love himself more than his neighbor, and consequently love his own bodily life more than that of his neighbor, and consequently

³² Literally the ‘right of the pole [of the heavens]’, or ‘ius poli’, which was natural or divine right, and was distinguished from the ‘right of the forum’, or ‘ius fori’, which was civil or human right. The two together form a sort of jingle in Latin and are found as such in Augustine, *Sermon 335, On the Life and Morals of his Clerics*, “The bishop has it in his power not to make return, but *iure fori* not *iure poli*.” The phrase appears in Gratian, *Decretum*, e.g. p.2 cause 17 q.4 ch.42, and several other sources.

love to retain this thing, which is simply necessary for himself, more than to give it to his neighbor – I reply: one ought to love one's own life in an ordered way more, as it is lovable for eternal life, and so ought to love the just conservation of one's life more than the conservation of the life of one's neighbor, but not the unjust conservation of one's life more than the just conservation of the life of one's neighbor. For thus should a thief undergo hanging more than kill the hangman so as to escape. The reason for this is that the love of bodily life unjustly kept is not an ordered love, because it is not for the love of one's soul nor of God. Now, in the case last mentioned, this detainer's protecting of his life by another's property is unjust; and along with this it is also homicide, because he who takes from another the necessary thing owed to him unjustly kills him.

201. But surely if, after extreme necessity, the detainer in the first or second case come to a fuller fortune, is he not then bound to make return? It seems that he is, [n.194] because the detaining came from impossibility, as was mentioned above [n.194] from Gregory IX, *Decretals*.

202. On the contrary: the property was made to belong to the detainer by the fact he was in extreme necessity, and consequently it ceased to belong to the first owner.

203. It could be said that such a simply necessary thing could only be something pertaining to sustenance, and then it would be consumed, and justly, because the consumer was owner; however he is bound to return the equivalent afterwards, when he comes to a fuller fortune, because the obligation to an equivalence seems to have had its rise by reference to the first taking of the other's property which, before the extreme necessity, was unjust; and therefore the obligation was not extinguished by the extreme necessity but slept. But if he never had taken it before the extreme necessity, then he would justly have taken it as his own, nor is he bound to any restitution.

204. To the other argument about the sword [n.72], the answer is plain from 'when' in the fifth argument of the fourth article [nn.190-192].

205. To the next about the adulteress, the answer is multiple:

In one way [Richard of Middleton, *Sent.* IV d.15 princ.5 q.4 ad 9], that she ought to reveal her fall or sin to her illegitimate son and induce him to let the inheritance go to the true heir, by reason of the fact he is unjustly holding it, because it is not his.

206. In another way is it said [Henry of Susa, *Summa of the Titles of the Decretals* V], and it is less strong, that she should reveal her fault to her husband so that he may assign the inheritance to the true heir, and this is licit according to imperial laws, after the testator has first instituted an heir in his testament.

207. Against the first response [n.205]: because either the son would believe his mother or he would not. If he believed her, it is not likely that he would for this reason let the inheritance go, because few are found so perfect that, for keeping justice in the forum of God, they would let great possessions go that they can hold by exterior right. Nor can even the mother presume this, unless she had much experience before of her son's will; and she should not, because of uncertain correction of her son, expose herself to certain danger of dishonor with her son. But if her son not believe her, there would then be two evils, because she would be dishonored and he would hold the inheritance as before.

208. Against the second response [n.206] the argument is that the woman defames herself, and exposes herself to danger of death, and her husband to danger of wife-killing, because such a husband could be a zealot (as many are), who would kill her, or at least hold her in hatred, and would expel her from himself and from act of marriage. And to

these evils of disgrace, of death, or of hatred at least or discord, which are very likely and seem they will for the most part happen, the woman should not expose herself for the uncertain good of restoring the inheritance. And in addition to this, in lands where the first born is universally the heir, the father, were he to believe his wife, could not take the inheritance from the illegitimate son unless he proved her such in a public forum, and then the woman would need to be defamed not only before her husband but before the whole country.

209. I say, therefore, that the woman should, as much as she can, work to get the inheritance returned to the true heir. I say, 'to the extent it is in her', because she should not expose herself to disgrace, but induce the illegitimate son, as far as she can, to let the inheritance go for other honest causes. One honest way is to enter religious life; another is to become a cleric and receive an ecclesiastical benefice and, being as it were content with these sufficiencies, let the inheritance go to the other brother as to the remaining layman.

210. But if by no honest persuasion can the mother sway the illegitimate son's heart to let the inheritance go, it does not seem that she should betray herself to her illegitimate son, because she is not certain that such a son, being thus unpersuadable by her in other things that are honest, would be swayed because of this; rather perhaps he would hold on more tenaciously, conceiving his dismissal to be to his own disgrace, because he would thereby be known to be illegitimate, and those ill born take much care against such notoriety. And then should the mother in another way work for the inheritance to be made to the true heir – as much as she can and according to what corresponds to justice. Because I do not say that she is bound to restore the equivalent of the whole inheritance, for there is a great distance between 'to have' and 'to be close'; but he, the true heir, never had the inheritance, though he was, according to justice, close to it. And therefore something less than the equivalent suffices him for restitution; and let that less be determined by the decision of a good man. However, it does seem that at least provision of honest sustenance and vesture is owed him, were the inheritance so full that it could suffice for the heir at double or triple that of his. But if this is not possible, the answer is as above [n.194].

211. Likewise to the last argument [n.74] I say that he is bound to restore the benefice, not in totality, because there is a great difference between 'to have' and 'to be close', but a portion corresponding to some part of the value of the benefice. And this if he directly took away the benefice from him with the intention of causing him loss; but if indirectly, namely by looking after it for himself and intending, together with this, to cause the other loss, and he did not otherwise sin, he is bound, as I said before. But if he only intended to provide for his own proper utility and thus look after it for himself and as a result another, contrary to his intention, suffers loss, he is not at all bound to him, because it is licit to provide for oneself to the neglect of another.

212. There is a confirmation of this in Justinian *Digest* XXXIX ch.3 [taken by Scotus word for word from Richard of Middleton, *Sent.*IV d.15 princ.5 q.4 ad 7]. If I cut off the streams on my farm, which water to another's well flows through, with the intention of harming him, I am bound to him for restitution of the loss. But if I do this without deceit, intending to consult my own utility and necessity, as that it is useful for me to make a wall which cannot conveniently be built without cutting off those streams, I do not harm him, because I have the right to do what is for my own utility on my own

farm. And the *Digest* says [*ibid. ch.17 n.151*], “No one causes loss save he who does what he does not have the right to do.” But this person has the right to care for his benefice, with just and honest circumstances preserved.

Question Three

Whether he who Causes a Loss to Another in the Goods of his Person, as Body or Soul, is Bound to Make Restitution so he Can be Truly Penitent

213. Third I ask whether he who causes a loss to another in the goods of his person, as body or soul, is bound to make restitution so he can be truly penitent.

214. It seems that he is not:

Because no one is bound to what is impossible; but in this sort of loss restitution is sometimes impossible; therefore etc. The minor is plain, for he who causes a loss cannot return an equivalent spiritual good to him whom he harms in goods of the soul; likewise, if he has caused a loss by taking away a limb or by killing, he cannot return either it or its equivalent, because no exterior good, which is a least good because a good of fortune, can be equivalent to a good of nature, which is an intermediate good, according to Augustine, *Retractions* I ch.9 n.4.

215. Again, someone who draws a man back, who wants to enter Religion, from entry into Religion causes him a loss in the goods of the soul that he would be going to have in Religion, and causes a loss to Religion by drawing such a person out of it. And he is not bound to restitution of those goods to him (because he is unable), nor to restitution of the person or the equivalent of the person, because he would be bound himself to enter Religion in his place if he could not induce another equivalent person.

216. To the contrary:

Gratian, *Decretum* p.2 cause 6 q.1 ch.13, “Those who corrupt with depraved morals the life and morals of the good are worse than those who ravage others’ substance and estates.”

217. Again, *Exodus* 22.16-17, “He who seduces a virgin and sleeps with her will give her a dowry and have her as wife, or he will return money according to the manner of the dowry that virgins are wont to receive.” Therefore, this loss inflicted on a virgin against chastity requires restitution of the conjugal chastity that should be given back for it.

218. Again, about loss inflicted on the body, there is contained in Gregory IX *Decretals* V tit.36 ch.1, ‘About injuries and loss inflicted’, and it is taken from *Exodus* 21.18, “If another has struck his neighbor and the neighbor has not died but has been lain on a bed, let him who struck him repay to doctors their labors and expenses.”

I. To the Question

A. About Losses Inflicted

219. I reply: here one must look first at loss inflicted on another in goods of the soul, second in goods of the body.

1. About Losses in Goods of the Soul

220. On the first point [n.219], the understanding is not about the natural goods of the soul, because no one can in this way inflict loss on another, since the natural goods are incorruptible goods. But the understanding is about the goods of morals, either the acquired ones that are corrupted or the ones that should be acquired whose acquisition is impeded – as namely it is about the sins and vices by which acquired virtues are corrupted (and vices at length generated), and by which virtues that ought to be generated by good acts are impeded.

221. In these things too no one can directly inflict loss on another, because sin and every vicious act is to such an extent voluntary that, if it not be voluntary, it is not a sin, from Augustine, *On True Religion* ch.14 n.27; therefore, by one's own will alone can one thus suffer loss.

22. But someone can inflict loss on another in these things indirectly, by inducing him to sin and to vicious acts, by which virtues are corrupted and vices and sins generated. And this inducing can be multiple, namely by counsel, persuasion, request etc.

223. About this first case, then, I say that the one who inflicts the loss is bound, in the way it is possible for him, to restore the loss to him, namely by efficaciously inducing him to penitence and to virtuous acts. And if inducement alone not suffice (because it is easier to persevere than to convert), he is bound both by his own prayers and by prayers procured of others to obtain conversion for him; also through other efficacious persuaders, provided however he not betray to them the other's hidden sin.

224. And from this is plain how great a danger it is to solicit another or to compel or induce him to sin, because scarcely is one able to make restitution worthily, since a will now attracted to sin one could scarcely by persuasions and many other ways bring back to virtue.

225. The reason for this is sufficiently plain, because since “the goods of virtue are the greatest goods,” according to Augustine, *Retractions* 1 ch.9 n.4, he who causes harm in these things causes more harm than he who does so in all other things whatever; and consequently, he is the more bound, according to justice, to restore such good to his neighbor, to the extent it is possible for him

2. About Losses in Goods of the Body

226. About the second [n.219], he who causes loss in the body, or inflicts the ultimate loss, namely death, or some other loss less than death. And this is double: either irremediable (as is mutilation), or remediable (as is wounding, or some other curable injury). And if the loss is in mutilation, it is double, for either it is extreme, which impedes in its totality some human act that would be a man's in respect of the amputated part (as in amputation of the right hand, when a human act is altogether taken away that, as to that hand, is of a nature to belong to him); or it is not extreme, that is, not preventing a human act (as amputation of a finger or some part of a finger).

B. About the Goods to be Restored

227. About all these losses one must look first at what could justly be established about them all, second at what has been established.

1. What Could be Established by Statute

228. About the first [n.227] I say that if the law of ‘an eye for an eye’ were established in all these cases, it would be just, because it is not easy for an equal recompense for such a loss inflicted on a man to be made by goods of fortune, because they are not equivalent.

229. And if the objection be made that therefore the judicial Law of Moses would remain in effect, and then it would be licit under the Law of the Gospel to Judaize in judicial matters – I reply that a law can get its force as from the legislator in the community where it is established, and then, wherever the reason for establishing it is taken from, the statute does not get its force as it is established by someone else, though it be made by someone else, but as from that legislator. And in this way could judicial elements of the Mosaic Law be established by the Pope and the Emperor for observance by Christians, and these elements would not be observed as established by the Mosaic Law or by Moses, but as by a Gospel Legislator. Nor would this be to Judaize, for the judicial law is not observed because it is Mosaic, but because the same thing is established by the prince who has power to establish laws in the Christian Church.

230. Proof of this:

First in fact, because many such things from the judicial elements of the Mosaic Law are accepted in the *Decretals*, as is plain from Gregory IX, *Decretals* V tit.36 chs.1-6, ‘Of Injuries and Loss Inflicted’, chapter 1 and the 5 chapters following, all of which are taken from *Exodus* 21.18-19, 33-36, 22.5-6, and they are kept today as canon laws, but not because they are in the Mosaic Law.

231. This is plain from four examples:

When a community sees another community ordered well in its laws, it can take up the laws that it judges to be reasonable and useful, so that he who has authority in making laws in this community may establish them to be here observed; and then they will be observed here, not because they are the laws of that other community, but because they are established by the legislator in this community.

232. The thing is plain also in cities where the governing is through a power presiding within it: one city accepts the laws of another and ordains them to be kept in this city.

233. The thing is also plain in kingdoms, as the laws of England could be received by another king and established by him to be kept in his kingdom.

234. The thing is also plain in religions, because when the *Constitutions* and *Ordinances* of one Religion [sc. Religious Order] are seen by another Religion to be honorable and very suited for observance of regular life, that other Religion could establish that they be observed in that Religion. Nor would they then bind the Order of Preachers because they are the ordinances of the Friars Minor, but because they are approved by the General Chapter of the Order of Preachers.

235. Thus it is in the issue at hand about the judgments of the Mosaic Law, indeed by reading the imperial laws of the Codex [of Justinian] – many things are found sufficiently consonant with many judicial elements of the Mosaic Law; and no wonder, because God was not foolish so as to give the laws against reason; and though he gave some very hard ones, which it is not necessary to observe in the Gospel, yet he gave many very reasonable ones, even for any state at all in this mortal life; and therefore if

they are established by a legislator to be observed for any time at all, they are justly set up.

236. And in this way, if it were established by someone that a blasphemer, adulterer, idolater should be killed, much more justly would it be ordained than that a thief should be hung, as will be plain later [n.242]. But it is plain now what princes look to instead, that they look to temporal advantage more than God's honor, and thereby do they punish, and want to repress, sins against one's neighbor more than sins against God.

2. What has Been Established by Statute

237. About the second point [n.227], namely what has been established by statute:

In recompense for the first and greatest loss, namely the taking away of life, the law of 'an eye for an eye' is regularly established in many communities, namely that the murderer die. And reasonably, namely because not only does this belong to the Mosaic Law but also to the natural law, and it is approved and confirmed in the Gospel Law of Christ, *Matthew 26.52*, "he who kills by the sword shall die by the sword." And consequently wherever such a law about returning life for life has been established, justly should a man pay the penalty and justly bear it. But if anywhere it has not been established, no one ought to inflict it on himself, because no one ought to be a murderer of himself without a special command of God; rather, for making restitution to him whose life he took away, it is expedient for him to expose his life in a just cause, as against the enemies of the Church.

238. But if he not wish to make so great a restitution, he cannot be altogether immune from restitution, as some fatuous people make him, who absolve murderers by not making clear to them the restitution that necessarily falls on them – as if it could be easier to pass over a homicide than (so to say) a dogicide or an oxicide, because if someone had killed his neighbor's ox or dog, he would not without restitution be absolved. Therefore, he is bound to do spiritual restitution, equivalent to the life that he took away, as equivalence is possible in such cases. And not this only, but if the one killed was supporting some others, as father or mother or neighbors, the killer is bound to all of them for as much restitution as he took from them by the killing of that person.

239. And because someone could scarcely recompense by his action that which the homicide took away, it would be expedient for the soul of such a one that he make payment through sufferings voluntary or patiently borne, namely so as to be 'killed' for the one he murdered. Therefore, the community is best provided for where the law of 'an eye for an eye' in a case of homicide has been established. For it is plain how much God detests homicide when David (who however had killed justly) wanted to build God a house, but because he was a shedder of much human blood, he was forbidden by God [*I Chronicles 22.8, 28.2-3*]. If therefore a just killer is not accepted by God for his cult, where will an unjust killer appear?

Let this, then, be said about killing unjustly.

240. But who is a just killer?

A response is obtained from Gratian, *Decretum* p.2 cause 23 q.5 ch.9, and it has the title there 'Augustine, *City of God* 1 [ch.2]': "With," says Augustine, "these exceptions (those whom a just law generally, or God specifically, commands to be killed), whoever has killed a man will bear the guilt for his crime." And as to what is a just law,

Augustine himself determines it briefly in *On Free Choice* I ch.4 n.27, “No law is just save one that has come already from the Divine Law (as are practical conclusions from practical principles), or one that agrees with Divine Law, at least does not disagree with it.”

241. As to the issue at hand, the Divine Law prohibits it, “Thou shalt not kill” [*Exodus*, 20.13], and it is licit for no inferior to dispense from the law of a superior; therefore, no positive law, establishing for a man to be killed, is just if it establishes it in those cases where God has made no exception. But he has made exception in many cases, as is plain in *Exodus* 21.12-22, 29, about blasphemy, homicide, adultery, and many others. No one, therefore, justly kills according to the law unless the positive law inflict homicide and unless the case is an exception from God who prohibits homicide.

242. If you object that therefore the law is unjust that prescribes that a thief is to be killed, because God has not made this an exception, namely the sin of theft, from the negative precept ‘thou shalt not kill’. Rather he has manifestly shown that he does not want to except a thief from the precept ‘thou shalt not kill’, and that he does not want him to be punished with death, because he inflicts another penalty on a thief – I reply: it is clear that God does not in the Mosaic or Gospel Law explicitly except the sin of theft from the precept ‘thou shalt not kill’, so that, surely, it be licit to kill a man for this sin. And therefore unless he has revoked it by some special revocation that is contained in Scripture (and we have not heard of any official decree descending from heaven), I do not see that any just law could establish that someone is to be killed for theft alone. I say ‘alone’, because if he is a thief, and along with this an intruder, he is presumed to be a murderer because he is willing to kill, and is ready for this if someone resist him. This is plain from *Exodus* 22.2-4 about a thief by night and by day. A thief by night is killed with impunity; but he who kills someone who enters by day to steal will be guilty of homicide. The cause of the difference is that it is presumed that he who is a thief by night would kill one who resists him if he could, but not a thief who enters by day.

243. Let it also be that it would have been in some way licit for Jews to kill for theft, it seems that by Gospel mercy is this rigor revoked more than the rigor against adultery, because the sin of theft is much less than adultery, according to *Proverbs* 6.30, “The fault is not great when someone is a thief, for he steals to fill his hungry soul; when caught too he will give back sevenfold.” There follows, 6.32, “But he who is an adulterer, because of his want of heart, will lose his soul.” But the punishment for adultery is revoked in *John* 8.10-11, “Has no one condemned you, woman?... Neither will I condemn you; go in peace and sin no more.” Much more, therefore, would the rigor against theft have been revoked if it had been established in the Mosaic Law.

244. About other losses in body, namely extreme or non-extreme mutilation [n.226], there has been established in the Church only a pecuniary penalty. And it should respond not only to the loss that someone incurs for the mutilation through the whole future time in which he was going to use the limb cut-off, but also for the expenses added in caring for it (and this is stated in the chapter cited [n.230] from Gregory IX, *Decretals* V tit. 36 ch.1); and further for placating the one wounded, which would be required even if there were no such mutilation; and for the consolation of the one afflicted, because of his abiding desolation over such mutilation. And the mutilation of the poor must be more weighed than that of the rich, if the poor had more need of the part cut off for necessary provisions; because he would have used that part for procuring necessities, although there

may be a preponderant condition on the other side, namely the dignity of the [rich] person, but this is little compared to the former condition.

II. To the Initial Arguments

245. As to the first argument [n.214], it is plain how it is possible to restore a good of the soul in the first article, and a good of the body in the second – by making restitution with corresponding exterior goods or, for killing, with corresponding spiritual goods to the one killed.

46. To the second argument [n.215] I say that if he has drawn back someone already obligated to Religion (I mean, by obligation of profession), he is bound to restitution, namely that he go back to Religion. But if he has drawn someone back from entering, then, because there is a difference between ‘having’ and ‘being close’, he is not bound to as great a restitution to Religion as he would be if he had been in Religion; but he is bound to some sort of restitution, for example to some sort of inducement of another, who is in some sort of way equivalent, to entry into that Religion. And this is to be understood if he had drawn him back with the intention of causing loss to Religion. However, if he did so with the intention of consulting, without fraud, his own proper utility, he is not bound to Religion. But in the first case and the second he is bound to the person whom he drew back, in persuasions and other spiritual goods, to an equivalence in those goods in which, by drawing him back, he caused him loss.

Question Four

Whether he who Causes Someone a Loss in the Good of Reputation is Bound so to Make Restitution that he Cannot be Truly Penitent unless he Restore his Reputation

247. The question asked fourth is whether he who causes someone a loss in the good of reputation is bound so to make restitution that he cannot be truly penitent unless he restore his reputation.

248. It seems that he is not:

Gregory IX, *Decretals* V tit.1 chs.1-2, he who denounces or makes accusation of a false crime is in bad repute; so he who denies a true crime charged against him defames his accuser unjustly, because he shows him to be an accuser of a false crime; and yet he who denies a crime of this sort charged against him is not bound to restore reputation to the accuser, because it seems rather that the accuser should restore reputation to the accused, since he could not prove the crime charged against him.

249. Again, everyone should be more zealous for his own reputation than for another’s, just as he should love himself more than his neighbor. But someone accused in public of a hidden crime cannot preserve his reputation unharmed except by indirectly defaming another, namely by denying the crime charged against him, and so by marking the other as an accuser of a false crime; therefore, this person is bound, according to right reason, to defame the other, although indirectly, and consequently he is not bound to make restitution, because he did not act unjustly in his initial act.

250. To the contrary:

Augustine, *Epistle 153, To Macedonius*, ch.6 n.20 (and it is in Lombard's text, *Sent. IV d.15 ch.7 n.9* [as taken from Gratian, *Decretum*, p.2 cause 14 q.6 n.1]): "Sin is not discharged unless what was taken away is restored."

251. Again, *Proverbs 22.1*, "Better a good name than many riches." Therefore, he who takes from his neighbor his good name harms him more than he who takes from him his riches; so, if he is bound to make restitution there [sc. in riches], much more so here [sc. in reputation].

I. To the Question

252. I respond: in general someone can defame another in three ways: in one way by charging against him a false crime; in another way, by charging against him a true crime yet a hidden one, without keeping to the order of right, namely by speaking it openly; in a third way by denying a true but hidden crime, though charged against him in public, because by thus denying it he marks with calumny the one who charges it against him.

A. Defaming by Charge of a False Crime

253. About the first I say he must restore his reputation by retracting what he charged against him, because otherwise he does not keep justice by returning to his neighbor what is his neighbor's own – and retracting it publicly if he charged it publicly.

254. The contrary seems to be the case, because it seems he should be more zealous for his own reputation than another's; but he could not, by retraction of his own word, return the other his reputation without defaming himself.

255. I reply: as I said [d.15 q.2 n.200] to the sixth argument in the first question about restitution, that goods of the body or external goods are only to be loved in their order to the good of the soul and to God, and this is not so save as they could justly belong to him who loves them. And therefore, just as I said about love of one's own bodily life, so do I say here about love of one's own reputation, that anyone to whom reputation can justly belong ought to love it more than the reputation of another to whom it can also belong. But if it can belong to him only unjustly and to the other justly, he should love reputation for the other, to whom it justly belongs, rather than for himself, to whom it unjustly belongs.

256. And so it is here: for reputation justly belongs to the one accused of a false crime, and unjustly belongs, after such accusation, to the accuser – not only because he has lied in the accusation but because he has publicly lied, wherein he has sufficiently and radically defamed himself. And therefore, after showing the innocence directly of the other (to whom in this matter he is bound), and his own guiltiness indirectly, he does not then properly defame itself but does then remove the false praise, of which, after the lying accusation, he is unworthy.

257. An example: someone commits fornication, with three seeing it; when they presently accuse him of the crime, they do not defame him, but he himself has defamed himself in that public deed; for, in brief, by committing any crime whatever publicly, he incurs harm to his dignity and thus loses his reputation, as far as it depends on him. Nor does the publication afterwards, by which that harm is made known, take away his

reputation, but only makes come to public attention more what from the first was, by the nature of the act, simply public.

258. And if you ask, “someone does not charge such crime against another in public, but murmurs it and speaks of it indiscreetly, or tells it in the presence of many yet not as something certainly known to him but that he so heard – is he bound to make restitution?” I reply: “Therefore is trust rare, for many speak much.”³³ And therefore he who says he only heard, unless he show from his manner of speaking some greater certitude than that of common report, does not, by the nature of his act, take from the opinion of others the person’s reputation, because if they firmly conceive the person being talked about to be criminal, they are shallow, because “he who believes quickly is shallow in heart,” *Ecclesiasticus* 19.4.

259. However, because one should beware of scandalizing the weak, according to the remark of Paul *I Corinthians* 8.13, “If I scandalize my neighbor, I will not eat meat forever,” and there are many weak like this, shallow in believing evils; therefore, it is dangerous in their presence to relate to them things like this heard by report. And if it is done in an evil spirit, namely by harming him whom one’s speech is about, it is not easy to excuse it of being against charity, and consequently a mortal sin. But if it is done by inadvertence in their presence, it is hard for it to surpass the category of venial sin, because the tongue is in a slippery place, and “he who offends not in word is a perfect man,” *James* 3.2.

B. Defaming by Public Revelation of a True but Hidden Crime

260. About the second [n.252] I say that he is not bound to retract his word, which he put forward in public, because by doing this he would be lying, since he knows that what he put forward is true. And he is not bound to lie for the sake of return of any good to another; but he is bound to return him his reputation in some other licit way, as for example by these words: “Do not believe him to be such, for I spoke badly and spoke foolishly.” And these words indeed are true “I spoke badly, I spoke foolishly, because I put forward in public, without keeping to the order of right, what is not true, public.” And this persuading “do not reckon him to be such” is a good one, because everyone is to be presumed good until the contrary be proved, according to Gregory IX, *Decretals* I tit.12 ch.1, ‘About making scrutiny in order’: “Human fragility should reckon him worthy who is not known to be unworthy.” But this man has not been proved to be bad in their presence; therefore, it is good to persuade them that they not reckon him unworthy or bad.

C. Defaming by Denial of a True but Hidden Crime Publicly Charged

261. In the case of the third member [n.252] I say similarly that he is not bound to retract his denial, whereby he denied in public a true crime charged against him, because no one is bound to confess himself guilty at once in court who is not convicted at once. He is however bound, as was said in the preceding article [n.160], to restore reputation to him whom he indirectly marked with calumny, by saying, “Do not hold him for a calumniator; for I believe he had a good intention in making the charge, or perhaps he believed that he was proving his charge, and was deceived.”

³³ From the anonymous ‘Sayings of Cato’ I n.13 (Baehrens ed., *Poetae Latini Minores* III, Leipzig 1881)

262. But about him who denies such a true but private crime against himself in public, does he not surely sin mortally?

It seems that he does, because he lies with a pernicious lie, both against the republic (because the republic is prevented, on account of his public lie, from the just punishment of him) and against the person accusing him (because thereby he is marked a calumniator).

263. I reply, “You will justly carry out what is just,” *Deuteronomy* 16.20. The republic, therefore, should not punish all evils, but those which, together with the fact they are to be punished, the power of the republic can justly punish; but such evils are those that can be adequately proved before a court of law. And so the republic is not harmed if divine judgment exceeds its judgment, so that some things are reserved to divine judgment over which there cannot be a just judgment of the republic, for “a man sees the things that appear, but God looks at the heart” [*I Kings* (aka *I Samuel*), 16.7]. From this the response to the objection against the republic is apparent.

264. And when the addition is made that this is pernicious against the accuser I reply: I say no, but rather he is pernicious to himself who brought a charge in the way that he had no obligation to bring it, indeed an obligation not to bring it; and therefore let him impute it to himself if some infamy follow, because he himself is the cause and not he who denies it, for the latter is defending his innocence in public where, until he has been convicted, he is not guilty nor to be held guilty.

265. But a difficulty remains in itself, whether he sins by lying on his own behalf. Hard would it seem to be that anyone accused in public should at once be bound, by necessity of salvation, to confess in public, and thus to expose himself at once to the gibbet in a cause of blood. But also, if one looks not only at the penalty but at the honorable and dishonorable, it does not appear that, honorably and according to right reason, he should confess in front of such a judge, because he himself, more than any other individual, would, by accusing himself, take away reputation from himself, because belief is reposed in one who publicly confesses in court against himself.

266. What then? The cautious response of the jurists is ‘I deny the charges as charged’; this can indeed be said, in the issue at hand, without lying, because the charges are made in public, and as public, and as to be proved in public; but to deny them thus he can do who knows that they cannot be proved in public.

267. But what if the judge urge him to confess the charge made or to deny it publicly? He could reply that he himself has given sufficient response to the accusation, and just as it is the manner of jurists to respond, and he does not wish to deviate from that response; let the judge do to the accuser what belongs to right.

268. But surely, if he deny it, intending however to deny it as it is there charged, namely as public (just as a confessor says of someone he has confessed “I know of no evil that this man has done,” because he is speaking as he has heard him in public or some other forum), is not he, who denied it, bound to be penitent about this denial?

269. I reply: “It is a mark of good minds to acknowledge fault where no fault is,” Gratian, *Decretum*, p.1 d.5 ch.1, and it is entitled ‘Gregory’ [taken from a letter attributed to Gregory the Great, *Epistle* 11, ‘Response to Augustine, bishop of the English’]; and therefore much more is it a mark of a good mind to acknowledge fault where there is doubt if there is fault and fault of what sort. And therefore is it safe in such a case, after

such a denial, to be penitent indistinctly, and indistinctly as to the sort that it is, namely under indistinctness of this sort: as of a mortal sin if mortal, of venial sin if venial.

II. To the Initial Arguments

270. To the first argument [n.248] the answer is plain from the third article [n.261].

271. To the second [n.249], if the argument is about him who has, without preservation of the order of right, been accused in public and denied it, I concede that he is not bound to restore reputation to the accuser; rather the accuser is imputing his own infamy to himself, because he acted impudently and unjustly by making a private accusation in public.

272. But if this argument is being made about a lying accuser of the innocent who cannot return reputation to the accused unless he defame himself, the response is plain from the first article of the question [nn.256-257], that, after such a public lie, he is not deserving of reputation; but the other is deserving, and therefore his reputation should be given back to him.

Sixteenth Distinction

Question One

Whether these Three, Contrition, Confession, and Satisfaction, are the Parts of Penitence

1. “Now in the perfection of penitence” [Lombard, *Sent.* IV d.16 ch.1 n.1]

2. About this sixteenth distinction I ask first whether contrition, confession, and satisfaction are the parts of penitence.

3. That they are not:

Sin is a simple defect; therefore a simple remedy can answer to it; penitence is such a remedy; therefore etc.

4. Again, if there were parts to penitence, either integral or subjective parts (and I take ‘integral’ in common for the essential and quantitative parts). Not integral parts because the whole is not predicated of such a part; but to be contrite is to be penitent, and to confess is to be penitent, and to satisfy is to be penitent; therefore etc. Nor subjective parts, because in any subjective part the idea of the whole, without the other part, is perfectly preserved. For Socrates would be perfectly man though there were no further supposita in the human species; but in contrition without the other parts the idea of penitence is not perfectly preserved; therefore etc.

5. Again, if they were parts, either of penitence the virtue or of penitence the sacrament.

Not the first, because penitence the virtue is a simple form in the soul, spiritual, and consequently indivisible. In like manner, confession and satisfaction are not spiritual but certain sensible things outside the mind.

Nor the second, because every sacrament is a sensible sign, or consists in a sensible sign; contrition is not anything sensible but something spiritual in the soul; therefore, it is not part of the sacrament.

6. Again, no part is posterior in order of nature to its whole; but satisfaction follows penitence in natural order; therefore etc.

7. Again, fruit is not part of that of which it is the fruit (it is plain both by example, as an apple is not a part of the tree of which it is the fruit; and by reason, because fruit is the final thing that is waited for from that of which it is the fruit). But now satisfaction is the fruit of penitence [*supra*, d.15 nn.32-33], according to the gloss³⁴ on *Matthew* 3.8 “Bring forth fruit worthy of penitence,” and according to [Ps-]Augustine, *On True and False Penitence* ch..14-15 nn.29-31 (and it is in the text in this distinction 16 [Lombard, *Sent.* IV d.16 ch.2 nn.1-5]).

8. To the contrary:

The master says in the text [*Sent.* IV d.16 ch.1 n.1] that these three things are required for the perfection of penitence: but several things are not required for the perfection of something unless they are parts of it; therefore etc.

I. To the Question

A. About the Many Ways of Taking the Term ‘To Be Penitent’

9. Here one needs to understand that, besides the way according to which ‘penitence’ is taken for the sacrament of penitence [*infra* n.25], ‘penitence’, or rather ‘to be penitent’, can be taken in many other ways:

For as is had from what was said in distinction 14 questions 2 and 3 [nn.86-92, 168, 187], penitence happens to have a sort of justice avenging its own proper sin; and next to that there is an elicited act proper to it, which is a certain imperative willing of a penalty, as of what avenges the fault; in third rank is an effect next to the elicited act, which effect is an act, or acts, on which follows a penalty of avenging (for the will cannot, by an act of will, command a penalty save by first commanding the cause of the penalty, because passions are not in the power of the will save by the mediation of acts); fourth and last there follows the penalty consequent to the act commanded by the elicited act of penitence itself as virtue; and the penalty is the remote effect of the elicited act.³⁵

10. The distinction between all these is plain from the fact that they can be separated from each other.³⁶

For the virtue can exist without the elicited act (as is plain of itself) and conversely, because (as was said) the first act conformed to right reason (of a nature to

³⁴ Nicolas of Lyra: “For the fruit of the good work of him who has done no or less sin and of him who has fallen more gravely is not equal.”

³⁵ Scotus seems to be following specifically here the analysis of the idea of penitence given in d.14 n.90 (save for the omission of the fifth part): “...one needs to know that ‘to be penitent’ requires...a distinct prior knowledge of that about which one is penitent. Here I say that the following things are disposed in order: (1) to command the coming together of the partial proximate causes of sadness; (2) and the conjunction of these partial causes that are the proximate effect of the command; (3) and there follows further the remote effect of this command, namely the sadness itself; (4) next contentment in the sadness can follow, which is an act of will having sadness for object; (5) and finally joy in the sadness, according to the saying of Augustine, “Let the sinner grieve over his sin and rejoice in his grief.”

³⁶ Cf. d.14 n.91: “The distinction between these is plain: the distinction, indeed, of the first one, namely the command, from the proximate cause of sadness, as of the principal and remote cause from the proximate and second cause; the distinction of the second one from the third, as of the cause from the effect and of the action from the passion; and the third one from the fourth, as of the object from the action; the fourth one from the fifth, as of the object from the passion that is desirous of this object.”

generate virtue) can be had before anything of virtue is had, because it is the cause of generation of the first degree of virtue.

11. Similarly, the elicited act, which is second, can be without the third, namely without the commanded act, because an act that is commanded does not at once follow the act of command in the will (because the will in commanding is not omnipotent), and conversely.

12. The third can be without the second, namely some act causative of a penalty can be without the act of the will commanding this act, just as someone can at once have detestation of a sin, committed by himself, from contemplation of God, though he not command such an act to be elicited as avenging the fault.

13. The third can also be without the fourth, because those acts that would be of a nature to generate the penalty are not always followed by the penalty, because of indisposition perhaps in the power itself that is receptive of the penalty, just as on the willing-against, or hatred, of sin committed sadness does not always follow, as was said before.

14. And the fourth can also be without the third, because this penalty can be without this ordered act that would be of a nature to cause the penalty, because that act, as ordered, is not the precise cause of the generation of the penalty.

Each one of these, then, can be without any other, and any two or three can be together without any other or any others.

15. To the matter at hand, about the term ‘to be penitent’, properly it is (as was said before d.14 n.61) ‘to hold a penalty’; but ‘to hold’ includes the act of the holder, namely that he hold it voluntarily, and the application of the penalty to himself, that he hold it in himself. This habit, therefore, can be called ‘penitence’, which is a certain habitual holding of the penalty, as a principle habitually inclining to inflicting a penalty on oneself voluntarily; and the elicited act of it can be called ‘actual penitence’ or ‘the to be penitent that is a certain willing inflictive of a penalty on oneself’; and the next act, commanded by the elicited act of justice, can be called ‘to be penitent’, because it is to have a penalty in oneself, at least in its cause; nor can something that is equally principally an object of will be otherwise had as in its cause; the fourth, namely, ‘to be punished with a penalty following that act’, is not properly to *be* penitent but rather (so to say) to be *made* penitent, that is, to be held by the penalty or, in more common usage, to be punished.

B. About these Ways of Taking the Term with Respect to Penitence as Virtue

16. To the issue at hand:

The three things aforesaid [sc. contrition, confession, satisfaction, n.2] are in no way parts of penitence as virtue (the way argued to the main point [nn.2-7]), because that virtue is a certain simple form in the will, as is charity and anything else other than justice.³⁷ And the point is plain from something else, that it is permanent, just as it is permanent things that belong to virtue. But contrition and confession and satisfaction are certain things that have their being in their coming-to-be; but a permanent thing does not

³⁷ Or “any other justice.” My reason for translating it as I do (making *iustitia* ablative and not nominative as in the printed text) is because justice is not a simple but a multiple virtue, and because to say charity is another kind of justice seems odd.

consist of parts that have their being in their coming-to-be. Again, the last two [sc. confession and satisfaction] are not in the will as in a subject, but are certain exterior things.

17. Likewise I say that they are not parts of penitence said in the second way [n.9], because that act too is a certain simple act, as it is an act of a simple virtue. It is plain too from something else, that the act is immediately from the will itself, as elicited by the will; but confession and satisfaction are not acts immediately elicited by the will but commanded by it.

18. Speaking, however, of penitence in the third way, namely for the proximate cause of the very punishment to be inflicted, which is an act commanded by an act of penitence as virtue, of this can those three things be parts.

19. And similarly the three penalties, which are concomitant with the three acts, can be posited as parts of the fourth part, which is 'to be punished'. And this in the following way: commutative justice has regard universally to equality in exchange, and this is not an equality of the thing but rather an equality according to right reason. And in this way, therefore, penitence or punitive justice in itself, which is a certain commutative justice in punishment, has regard to the penalty equal to, or commensurate with, the fault, and this according to the right reason of the law according to which it is avenging justice.

20. Now that law, according to which penitence as virtue is avenging, dictates that guilt must be ordered both through a penalty intrinsic to sadness and through a double extrinsic penalty (namely of shame and bodily affliction or labor), as is gathered from the diverse Scriptures [d.14 nn.37, 163-166] that contain that law; therefore, the penalty, or the being punished, which responds to the fault, is integrated from three penalties.

21. And likewise, the proximate cause of the penalty must be what is integrated from the causes proper to these penalties.

22. Now the cause proper to interior sadness is detestation of the sin committed, or displeasure about the sin. And this includes two partial causes, namely consideration of the sin committed, and the willing-against of it, and among these the more principal cause is the willing-against; also, when posited, it necessarily posits the other, but not conversely.

23. The act, then, which is the proximate proper cause of sadness, is called contrition; the second act, which is the proximate cause of blushing or shame, is called confession, where the hidden sin is made manifest to a human being. The third cause proper to the third penalty is some laborious or penal work.

24. Just as, therefore, the perfect penalty, which corresponds to the fault according to avenging justice, has three partial penalties, which are parts of one perfect punishment, in the way in which three restitutions would be parts of one perfect restitution for him who would have suffered loss in such a way – so the three acts, on which the three penalties follow, are parts of one sufficient cause proximate in regard to a fitting penalty.

C. About these Ways of Taking the Term with Respect to Penitence as Sacrament

25. About penitence as a sacrament I say that those three are in no way parts of it because, as was said in distinction 14 [n.195], penitence as a sacrament is 'absolution by a

priest done with certain words etc.' But no part of this is contrition, which is something spiritual in the soul; nor is it confession, because confession is not anything of the sentence itself of the priest, but an act of the guilty party accusing himself; nor is it satisfaction, but satisfaction follows the sacramental absolution.

26. However these three are required as preparatory to, or following from, the sacrament of penitence, so that it may be worthily received.

For confession is simply required, because the priest does not absolve by his sentence unless the guilty party has first accused himself in that forum [of the sacrament].

Nor even is the absolution useful unless some contrition or attrition precede in the one confessing. Now the reason for this distinction is plain from what was said above [n.9, d.14 n.62]; for it suffices that some displeasure, although unformed, precede, and then he is capable of sacramental absolution, and through it contrition comes to be.

Now satisfaction ought to follow the sacrament of penitence so that the sacrament be effective, and this effectiveness I understand to be in reality or in will – unless the judge could make assessment that the preceding other penalties were sufficient for payment of the whole penalty. Now this judgment of the priest gives absolution in such a way that, however, it still binds: it absolves from the debt of eternal penalty, but it binds for the payment of temporal penalty, unless this already be sufficiently paid. Also, this judgment either does not absolve at all, or at least not efficaciously, if the guilty party is not in himself disposed in the due way; because the sacrament is a sign of interior absolution, and the interior absolution does not accompany the sacrament unless there be a due disposition in the mind of the one who is to be interiorly absolved.

II. To the Initial Arguments

27. To the first main argument [n.3]: it does not follow that, if a sin be simple, the avenging remedy is simple; for a legislator can justly establish that many partial penalties correspond to one sin as one integral revenge.

28. To the second [n.4] I say that when penitence, taken in the third or fourth mode [n.9], is correspondent to some sin, it can be taken in two ways:

In one way for what is of a sort to be adequately correspondent to it, and in this way a single penitence and a single penalty correspond to a single fault and, if the fault has them as parts, it is disposed to them as to integral parts.

In another way, penitence can be taken (when stated in the third or fourth way) for the general idea of what it is 'to hold a penalty', or to be punished for a fault, even if not adequately; and thus is it a whole universal to things that are integral parts of it in the first way. This is plain in an example. For suppose someone has killed another: there can be a just law that he be punished with a bodily punishment, and that a monetary penalty be handed over to the friends of the person killed; each of these is a penalty, and a penalty for homicide. In this way can it be called a penalty universal with respect to the monetary and bodily penalty, because each of these is the penalty, and for this sin. In another way, taking the penalty for homicide to be the total and adequate penalty for the fault, neither the bodily nor the monetary punishment is that penalty but an integral part of that penalty.

29. And it is plain how, according to this, penitence is predicated of any of these three separately [contrition, confession, satisfaction], taking them for what holds of any penalty corresponding to the fault but not totally and adequately; and it is plain how, on

the other side, none of them without the other makes the penitence complete – and understand this as what is adequate to the fault.

30. To the third argument [n.5], it is plain that they [the three of contrition, confession, satisfaction] are not parts of penitence as sacrament nor of penitence as virtue, nor even parts of the act of the virtue, but they are acts commanded by the virtue, which is the proximate punitive act; and it is plain that the penalties accompanying those acts are parts of the remote effect of the act of penitence. But the elicited act of penitence could in some way be said to have those parts not formally but quasi causally, to the extent the act is in some way distinct as it commands this part and that; and in this way could they be called parts of virtue as penitence, as this inclines to inflicting all of them.

31. To the fifth argument³⁸ [n.7] I say that of penitence as virtue and of its elicited act and of its commanded act the laborious exterior act is the fruit; and in this way must the exterior work worked be understood. And I concede that that work is not part of penitence in any of the three ways stated. It is yet part of what ‘to be punished’ is, which is the fourth among the parts enumerated before [n.9]; and it is not unacceptable that the same thing is part of something prior and fruit of something posterior.³⁹

Question Two

Whether Remission or Expulsion of Guilt and Infusion of Grace are One Simple Change

32. Second I ask whether remission or expulsion of guilt and infusion of grace are one simple change.

33. That they are not:

[Ps.-]Augustine, *On True and False Penitence* ch.14 n.29 (and it is in Lombard’s text, *Sent.* IV d.16 ch.2 n.1), “The sinner must grieve not only because he has sinned but because he has deprived himself of virtue.” From this follows that to sin is not formally to deprive oneself of virtue and that to sin is not formally privation of virtue; but infusion of grace, if it is formally the expulsion of some privation, is only the expulsion of its own privation; therefore, it is not itself the expulsion of the fault. Therefore, privation of virtue and the fault are different matter for grief; therefore, by opposition, expulsion of guilt and restitution of virtue are different matter for joy.

34. Further, in morals the corruption of vice is a different change from the introducing of virtue; therefore, similarly here.

35. Proof of the antecedent: Vice is a certain positive quality, just as timidity and stinginess are; for not everyone lacking fortitude is timid but he who has the habit that

³⁸ No response is given by Scotus to the fourth argument in n.6. The Vatican editors write: “The reason is that Scotus, in putting the *Ordinatio* together, follows the lectures he gave before at Paris and Oxford, the student reports of which (*Reportationes*) have come down to us. And already in *Rep.* IV A d.16 q.1 n.1 the fourth argument is lacking. In place of ‘To the fifth argument’ the codices and editions hand on ‘to the fourth’. So rightly is there placed here in edition ‘v’ a marginal note: ‘To the fifth. The solution to the fourth is clear from what has been said’. Similar lapses for similar reasons occur elsewhere too.” The answer to the fourth argument would presumably come from the answer to the third, that penitence has satisfaction as a part quasi causally or as a remote effect, for satisfaction can be a part of penitence in this way and yet be posterior to it in order of nature. This answer is in effect, anyway, what the response to the fifth argument says, that something can be both part of something, and so not posterior to it, and also a result of it, and so posterior to it.

³⁹ A bit obscure. Perhaps the sense is that it is *part* of ‘to be punished’, which is prior in universal predication; and *fruit* of the commanded act of the will, to which it is a posterior in the analysis of ‘to be punished’.

inclines to being timid; nor is everyone lacking liberality stingy, but he who has acquired the habit from frequently acting stingily. This appears by induction also in the vices, that the extremes incline the powers to acts conform to themselves, just as the means incline to acts conform to themselves; and this inclination is not by privation alone. But now, when there are two opposed positive forms, one of which succeeds to the other, the changes are different because there are four terms, as is plain in the case of alterations from contrary to contrary [e.g. from black to white, and from white to black]. Further, generation and corruption are two changes because of the four terms, namely two privations and two forms [e.g. from non-black to black and from non-white to white].

Here there is the corruption of the sin that was present and a certain generation in gratuitous being when grace is infused; therefore, two changes.

36. Further, the disposition and that for which it disposes are not the same; the expulsion of sin disposes to infusion of grace. The proof is that by expulsion of guilt one is not an enemy, and by infusion of grace one is a friend, but not being an enemy disposes one to being a friend. And from this could the main argument be made: that ‘to cease to be an enemy’ is not the same as ‘to begin to be a friend’; but by expulsion of guilt one ceases to be an enemy, and by infusion of grace one begins to be a friend; therefore etc.

37. On the contrary:

If expulsion of guilt is a change different from infusion of grace, it will then be either a positive change or a privative one; or, as others say [Scotus, *Ord.* IV d.10 nn.44-50], it will be either a change acquiring, or a change losing, something. Not a change that acquires something, because the term ‘to which’ of a positive change is something positive, while of the expulsion there is no positive term ‘to which’ other than grace. Nor is it a privative change, because then the term ‘from which’ would be positive, but guilt is not anything positive; therefore etc.

38. Again, if this and that change are different, they will have between them some order of prior and posterior, because they are ordered to the same end, and not equally so because they do not equally immediately attain the end; but no order can there be posited; therefore etc. The proof of the minor is because, if expulsion were prior in nature, then this person would be a friend in the prior expulsion and yet not a friend, because not possessing the grace without which no one is a friend; for if infusion of grace were prior, he would be a friend in the prior stage because possessing grace, and yet an enemy at the same time because still possessing guilt.

I. To the Question

A. A possible Solution

1. First Conclusion

39. Let the first conclusion, then, be this, that the infusion of grace and expulsion of guilt (or more properly the remission of guilt) are not simply one change.

40. The proof of this is fourfold:

First as follows: the simply same thing cannot be multiplied and not multiplied, and this when taking ‘the same’ and ‘multiplied’ uniformly (namely, if really then really, if in reason then in reason); for this includes the opposite of the first principle [sc. the principle of non-contradiction], that the same thing, as the same thing, is one and is not one. But remissions of fault are many (in the way that someone is said to be a sinner after

an act of sin that passes, and is said, after he has committed many sins, to be a sinner with many faults). And each of these faults has its own remission, because each remission could be without any other if the sinner had committed only that fault and not any other.

41. Again, second as follows: the same thing is not separate from the same thing, taking identity and separation uniformly (namely, if really then really, if in reason then in reason); for this includes the opposite of the first principle, namely that the same thing, as it is the same, is and is not at the same time. But remission of guilt and infusion of grace can be separated, which is plain both by comparing the first with the second and conversely. For, in the state of innocence in the human race, it were possible (as it was in fact in the angels who did not sin) for grace to be infused without remission of any guilt, because there was no guilt present. Likewise, guilt can be remitted without grace being infused. Proof: God can, of his absolute power, create man in a purely natural state, without fault and without grace; therefore, also after the Fall he can repair such a man and remit guilt without infusion of grace. The evidence for this reasoning is plain above, in d.1, the question on circumcision [*Ord. IV d.1 nn.343-345, 357*].

42. Third as follows: guilt and grace are not formally opposed nor formally repugnant. Proof: because then an agent that can, by effecting or failing to effect, have power over the being of one, could, by effecting or failing to effect, have power over the non-being of the other, as is plain universally about incompossibilities. But the created will has, by effecting or failing to effect, power over the being of guilt, because the guilt is from itself. Therefore, it could, by effecting or failing to effect, have power over the non-being of grace, which is false, because grace is not destroyed unless it be annihilated, and a creature is not able to annihilate anything. The first proposition [*here supra*] is therefore plain, namely that 'there is no formal repugnance between guilt and grace'. But there is no single change from a thing as from the term 'from which' to another thing as to the term 'to which' unless they are formally repugnant; therefore etc.

43. Fourth as follows: there is no single change to a positive form save from the proper privation of that form; guilt, as that by which a sinner, after the act, is called a sinner, is not the proper privation of grace, because a single grace has only a single privation, and there are many faults in this way, as was said in the first reason [n.40]. Nor is it valid to object, against the major, that some change has both terms positive, for of this change (which is to grace) the *per se* term 'from which' is privation, and consequently it is the proper privation of the term 'to which'.

2. The Second Conclusion

44. The second conclusion is this: the infusion of grace and the remission of guilt are a real two changes.⁴⁰

45. This is plain, because the infusion of grace is a real change, since it is between privation of the real form and the real form; but remission of guilt is not a real change; therefore etc.

⁴⁰ Scotus' Latin is unhelpfully ambiguous, since 'real' could go with 'two' or with 'changes'. But it cannot go with 'changes' because remission of sin or guilt is said not to be a real change [nn.45, 49]. Therefore, it must go with 'two' and the sense is there is not just one change here [nn.39-43], but two, because, as n.45 says, one is a real change and the other is not.

46. The major of this reason has been proved [n.45], and is plain from the fact that there is one real change here.

47. The minor needs proof:

Here one must understand that if actual sin were posited to be the corruption or privation formally of some degree of nature, or of natural rectitude, or of some proper positive state or other, then the expulsion of guilt would be the restitution of the positive state that guilt was the privation of; and then the expulsion of guilt could be a real and positive change, from the privation of this rectitude to this rectitude.

48. But this was rejected in *Ord. II* dd.34-37 nn.36-40, 46, because intellectual nature cannot be corrupted through any action of itself; and just as the whole of nature is incorruptible so also is any degree of it, because if one degree could be corrupted by nature itself through an action of itself, the result would be that the whole could be corrupted by actions of itself repeated several times. Hence as was said there [*ibid. supra*], the remark of Augustine in *Enchiridion* [cited by Scotus in *Lectura II* dd.34-37 n.36], “sin is bad to the extent of the good it takes away,” must be understood to mean, not that it takes away from the goodness of nature in its primary being [sc. substantial being], because the failing of a contingent effect is not repugnant to the cause, since neither is it repugnant to the contingent effect to which it would seem to be more repugnant,⁴¹ but it must be understood to mean ‘to take away good in second act,’ not a good, to be sure, that is present, but a good that ought to be present.

49. Therefore if it were posited that some stain, proper to actual sin, were to remain in the soul and that it were expelled by penitence, then remission of guilt could be posited to be a real change away from that guilt to the lack of it. But this was rejected above in distinction 14, question 1, first article [nn.17-20, 34], where it was shown that after the past guilty action, interior and exterior, there remains, besides habitual injustice (which is lack of grace and single in a single soul), no proper actual injustice by which one may be called a sinner by such a sin. For the soul is not receptive immediately of the wrongness that is of a nature to exist in actual sin, but is so only through the medium of the proximate act in which that wrongness is. Therefore, after the past act, the soul remains obligated only to the proper penalty corresponding to the fault committed; and so this obligation is called ‘being guilty’, which remains in the soul after the passing of the intrinsic and extrinsic act.

50. And from this can the minor be proved of the reason accepted before [nn.45, 49, taken from d.14], as follows:

Obligation to a penalty for a fault committed is not anything real in the soul after the past act, but is only a relation of reason in the willed object as willed; therefore, turning away from this relation of reason, which is from this obligation to non-obligation, is not any real change.

51. The consequence is plain, because a change is not real unless it is to a real positive term or a real privative term.

52. The antecedent is plain because, just as what is willed by me has, from the fact that it is willed by me, no new real form, absolute or relative, but only a relation of reason corresponding to the real volition in me – so by the fact that someone, after he has

⁴¹ Sin is a contingent effect of nature, for no one sins by nature or necessarily, and is not repugnant to nature, for then sin would be impossible; and a *fortiori* sin is not repugnant to acts of virtue, which are also contingent effects, and opposite effects, of nature.

committed a fault, is willed or ordained to a penalty by the divine will, then, since the fault not remain as either any real positive or privative thing, neither is any real relation going to remain founded on the fault, but only a relation of reason; and this, taking relation of reason indifferently for an object willed just as for an object understood (the way contained in *Ord.* I distinction 45 question 1 nn.7-110), because the comparing of an object willed through an act of will to something else is no more real than the comparing of an object understood through an act of intellect to something else.

B. Weighing of the Aforesaid Possible Solution

53. Against this: no passage from contradictory to contradictory is without some change; but when to this person fault is remitted, it is such a passage; therefore etc. – The major is plain because, if there is no change, there is no reason why one part of the contradiction is more now true than the other and why the other was true before this one is. And this proof can be taken to a further deduction, that such passage cannot be without real change; because a change of reason must be reduced to some real change. The proof of the minor is that this man, before fault is remitted, is ordained to penalty and is deserving of penalty; but when guilt is remitted he is neither ordained to penalty nor deserving of penalty.

54. There is a confirmation, because before remission the divine intellect knows that he is to be deservedly punished; therefore this known thing is true; after remission the divine intellect knows he is not to be punished; therefore this too is true; therefore there is a passage; therefore etc.

55. And it can be argued further, from the proved conclusion [n.53], that, since this change is not in the divine will nor in its act, therefore it will be in him to whom guilt is remitted; and consequently remission of guilt in this person is, according to its proper idea, some change.

C. Scotus' own Response

56. I reply. Here one needs to see something first about a created will, and afterwards to apply it to the issue in hand.

1. About a Created Will

57. A created will, though it cannot simultaneously will the affirmation and negation of the same thing for the same time, yet it can non-simultaneously will affirmation and negation of the same thing for the same time, namely through diverse acts succeeding each other in turn. And it can simultaneously will affirmation and negation of the same thing for the non-same time, and it can will this of a same thing that has in no way varied in itself before the term of the volition – the fact is plain, if the will considered the same thing for diverse ‘nows’ and willed opposites to belong to it for those diverse ‘nows’.

58. But it is not necessary either that that of which it wills the affirmation and negation for diverse ‘nows’ vary because of that volition, unless the volition be the sufficient cause of the opposites, and thus be an absolute, not a conditioned, volition. For

if it could not be the cause of these opposites – namely if both cannot be caused from the outside, because they are only beings of reason, as when I will for this person ownership or something of the sort that is not really causable in him; or if what is willed for him is causable but not by this will, as that I will beatitude for him, which is something really causable in him, but not by my will; also, if it is causable in him, and causable by my will commanding this causable thing, I might will it for him only conditionally for time *a* and the opposite conditionally for time *b* – if so, there is no necessity that this opposite be present at time *a* nor the other at time *b*, unless the condition were to exist for either of them, or for one of them.

2. About the Divine Will

59. As to the issue at hand [I say] that all objects whatever (with the exception of sins and things willed in generally disordered way) that can be willed by a created will for the same ‘now’ or for different ‘nows’ (and this either in one or in diverse acts) – all these the divine will can in a single act, with one volition really but in idea diverse, will for the same person for the same ‘nows’. For that a will is limited to certain secondary objects precisely (such that it have no power for other objects) is a mark of imperfection in the will. And consequently, the divine will can will, for diverse instants, affirmation and negation for this person, who is in no way varied in himself before an act of volition. And the divine will can do this more than the created will can, because something eternal depends less on something temporal than a temporal act depends on something temporal; rather, it does not depend.

60. If the affirmation and negation, wherewith that will [sc. divine will] wills for this person (who is unvaried in himself) one thing for time *a* and another thing for time *b*, are causable simply, it follows that they are causable by the divine will; because the divine will is simply omnipotent. But if they are not causable, or if that will either wills only one of them or wills both conditionally, it follows that that will wills for this person one opposite for *a* and another for *b*, and without any change of itself (whether in itself or in its act), and without any change of object, as the object is object; because both volition and object, as it is object for the will, have being in eternity, and an object, as it is an object for act, could not vary without variation of act.

61. And from this follows that the divine will can will affirmation (let it be called *c*) for this person for instant *a*, and negation (let it be called *d*) for the same person for instant *b*, without any change either in the divine will or in the object, as it is object, or in anything extrinsic, and this if between those opposites change by nature does not occur (because, clearly, either the affirmation is only one of reason, and so the negation is only negation of a being of reason, or the will does not will them, both or one, save conditionally).

62. But because there is no new being of reason save through a new act of intellect or will, that condition (namely about being of reason [n.61]) does not preserve a passage from contradictory to contradictory without change – although the change is not a change between things that are beings of reason but between act and non-act. So, because of the divine will’s omnipotence, in no way can it will *c* instead of *a* for this person, and *d* instead of *b*, without some change in this person, and this if it will them with efficacious and absolute will. But if it will both or one of them conditionally and the condition does

not exist, then a change too is not required. But a created will, because it is not omnipotent, can will absolutely for the same non-varied person *c* instead of *a* and *d* instead of *b*, and without any change preceding or following.

63. To the form, then of the reasoning,⁴² I concede the major, taking change properly. But the minor in this way I deny, because the divine will, for the instant at which this man sins and for the whole time gone through up to instant *b*, wills him to be punished, not insofar as ‘to be punished’ is a participle of future time but insofar as it is a name, that is, he wills this person to be deserving of punishment – which is nothing other save to will to punish this person for the time then, and this with conditioned will, namely if it go on to the end [sc. if the person persists in sin until death]. But if at instant *b* he repent, God wills him for that time then, and for the whole time gone through up to the instant of a new sin, not to be punished – which is to will him conditionally to be punished if it go on to the end.

64. There is here, then, no passage from one opposite to the other, but there is about the same object here a conditioned willing of the affirmation for one instant and a conditioned willing of the negation for the other instant; and these two ‘willing’ stand together in eternity, and about the same object willed in eternity, although not for eternity, but for different ‘nows’.

65. And hereby is plain the answer to the proof about the divine intellect [n.54], which knows this person to be deserving of penalty before remission and not to be deserving after remission; for this is not other than to know this person to have been ordained to a penalty through an act conditioned for this instant for which he is so ordained, and not to have been ordained for that instant for which he is not so ordained.

3. Objections and their Solution

66. If you argue that every manner of simultaneity is incompossible, because then God would will opposites at the same time and for the same time, therefore some succession, and so a change, is necessarily there required – I reply: succession of an act to an act is not required, nor succession of an act as it extends over an object to an act is it extends over another object, because in eternity it extends over both. But neither is a succession of one object to another in external reality required, because the existence of an external reality is not required for that volition, just as neither is the temporal required for the eternal; but there is required some succession there of things that are objects in objective existence.

67. Nor is ‘to have an order thus [sc. as objects in objective existence]’ the same as ‘to have order in being an object’, for a prior as prior and a posterior as posterior can be understood simultaneously, such that they do not have an order in being an object for the

⁴² Scotus seems to be referring back to the argument at B above, nn.53-55 (and not n.62 as suggested by the Vatican editors). The major: no passage from contradictory to contradictory is without some change. The minor: but when to this person fault is remitted, it is such a passage. Conclusion: therefore, when to this person fault is remitted, it is not without some change. The conclusion does not hold because the passage from contradictory to contradictory when fault is remitted is not a change properly speaking, or not a real change. It is only a difference in relations of reason, namely from obligation to non-obligation [n.50]. This difference in relations of reason is explained in terms of God’s eternal but conditioned willing: he wills obligation to penalty for this person on the condition of no repentance, and remission of obligation to penalty for this person on the condition of repentance. There is no change in God, then, but there is change in the person [as said here, nn.62-63].

intellect; and yet there is an order to them as they are objects, namely in their objective being. And from this order of objects in objective being no change follows, because an opposite does not succeed to an opposite either in being known or in being [opposite].

68. If you argue against this that there still stands a difficulty in the reasoning, because first one part of the contradiction is true, namely ‘this person is ordained to a penalty’, and second the other part is true, namely ‘this person is not ordained to a penalty’; but there is no passage from contradictory to contradictory without a change; therefore etc. – I reply:

In eternity this proposition is true, ‘this person is for time *a* ordained to a penalty’, and this one is true, ‘this person is for time *b* not ordained to a penalty’. And these contradictories are not true at the same time, nor do they succeed each other in truth; but the things for which the affirmation and negation are designated as holding are apprehended as succeeding each other really or possibly.

Or in another way: that ‘this person is now ordained to a penalty’ is nothing other than ‘this person is willed for a penalty at time *a*, if at that time he is going to be judged’, and ‘this person is later not ordained to a penalty, that is, this person is not willed for a penalty at time *b*, if at that time he is going to be judged’ – and these are not contradictory.

But that each volition, pertaining to retention and remission of guilt, is only a conditioned volition is plain, because if God wanted absolutely to punish the sinner immediately he had sinned he would immediately punish him.

69. Against this whole process about diverse ‘nows’ for which there is offense and remission: because to an angel existing in the aevum⁴³ who sins God could remit the offense outside all time; and then there would be no possibility of granting such diverse ‘nows’ for which there would be fault and remission, especially if the aevum is posited as indivisible. If it be said that then there would be a different aevum for the fault, and that it would then cease to be when remission arrives – on the contrary: one or other of these two, either the fault or the remission, is a privation only, and so does not have its own aevum. Also, in reference to the aevum when an angel is first abiding in fault and afterwards in remission, these two opposites would be existing in the same aevum and for the same aevum.

70. Let the response to this be looked for in *Ordo II d.2 nn.48-79*, about ‘Succession in the Aevum’.

71. But suppose God does remit guilt in this way after the offense, without any change in the act or in the object as it is object or in the object as it exists outside – is there not to this act of remission in Peter (to whom remission is made) some change of reason outside that corresponds?

72. It seems that there is, otherwise Peter is no more absolved or reconciled after remission than before. But if there is something that corresponds, a question about it will arise, whether it is the same as the giving of grace or something other.

73. It can be said that when an act, wherein the object has being of reason, can be the term of a real change, the object can there change with a change of reason (just as a stone can become understood by me from being non-understood, because there could be a new intellection of it). But when the act is in no way the term of a real change, the object

⁴³ The ‘aevum’ or ‘aeviternity’ is the scholastic term for the duration of angels who, unlike God, are not eternal and, unlike men, are not measured by time.

in the act there cannot change with a change of reason. Of this sort is divine willing, and consequently Peter, as he is the object of this act because having, as outside, new being, does not have the idea of being recently an object but of being so uniformly in eternity. And so change, whether of thing or of reason, does not seem it needs to be posited in Peter when his fault is said to have been remitted to him.

74. Concomitant there, however, with this remission, active from God and passive in Peter, is a certain real change – and this always of God's ordained power, which is for the giving of grace to Peter, because God does not, of his ordained power, God give remission to anyone for time *a* without for that time giving him grace. But of God's absolute power, both in the thing outside and in the act inside, these two could for eternity be separated, namely so that he would give remission to Peter at time *a* when *a* comes (which is only an imminent act in God) and yet not give grace to him in *a* when some outside act comes and goes – if in eternity he wanted to give remission for time *a* when *a* comes, and yet not did not want in eternity to give him grace for time *a*; for the first states only negation of a positive act, which is 'to will to punish', but the second states a positive different act.

75. And if you argue that Peter cannot be differently disposed to the divine will (as punitive will or non-punitive) save because he is differently disposed in some other respect, namely, because he is accepted or not accepted; for an object not in itself varied according to any other thing actually prior is not an object in a different way for divine volition – this is false, because our will too can in some act be differently disposed to an object that, even before the act, is disposed uniformly; and it could do so if it always had the same act contingently passing over secondary objects.⁴⁴

II. To the Initial Arguments of the First Side

76. To the first main argument [n.33], I concede that sin is not formally the privation of grace, as some arguments proceeded for the first conclusion [nn.41-43]; and from this I concede that the introducing of grace or of any virtue is not formally the expulsion of guilt.

77. But if you wish to prove from the authority [n.33] that there are two changes, infusion and expulsion, and thereby that sinning and the corrupting of grace are two changes, therefore, by similarity, in the issue at hand – I reply: the consequence is not valid, because this fault, toward which is the motion of sinning, does not remain up to the infusion of grace, nor could it be the term 'from which' of change proper. But when the fault passes, there remains in the person only the obligation as it is the secondary object of the divine will; and in the justification there cannot be a term 'from which' of any change proper.

78. To the second [nn.34] it is plain why there are two changes there in morals, because there are four terms there: two real positive ones and two real privative ones. It is not so here, as is plain. The same is plain as to the point about generation and corruption [n.35].

⁴⁴ That is: the will is free and not determined by its (secondary) objects, so that its acts relative to them are contingent. Consequently, if the same contingent act were always being done it could always be done differently. Scotus is not of the view that if we were in the same conditions again we would choose and do the same act again. On the contrary, our will could always have chosen differently; and if ours then a fortiori God's.

79. To the last argument [n.36] about the disposition for the form for which it disposes, I say that this passive remission, which is the lack of obligation to a penalty, is not a real disposition for friendship or grace; and so this remission, taken as having its term in this lack [sc. of obligation], is not a real change. Therefore, if you take it that the remission-change is a disposition for the change that is infusion of grace, I deny it; because remission is not a change, neither active nor passive, neither real nor of reason.

III. To the Reasons Adduced for the First Conclusion

80. From the same point could response be made to the four reasons for the first conclusion in the solution of the question [nn.40-43] if, however, they are extended by anyone to proving there are two changes – which was also denied in the second conclusion [n.44].

81. For the major of the first reason [n.40], if it is taken like this ‘whatever is multiplied in its entity as such a quality is different really from that which is not multiplied in its entity’, is false unless it be a real being; and therefore if the remissions are multiplied in the sort of quality in which they are beings (because they are only remissions of reason), and if the infusion of grace is one, it does not follow that the former are different changes from it; but it does well follow that they are not the same as it, because, universally, what is multiplied in its entity as such a quality is not the same as what is not multiplied, taking the multiplication to be similar on this side and on that.

82. Likewise, the major of the second reason [n.41], ‘whatever is separated from another in its being is really different from it’, is false unless it is in its being a real being.

83. The third reason and the fourth [nn.42-43] do not prove these to be two changes, but only that the change that is to grace does not have guilt for its *per se* term ‘from which’, which I concede.

IV. To the Initial Arguments for the Other Side

84. To the initial arguments for the opposite.

To the first [n.37] I say that, just as guiltiness or obligation to a penalty (which alone remains after the passing of the act, interior and exterior, in a sin) is a being, because it is a being of reason and so a positive being, consequently too non-guiltiness or non-obligation or non-debt is a privation of a being of reason. And thus, if there were anywhere a passage of reason from obligation to non-obligation, it would be a privative or corruptive change of reason. But it would not anywhere be either in an act of the divine will, or in an object as it is object, or in an object as it exists outside – unless it be said that, to the extent it is in the object outside, to that extent the object is in the ‘now’ for which the act of the divine will regards the object. And then, for the object outside to pass from ‘not being in that now’ to ‘being in that now’ is for it to change concomitantly with a change of reason from ‘being obligated’ to ‘not being obligated’. When therefore you argue that there is no corruptive change, because its term ‘from which’ is not anything positive, I deny it. Nor yet is a fault anything positive, nor does it remain, but the obligation that follows the commission of a fault is something positive and it remains.

85. The second argument [n.38], about prior and posterior, is something pondered in this matter by others, because when positing a distinction between these changes they

seek for an order between them [Aquinas, *Sent.* IV d.17 q.1 a.4; Richard of Middleton *Sent.* IV d17 princ.4 q.4].

86. I say briefly, then, that according to the Philosopher, *Metaphysics* ‘On the Prior’ [5.11.1019a2-14 and 9.8.1049b17-21, 9.1050a4-7], some things are prior in generation, others in perfection. And these priorities are commonly disposed to each other conversely, for the more imperfect things are prior by way of generation. I say in this manner that if the expulsion of guilt were some being, and the infusion of grace likewise, the expulsion of guilt would be prior by way of generation; but, conversely, the infusion of grace would be prior by way of perfection, because it is more immediate to the end, which is what is simply perfect in this order. Similarly in the case of priority of consequence it is plain that the more imperfect is prior, just as animal according to consequence is prior to man, and universally the consequent is more imperfect than the antecedent.⁴⁵ So, in the way in which there would be a consequence between them, expulsion would follow on infusion, not conversely, for they are not immediate opposites simply by nature of being extremes, but by divine institution. But the introduction of one does not follow on the removal of the other save in the case of opposites immediate in themselves.⁴⁶

87. But whether the expulsion of guilt follows on grace is doubtful, since they are not formally opposed, as was proved in the third argument and the first conclusion of the solution [n.42].

88. But one could say, denying this [n.87], that to be a friend to God and an enemy to him is a contradiction: by grace one is a friend, by guilt one is an enemy; therefore etc.⁴⁷

89. But this is not cogent, because ‘friendship through grace’ means to be ordained to life eternal, ‘enmity through guilt’ means to be ordained to a fitting penalty; these can stand together, though not for the same ‘now’. At any rate, in whatever way they are opposites, there seems to be a formal consequence from ‘grace is present’ to ‘guilt is not present’ rather than conversely, because in the second case the antecedent in no way entails the consequent.⁴⁸

90. But if a question is asked about the priority of causality between them, I reply: the question does not arise. For neither is the negation of obligation (which is only a negation of a being of reason) a cause of grace nor conversely, because the divine will

⁴⁵ In the consequence ‘if...then...’, the antecedent entails the consequent but not vice versa, as that ‘if it is a man, it is an animal’ but not ‘if it is an animal, it is a man’. So ‘animal’ is prior to ‘man’ in the sense that in order to be a man it is necessary to be an animal, but it is not necessary to be a man in order to be an animal. The consequent (animal) is thus not only prior to but also more imperfect than the antecedent (man), because it does not include the antecedent but the antecedent does include it.

⁴⁶ The correct consequence is, ‘if there is infusion, there is expulsion’ but not ‘if there is expulsion, there is infusion’. The reason is that expulsion and infusion are not immediate opposites simply by the nature of their extremes but by divine institution. For instance, non-x and x are immediate opposites by the nature of the extremes, so that if one then not the other (if non-x then not x, and if x then not non-x). But expulsion of guilt and infusion of grace are not immediate opposites by reason of the extremes ‘guilt’ and ‘grace’, but by divine institution. For while by that institution expulsion of guilt and infusion of grace go together, there is no necessity in the nature of ‘grace’ and ‘guilt’ that they should, or that the removal of the one extreme, guilt, should necessitate the presence of the other, grace.

⁴⁷ Sc. therefore grace and guilt are opposed as contradictories, and so as immediate extremes.

⁴⁸ The consequence that ‘if grace is present, then guilt is not present’ holds; but the converse (the ‘second case’) that ‘if guilt is not present, then grace is present’ does not hold.

alone by its own justice determines the obligation, or determines by its mercy non-obligation.

91. And if you ask what order these have (grace and guilt) as they are secondary objects of the divine will – I reply as was said in *Ord. I* d.41 nn.40-42, ‘On Predestination’: in the way in which there is an order of divine volition in relation to secondary objects, God first wills what is nearer to the end; and so for this person for time *a*, namely after he has sinned, God wills grace simply first rather than not to exact vengeance, speaking of priority of intention. But just as he wills the execution to be converse to the intention (and therefore he wills this person to have merits before grace, and through merits glory), so he wills that in the order of nature guilt not be present in this person before grace is present.

92. Or if it be said that by ‘present’ and ‘not present’ nothing is posited in this person externally but only as he is object of divine volition, one can in consequence say that these secondary objects have a certain order according to perfection as the divine will tends toward them, but that according to causality and generation they have no order, etc.

Seventeenth Distinction

Single Question

Whether for Salvation a Sinner Needs to Confess all his Sins to a Priest

1. “Here arises a question etc.” [Lombard, *Sent. IV* d.17 ch.1 n.1].

2. About this seventeenth distinction I ask whether for salvation a sinner needs to confess all his sins to a priest

3. That he does not:

On *Luke* 22.62, where is written of Peter that after his denial “he wept bitterly,” Ambrose says [*On Luke* 10 n.88], “Tears wash away a transgression that it is shame to confess by voice; I read his tears, I do not read satisfaction.”

4. Again about *Psalm* 31.5, “I said, I will confess,” Cassiodorus says [*Exposition on the Psalms* 31.5, taken from the gloss, Nicolas of Lyra]: “‘I said’, that is, I deliberated with myself, that ‘I will confess, and you have forgiven’; great the mercy of God, because he remits sins for a promise alone.”

5. Again, Augustine on the same psalm [*Expositions of the Psalms*, ps.31, 2 n.15; Lombard, *Sent. IV* d.17 ch.1 n.3], “He does not yet pronounce [his sins] but promises he will, and God dismisses them.”

6. Again, *Ezekiel* 18.21-22, “In whatever hour the sinner laments [his sins], his life will live” [*supra* d.14 n.128].

7. There are other authorities for this set down in the text [Lombard, *Sent. IV* d.17 ch.1 n.4], about Lazarus, *John* 11.44, that he was resuscitated first before being loosed from his grave clothes, and about the lepers, *Luke* 17.14-15.

8. Again by reason:

Only the precepts of the Decalogue are necessary for salvation, according to the response of the Savior in *Matthew* 19.17, “If you wish to enter into life, keep the commandments,” and elsewhere [*Luke* 18.20, 28], “You know the commandments...this do and you shall live.” Therefore, if confession were necessary simply for salvation, it would be contained under one of the ten precepts of the Decalogue; but this is false; for the precepts belong to the law of nature, and were at least binding in the time of the

Mosaic Law, but neither in the law of nature nor in the Mosaic Law was there an obligation to confess sin to a man; therefore etc.

9. Again, “no one is obligated to what is impossible” [*Digests of Justinian*, L ch.17 n.185]; but the dumb cannot speak. Again, everyone who is a stranger among those for whom he is a barbarian is dumb; therefore, he is not bound to confess.

10. Again, he who does not have a priest present cannot confess verbally to him, nor is he bound to confess in writing, because no precept is found issued about this.

11. Again, no one is bound to lie; rather everyone is bound by the Divine Law not to lie, at least perniciously; but he who is conscious that he has for his whole life lived innocent or without mortal sin, would be lying if he were to confess he had sinned at least mortally; therefore etc.

12. To the contrary:

James 5.16, “Confess your sins one to another.”

13. And in canon law [*Gratian Decretum* p.2 cause 33 1.3] are adduced many authorities that the Master adduces in the text [*Lombard, Sent. IV* d.17 ch.1 nn.6-9].

14. One is from Ambrose [*On Paradise* ch.14 n.71], “No one can be justified from sin unless he has first confessed his sin.”

15. And Augustine [*Sermon* 392, ‘To the married’, ch.3 n.3], “Let no one say to himself, ‘I do penitence in secret, God knows what I do in my heart’.” And there follows, “So it was said without cause, ‘What you loose on earth will be loosed in heaven’ [*Matthew* 18.18], and if they keys were given without cause, we make void the word of Christ.”

16. And the same Augustine on that verse in *Psalm* 68.15-16, “Let not the deep swallow me; and let not the pit shut its mouth on me,” says [*Expositions on Psalms* ps.68 1 n.19], “The pit is the depth of iniquities, and if you fall into it, he will not close his mouth on you if you do not close your own mouth.”

I. To the Question

17. In this question there are three things to look at: first, by what precept a Christians is bound to make confession to a priest of sin he has committed; second, what that precept about confession includes; third, what has been further articulated about it by precept of the Church.

A. By what Precept a Christian is Bound to Make Confession to a Priest of Sin he has Committed

1. About Natural Right and Divine or Ecclesiastical Positive Right

18. About the first, we cannot find for the issue at hand a precept by which someone is bound to confession save one either of natural right or positive right, and the latter either of divine or ecclesiastical right.⁴⁹

19. Now that precept is a practical truth of natural right whose truth is known from the terms, and then it is a principle in the law of nature (as in speculative matters too a principle is known from the terms), or it is what evidently follows from such truth thus

⁴⁹ So there are three members in all, dealt with in turn: natural right [n.19], divine positive right [n.20], and ecclesiastical positive right [n.21].

known, of which sort is a demonstrated practical conclusion. And strictly speaking, nothing else is of the law of nature save a principle or a demonstrated conclusion. However, by extending it as follows, sometimes that is said to be of the law of nature which is a practical truth consonant with the principles and conclusions of the law of nature, insofar as to everyone is it known at once that it agrees with such law. And hereby does it appear that Gratian [*Decretum* p.1 d.1⁵⁰] does not speak about the right of the law of nature correctly in wanting all the things that are in the scripture of the *Old* or *New Testament* to be of the law of nature; for neither are they all practical principles known from the terms, nor demonstrated practical conclusions, nor truths evidently consonant with such principles and conclusions. Therefore, exposition must be given of Gratian, that he is extending natural right to right posited by the Author of nature as it is distinguished from positive right, which clearly is posited by someone who is not author of nature.

20. The second member [n.18], namely about divine positive Law, is plain from what has been said [n.19, also *Ord. IV* d.1 nn.223-257, 343-345, 357, 370-381, 389-392].

For whatever is contained in Scripture for the time for which it is to be observed, and yet is not known from the terms, nor demonstrable from such known truths, nor at once evidently consonant with such truths, is merely of divine positive right, of which sort are all the ceremonies of Jews for the time of that law and of Christians for the time of our Law. For it is not known from the terms nor demonstrated nor evidently consonant with such truths that God is to be worshipped in the animal sacrifices of the Old Law (and this for all time), nor that he is to be worshipped in our ceremonies, namely in the offering of the Eucharist and the chanting of Psalms, although these are consonant with the law of Nature such that they are not repugnant to it.

This fact is plain too, because things that are of the law of nature, whether properly or by extension, are always uniform; not so are these ceremonies, which were different for the time of another Law.

21. The third member [n.18] is plain, because beyond divine positive right, which is contained in divine Scripture, the Church has established many statutes, both for more honorable observance in morals and for greater reverence in receiving and dispensing the sacraments.

2. Application to the Issue at Hand of what has been Said

a. In the Time of the Law of Nature and of the Mosaic Law

22. To the issue at hand I say that no one is bound by precept of the law of nature to the confession of sin that the question is about, because then this obligation would have existed for the state of any law, which is false because it did not exist in the state of innocence or in the state of the Mosaic Law.

23. If you object, through the gloss [Nicolas of Lyra] on *Genesis* 3.9 “Adam, where are you?” – it was the speech, the gloss says, “of someone rebuking and seeking after confession [and not of someone who did not know].” So, there was confession in the time of the law of nature after the Fall.

24. Similarly about Aaron and his sons it is read that they had to confess the sins of the sons of Israel [*Leviticus* 6.25, 7.1, 8.1-2, 14, 16.21], and frequently that he who had

⁵⁰ “Natural right is what is contained in the Law and the Gospel”

sinned in the Law had to confess his sin and offer such or such a sacrifice [*Leviticus* 4-5, 9.1-15, et al.].

25. There is also confirmation of this, because there are many authorities in the *Old Testament* about making confession, as this one, *Proverbs* 18.17, “The just man is the first to accuse himself” [also *Joshua* 7.19, *3 Kings* 8.33, *Nehemiah* 1.6, 9.2 et al.].

26. Besides, that it is a conclusion following from the principles of the law of nature is proved thus: this proposition is known, ‘every culprit should be judged’; and this one, that ‘no one should be judge in his own cause’; therefore, a culprit should be judged by another. He cannot be judged by another unless he be accused before that other; nor can he be accused save by himself if his sin was secret; therefore, he should accuse himself before the other by whom he will be judged; and it is more agreeable to reason that he do it in secret than in public if his sin be hidden; indeed it is perhaps sufficiently known to natural reason that if sin is hidden the accusation ought to be hidden. Therefore, from propositions known by the law of nature, or at any rate very evidently consonant with the law of nature, it follows that this secret confession of one’s own sin is to be made to another, and then to no one more reasonably than to a priest.

27. I respond to the first one [n.23]: Adam ought not to have hidden his sin from God, because God is the very judge to whom every sin is manifest, in whose presence every culprit should acknowledge his fault. And this confession God required of Adam, which confession Adam not only did not make but he excused his sin by turning it back onto the woman, saying [*Genesis* 3.12], “The woman whom you gave me etc.” Hence this does not prove that in that law confession should be made to man, though it should be made to God when he rebukes.

28. To the second [n.24]: in the whole Mosaic Law the confession we are speaking of was not made, but confession was made of hidden sins to God only. However, as to certain public failings and the observance of legal rules a confession was made – by each one when he offered sacrifice for such a failing, and by the priests a general confession [*Psalm* 105.6], “We have sinned, we have done unjustly etc.” And in this way was the public confession of the priest a certain disposition for asking God’s mercy for the people – just as also now in the Church we confess, with the confession we are now speaking of, that we have sinned, and we ask mercy for ourselves and the whole people.

29. To the third [n.25] I say that all the authorities of the *Old Testament* for proving confession, as we are here speaking of it, are only verbal and not judicial sentence. Of what confession are the authorities speaking then? I say of that general one, the sort that the priests made [*Leviticus*, 4.1-12, 6.17-23, *Numbers* 15.25-26, 18.1-7 etc.] and Daniel [*Daniel* 9.4-19] and many other holy Jews [*Exodus*, 32.31-32, *2 Chronicles* 6.21-42 etc.]; or of the confession of their own public failing concerning non-observance of the legal rules, as are the irregularities in contracting the impurities of the Law [*Matthew* 15.1-20, *Mark* 7.1-23].

30. As to the argument [n.26], I concede that that proposition [‘every culprit should be judged’] is known by the natural light, or at least is very consonant with a known proposition, for a culprit is to be judged because, if there is one Ruler of the universe and he a just one, no failing is to be left unpunished in the universe – this is naturally known or is very consonant with things naturally known.

31. But further, when you say he is to be judged by another [n.26], I concede it. But who is that other is not known by natural reason, nor even by things consonant with

natural reason, save about God only, who is rewarder of merits and punisher of sins. And then further, that another cannot judge unless accusation be made to him, can be denied, because God knows sins without any accusation, even before they are done. Or suppose that this proposition, that 'a fault should be accused before this Judge and by the sinner himself, for only he himself knows', be granted as consonant with things known. From all these follows only that sin should be confessed to God. And this confession I concede insofar as it was of the law of nature, that is, consonant with truths known from the law of nature. Because for every state after the Fall, the just, who had about God faith that he was Ruler of the universe and just punisher, were wont, after they had sinned against the law of God, to confess their sins to God, seeking remission of them from him, knowing that without such remission he, as just judge of the sin, would avenge it.

32. And if you argue that he should accuse himself to some other who is his judge, this cannot be proved by what is known to the law of nature nor by what is evidently consonant with it, because no sinner can be judge of a man's sin save as minister of the supreme Judge. This (namely being a minister of the Judge in judging or punishing what has been committed) is conceded more to each with respect to himself than to one with respect to another. For to each has God committed it that he be minister of God in judging his own sin, by inflicting sadness on himself and displeasure at his sin. But it is not thus known that he has conceded it to anyone to be his minister in executing judgment against another for that other's sin.

33. If you argue that in a human republic one person is judge of another – I reply: this is true in the case of sins that can become known to him in the court of justice, of which sort are public ones.

b. In the Time of the Gospel Law after Lateran Council IV

34. If the third member [nn.18, 21] be held to, namely that confession falls only under a precept of the Church, it cannot be rejected easily save either because the Church would not have accepted the imposition of so hard a precept on Christian men if it were not a divine precept; or because there is no place found where this precept is imposed by the Church without this being before the time the saints reckoned a precept about confession was obligatory. For if the chapter from Gregory IX, *Decretals* V tit.38 ch.12, 'About penances and remissions', be alleged, it is clear that that chapter is from Innocent III in the [Fourth] Lateran Council [1215 AD].

c. In the Time of the Gospel Law before Lateran Council IV

35. Now before that time, there was for many years, for more than 800 years, the advice of Augustine, and he himself proved that confession is very necessary, as is plain in [Ps. Augustine] *On True and False Penitence* [in fact Augustine *Sermon 392, To the Married*, ch.3 n.3, and *Expositions on Psalms* ps.68 sermon 1 n.19], and certain of his authorities are put in the text [Lombard, *Sent. IV* d.17 ch.1 nn.8-9] and certain in Gratian [*Decretum*, p.2 cause 33 q.3, d.5 ch.1, d.6 ch.1]. Nor would a canonist easily find any Council of the Church, or any precept proper, where a precept about making confession, as we are here speaking of it, is expressed.

36. This opinion is held by the glossator, ‘On Penitence’ d.5 at the beginning [*Gloss on Gratian’s Decretum*, p.2 cause 33 q.3, d.5 ch.1], where, after reciting diverse opinions about the institution of confession, he adds his own saying, “The better statement is that it was instituted by a certain universal tradition of the Church rather than from the authority of the *New and Old Testaments*.⁵¹”

37. But, saving his grace, he speaks unreasonably as a canonist. For it would be unseemly for a theologian to say that something is in the Bible and not know where it is found; and so should it to be for a canonist to say that something was instituted by the universal tradition of the Church and not to find it in Canon [Law] if Canon [Law] sufficiently contain the universal traditions of the Church. Now he does not allege any chapter of Canon [Law] for this tradition, but he only afterwards adds that “the tradition of the Church is obligatory” [*Gloss on Gratian’s Decretum* p.2 cause 33 q.3, d.5 ch.1], and for this he alleges the article ‘In these things’ in d.11 [Gratian, *Decretum* p.1 d.11 ch.1, “In these things, about which nothing certain has been established by divine Scripture, the custom of the people of God and the institutes of the ancestors are to be held as law”].

38. Again, if this opinion were true, the Pope would not be bound to confess because, as is contained in Boniface VIII *Decretals Book Six* V tit.12 ch.3, “an equal has no command over an equal.”⁵¹

Again, it would not seem that infidels were bound to the precept about confession, because according to the Apostle *I Corinthians* 5.12, “For what have I do to judge them that are without?”⁵²

39. However, the glossator hints at an argument for his opinion of this sort: confession is not necessary among the Greeks; but it would be necessary if the precept about it came from the authority of Sacred Scripture [sc. therefore the precept does not come from the authority of Scripture].

40. But the antecedent is not manifest; for just as baptism of water is necessary among them as the first plank (as also for us), so too (as it seems) is penitence, indeed the sacrament of penitence counts as the second plank [cf. *supra* d.14 n.13].

41. And if the antecedent is proved because there is no custom of confessing among them – I reply: the Greeks omitted many laudable customs after they departed from the Church, and so they could omit this custom, a custom not only laudable but necessary. Nor does the denial of that act introduce a custom. Nor is what he himself takes as antecedent, namely ‘that they are not bound [to confess]’, so known for Greeks but that their not confessing is not known the more.⁵³ And this [sc. the Greeks not confessing] is not expressed anywhere by any doctor who was writing against their other abuses,

⁵¹ The laws and traditions of the Church are sanctioned ultimately by the Popes, so that if the rule about making confession holds because sanctioned by a Pope, and a Pope is not under command of a Pope (for a Pope is equal to a Pope), then Popes are not bound to the rule about making confession (whereas the value and importance of confession holds for all Christians, including Popes).

⁵² If the precept about confession comes from Church tradition, then infidels, who are not bound by the law or tradition of the Church, would not be bound to confess, but they are so bound by the law of nature [nn.22-33]. So obligation to confess cannot be Church tradition alone.

⁵³ That is, if the glossator tries to prove his antecedent (‘the Greeks are not bound to confess’ [n.39]) by saying that the Greeks do not have the custom of confessing, then their not having that custom would be more known (to them and to others) than the antecedent. But it is not. For, as Scotus’ argument in the next lines continues, if it were thus more known, it would have been more a point of dispute between the Greeks and the Latins than disputes about the Eucharist and baptism, and it was not.

although however there would have been a noteworthy disagreement with the Roman Church if in this they had disagreed – more noteworthy, to be sure, than their confectioning [the Eucharist] in fermented bread, or their using this form of baptizing, ‘may the servant of Christ be baptized etc.’, about which the Latins do not keep silent.

3. The More Reasonable Conclusion is to be Held

42. Briefly, it seems more reasonable to hold to the second member [nn.18, 20], namely that confession falls under a positive divine precept.

43. But then it is necessary to see whether under a precept explicitly in the Gospel immediately from Christ (for it is plain it is not in the Old Law), or explicitly from him in any apostolic doctrine, or neither in this way nor in that but [under a precept] given by Christ and promulgated by the Apostles of the Church following his words.

44. The first of these should more be held if the precept could be evidently got from the Gospel. And one ought not adduce for this the verse of *Matthew* 16.19, “I will give you the keys of the kingdom of heaven,” because that is only a promise about a future gift. But if anything in the Gospel has force for this it is that passage in *John* 20.22-23, “Receive the Holy Spirit; whose sins you remit etc.”

a. Solution of Others and the Weighing of It

45. From this passage is argument made:

In one way as follows [Hugh of St. Victor, Alexander of Hales, William of Auvergne]: there is given here to the Apostles, and in them to all priests, power to remit sins; not principally, because this is proper to God, therefore ministerially and by arbitration; but they cannot arbitrate in a cause they do not know; therefore the cause they have to arbitrate must be made manifest to them. This making manifest is confession; therefore, by the conferring of the power of arbitration to priests in a cause of sin, sinners are obliged to accuse themselves before priests as before arbiters, which is to confess.

46. Suppose it said that reason does well conclude that the sacrament of penance was instituted by Christ as useful and efficacious, but it does not follow from this that it must necessarily be received as falling under a precept, because extreme unction was instituted by Christ, and the sacrament of confirmation as was said above [*Ord. IV d.7 n.18*], and yet neither is simply necessary, nor is there a precept about this one or that.

And then to the form of the argument [n.45]: ‘they are arbiters in a cause of sin, therefore others should accuse themselves to them’. Those others, it is true, who want to submit to their judgment, and, if they do submit, those arbiters do indeed have power of judging. But it does not follow that therefore others are bound by necessity of precept to submit to their judgment. An example: let there be four priests, each of whom has authority to absolve this sinner. Each is completely his arbiter as far as power is concerned. But it does not follow that this sinner is bound to submit himself to any of them but only to the one he wants.

This is confirmed by what Christ adds, *John* 20.23, “Whose sins you retain, they are retained.” But that statement is not precise. For not only are those sins retained by God for penalty that are retained by the priest (because the priest does not retain any sins unless they are in some way revealed to him, though by signs unfitted for penitence), but

also those sins that are in no way shown to the priest does God retain for the vengeance of Gehenna. Therefore, this statement too “whose sins you remit, they are remitted” was not precise. Hence to neither affirmative is the negative adjoined that denotes that the remission or retention done by the Apostles is precise with respect to the retention or remission done by God.⁵⁴

47. Although this sort of response [n.46] seem very probable, if from the statement of *John* “Whose sins you remit etc.” one excludes the idea of precept. However, by excluding this response the point at issue is shown in two ways:

First as follows: judging or arbitrating power is not committed to anyone unless the necessity is imposed on someone of submitting himself to him; but judging or arbitrating is, for you, committed to the priest in a cause of sin; therefore, on someone, as on the guilty party, is imposed the necessity of submitting himself to the priest’s arbitration. –

And the same major [‘judging or arbitrating power is not committed to anyone unless...’] is proved through the following, that no one is judge of anyone in the will of whom (namely him who is to be judged) it lies whether to be judged by this judge or not to be judged by him. For then the judge would have no authority in himself for judging if the other could be judged if he wanted and not judged if he did not want. For to what purpose does the power of judging belong to anyone save to declare the right to him who is bound to obey the right? For only to declare the right by way of punishment, if you like, is not to judge.

But neither is this compelling: for I concede that the arbiter has power not only to determine right in this case but that, from the fact that another submits himself to him, his determination binds or releases him. Not so the determination of anyone who knows the right and does not have judiciary power.⁵⁵

b. Scotus’ own Solution

48. Therefore I argue in another way as follows: whoever has lost the first grace is bound by necessity of precept, and this the precept ‘You shall love the Lord your God etc.’ [*Deuteronomy* 6.5, *Luke* 10.27], to do as much as in him lies to recover it, and also by virtue of the precept, ‘You shall love...as yourself’ [*Leviticus* 19.18, *Luke* 10.27]. This person has by mortal sin lost the first grace, and he can recover it by receiving the sacrament of penitence from the arbiter, because this was instituted as efficacious remedy for recovering the first grace, from the statement of *John* 20.23, ‘Whose sins you remit etc.’ And thus does the necessity of the precept of confession arise or follow, not from the statement precisely ‘whose sins you remit etc.,’ but from this statement joined together with the precept, ‘You shall love the Lord your God etc.’

⁵⁴ The affirmatives are ‘whose sins you remit, are remitted’ and ‘whose sins you retain, are retained’, and the corresponding negatives are ‘whose sins you do not remit, are not remitted’ and ‘whose sins you do not retain, are not retained’. But neither of these negatives is simply true, because sins that the confessing penitent does not reveal to the priest are neither remitted nor retained by the priest, and from this follows nothing about their remission or retention before God.

⁵⁵ That is, from the mere fact that priests do in fact know or determine the right, and do also bind and loose penitents who submit to them, it does not follow that the faithful are obliged to confess to them. For unless priests have judiciary power in addition, no one is bound to submit to them or to follow their determinations.

49. If you say that the major is true, that bound one is to some way by which one could recover grace, but not to this way determinately if another be possible; but as it is, although receiving the sacrament of penitence is a useful way, yet there is no proof that it is for recovering that precise grace – against this:

No other way is as easy and as certain. For nothing is necessary here save not putting up an obstacle to grace, which is much less than to have some contrition that, by way of merit by congruity, would suffice for justification, as was said above in d.14 [nn.136-144]. For someone can be more certain that he is not putting up an obstacle than that he has sufficient contrition, as it were, by way of merit by congruity, because he can probably know that he is now not actually sinning with interior or exterior sin, and that he intends to receive what the Church intends to confer in the sacrament. He cannot thus know that he has contrition sufficient, as merit by congruity, for justification. I accept then this major: where a way is easier, that is, more in the power of man, and more certain for receiving grace, everyone is bound to that way, so that, if he omit it, let him not attempt another more difficult and more uncertain way, because then he would expose himself to the peril of his own salvation, and would seem to be despising his own salvation. But the way of receiving the sacrament of penitence is more possible for man and more certain for recovering the first grace. Therefore, from that by which this way gets its efficacy, from the precept both of love of God and of neighbor and oneself, one is bound to this way.

50. This reason, if it prove that the precept of confession is got from the Gospel from the statement ‘Whose sins you remit etc.’ and from ‘You shall love the Lord your God etc.’, it is indeed well. But if not, it proves at least this, that a precept of God about making confession is very reasonable for a multitude, because although some person could have some special remedy yet about this remedy, because it is more possible and more certain for a community, it was more reasonable for a precept to be given, and given to everyone in the community – just as was said above about baptism [Ord. IV d.4 nn.126-129], that although one may have baptism of desire without baptism of water, yet because baptism of water is an easier remedy, it is therefore certain that a precept about it for the whole community is very reasonable. And so I will at least get that a precept about generally making confession would have been very reasonably given.

51. But if you altogether insist that, for reasons set down in this member [nn. 42-45, 47-50], there is no proof from the words of the Gospel that a precept was given, shall we really say the second thing, that this precept is got from the words of some Apostle?

52. It is said that we shall [Hugh of St. Victor, Alexander of Hales, William of Milton, Richard of Middleton], taking it from the words of *James* 5.16, “Confess your sins one to another etc.”

53. But from this it seems to me neither that James gave that precept, nor that he promulgated a precept given by Christ.

54. Not the first [n.53], for whence came his authority to obligate the whole Church, since he was only bishop of the Church of Jerusalem? Unless you say that the Church of Jerusalem was the principal Church and, consequently, its Bishop was the principal Patriarch, which the Romans would not concede – and not because, properly for the time, that authority was taken away from that Church.

55. Not the second [n.53], because when the Apostles were making public in their writings the precepts of the Lord, they used a mode of speaking by which it could be known that they were heralds of Christ, as is plain from the statement in *I Corinthians*

7.10 – that when Paul wants to make public the Lord’s precept about not dismissing one’s wife, he says, “To those who are joined in matrimony I command, yet not I, but the Lord.” But when he wants to impart his own conviction about a man who is a convert to the faith living together with an unbelieving wife, or conversely, because this, without insult to Christ, is permitted but not necessary, he says [*ibid.* 12], “I speak, not the Lord.” Otherwise, unless from what preceded or what followed he made it manifest that he was herald in that proclamation, the Church could not be certain that he was making the precept public as herald.

56. Both points [n.53] are also jointly proved by James’s own annexed words [n.52]; for by saying “confess...one to another” James is no more saying that confession is to be made to a priest than to anyone else; for he adds immediately, “and pray for one another so that you may be saved,” where no one would say that he had instituted or promulgated a divine precept. But his intention, as in the words ‘Confess one to another’, is to urge to humility, namely so that we may generally confess among our neighbors, according to the verse from the first canonical letter of *John* 1.8, “If we say we have no sin, we deceive ourselves.” So, by the second remark [“and pray for one another so that you may be saved”], James is urging to fraternal charity, namely that through fraternal charity we come to each other’s aid. This verse, then, does not appear to be about a divine right promulgated by Apostolic Scripture.

57. So either the first member is to be held [nn.42-43], namely that the precept is one of divine right promulgated through the Gospel, as is set out in the second member [nn.18, 20]. Or if that not suffice, the third member must be asserted [nn.18, 21], that it is a precept of positive divine right promulgated by Christ to the Apostles but promulgated to the Church, without any Scripture, by the Apostles; just as the Church also maintains many other things that were promulgated orally by the Apostles without Scripture, the foundation of which is that verse of *John* 20.30 (cf. 21.25), “Many other signs truly did Jesus do etc.”, and it is contained in *Gregory IX Decretals* III tit.41 ch.6 [“Certainly many of the Lord’s words and deeds we find to have been omitted by the Evangelists, which the Apostles, it is read, supplied in word or expressed in deed.”]

B. What the Precept about Confession Includes

58. About the second article [n.17] I say that the precept includes ‘who’ should confess [cf. *supra* d.15 n.163], that an adult should, that is, someone possessing the use of reason and knowing the sin he has committed. By him who is an ‘adult’ I do not mean that he is of this many or that many years but that he have age enough to know the just and the unjust against the Law of God. For in many people, before the accustomed age, “malice supplies for age” [*Code of Justinian* II ch.32 n.3], and not in the bad only, as the common words say (because, perhaps, he more quickly has a prudence for evil, hence is he also called ‘guile-capable’), but also in the good, according to the remark in the legend of Blessed Agnes, “Faith is not counted in years etc.” [*Ps.-Ambrose, Epistle to Holy Virgins* n.6: “infancy indeed was counted in her years, but maturity of mind in her morals”].

59. And of this the rule, in brief, is that he should be judged adult who, having been instructed and questioned in ordered manner, distinctly perceives what is just and what unjust in the Divine Law. And this can be seen if he respond in ordered manner to

ordered questions the way someone else perfectly adult from the like premises would respond.

60. The precept [n.58] also includes ‘what’ should be confessed, that mortal sin should be. And it does not include anything else, for by venial sin is no one in peril outside the ship of the Church, because venial sin stands along with perfect charity, which is the saving ship. And so, from the first institution of penitence as the second plank, no one needs to have recourse to it for remedy against venial sin but only against mortal sin.

61. But which mortal sin?

I say every mortal sin that there is memory of, and this after prefacing diligent inquisition according to the capacity of human weakness. And I mean: as much inquisition as one might impose, or perhaps could impose, concerning something very hard that would be much on one’s heart – that much should one impose as to all mortal sins that need to be brought back to memory; and those that are brought back to memory should be confessed to the same priest without dividing the confession up. For, as [Ps.-]Augustine says *On True and False Penitence*, and it is in the text [Lombard, *Sent.* IV d.16 ch.2 n.5], “Some hide from one what they keep to make manifest to another, which is to praise oneself and to tend toward hypocrisy and always to lack the pardon which they hope to reach piece by piece.”

62. But an objection against this is that it then seems that every sinner is bound to state all his sins to anyone who questions him; otherwise, by keeping quiet about them or some of them, he would be a hypocrite, because showing himself to be more innocent than he is.

63. I say that by keeping silent before him to whom I should not speak I do not show myself innocent in the things I am silent about. But I do to him to whom I should speak and when I should speak, just as, by keeping quiet about something in confession while confessing something else, I show myself innocent in what I am silent about, and in this there is hypocrisy; not in the other case.

64. And not only does the aforesaid precept include sins but all the circumstances of sins, notably the aggravating ones, according to the remark of Ps.-Augustine in the place above [n.61, ch.14 n.29], “Let him consider the quality of the crime in place, in time, in perseverance, in variety of person etc.” At any rate, it includes, I say, those aggravating circumstances and those necessarily in need of being confessed that are prohibited by a special prohibition, as that to take what is another’s is illicit and prohibited. But by a special prohibition is it prohibited to take from a holy place, and therefore the special sin of sacrilege is constituted by this circumstance. Likewise it is illicit and prohibited to know a woman not one’s own but, if she be a close relative, it is prohibited by a special prohibition, and therefore is a special sin, namely incest, constituted by this circumstance. Frequency too is a circumstance, there is no doubt, that simply posits another sin, because a new sin is committed on each occasion; and about like things there is a like judgment. There are also many circumstances by which a sin is in some way more serious (as that if the temptation is a minor one), and this too either on the part of the object or on the part of the person sinning, about which it is not so certain that they need to be confessed, but it is safe and useful to do so. But as to other circumstances that are nothing to the purpose, as those without which there would be as much gravity as there would be with some other impertinent circumstance, it is fatuous to confess them, as if someone has sinned with some woman called Alicia or Agnes or the like.

65. This precept also includes 'to whom' confession should be made, that it should be to a priest; for he alone has the authority of binding and loosing, as will be said in d.19 [dd.18-19, n.52], and to a priest who has jurisdiction, because a sentence not passed by its judge is null.

66. The precept contains also 'when', that it should be whenever one is in danger of death. For everyone, when judgment of damnation or mercy is imminent, should prepare himself for mercy as much as he can. But this is not only to be done in a terminal illness but also when arduous actions are being undertaken wherein it is likely that death threatens, as in mortal combat and shipwreck and the like. And when he wants to undertake other acts to which a special reverence is due, as when he wants to receive communion, because as was said above in d.9 [*Ord. IV d.9 nn.15-18*], when one has the opportunity of a confessor, no one should receive communion without confession; and about similar cases the judgment is similar.

67. It also contains 'how', because confession should be with displeasure at the sin committed, and with the purpose of abstaining from sin and obligating oneself to the Church to make satisfaction for such sin, meaning not that one must want to accept the penitence from the priest, because if one wanted to accept no penitence offered to one by a priest and yet one had the two conditions proposed here [sc. abstaining from sin and obligating himself to the Church for satisfaction], and the purpose of receiving the penitence to be inflicted on oneself by God here or in purgatory, such a person, I say, is rather to be absolved than repulsed, as was said above in d.15 q.1 [nn.50-51].

68. But if one accept some satisfaction imposed on one by the Church, one is bound to keep to it. And one ought to have the purpose to confess in due manner, namely that one should wish to obey the confessor in keeping the satisfaction imposed by him that one has voluntarily received.

69. If against this be argued what was said in this article, namely which sins are to be confessed, that all mortal ones are [nn.60-61], because it was said above, d.15 q.1 [n.53], that someone can pay the penalty due for one sin without paying the penalty for another, indeed by remaining in the other sin; therefore, by similarity, he can pay the confession due to one sin without paying the confession due to another – I reply: it was said there that he who has truly been once absolved from all his sins can pay the exterior penalty imposed on him whether he is in charity or in mortal sin. And let it be that he pay it in mortal sin; he is not bound to pay it again either here or in purgatory or in hell [*ibid. nn.55-58*].

70. If someone is never truly absolved from the sin, say because when he ought to be absolved he puts an obstacle in the way, of which sort this hypocrite is who is putting obstacles in the way, then he is bound to pay whatever sort of exterior penalty he pay or satisfy.

71. And the reason is that an eternal penalty must first be commuted to a temporal one before any temporal penalty be any sort of payment for the fault. But when the hypocrite here confesses, the penalty is not commuted, because neither is he absolved from his fault; but it is commuted when he does truly repent once, although afterward he back-slide in some way or other. For he was at some time just and was not a debtor to an eternal penalty for sins previously committed. But this hypocrite remains always debtor to eternal penalty for sins previously committed; and he also becomes debtor again to a new penalty for a new sin he has committed here.

C. What has Been Articulated Further about the Precept of Confession by Precept of the Church

72. About the third article [nn.17, 21] I say that the Church has specified this precept as to some of the things aforesaid and has not specified it as to others. The chief specification of this precept is found in Gregory IX, *Decretals* V tit.38 ch.12 [“Let all the faithful of both sexes, when they have come to years of discretion, faithfully confess alone all their sins to their proper priest at least once a year...receiving reverently at least at Easter the sacrament of the Eucharist, unless perhaps on the advice of their own priest they judge that for some reasonable cause they should for a time abstain from this sort of receiving.”]

73. As to the ‘who’ the Church has specified that it is the adult sinner “after he has come to years of discretion etc.,” which is nothing other than the adult according to the understanding assigned before [n.58].

74. As to the ‘what’, sinner and adult: some say [Richard of Middleton, *Sent.* IV d.17 princ.2 q.4, d.16 princ.5 q.1] that if he have mortal sins he is bound to the confession precisely of them and not of venial sins; but if he have only venial sins, he is in that case, because of the precept of the Church, bound to the confession of them.

75. This I do not understand, because since in the chapter is said “all their sins,” the distribution of ‘all’ to cover venial sins is either made there or it is not. If it is, then he who has mortal sins is bound by virtue of this precept to confession of venial sins; if it is not, then he who does not have mortal sins but only venial ones is not bound to confession of them, because venial sins simply do not fall under the “all their sins” that is there stated. Hence, when positing the same understanding for the words “all their sins”, it seems a contradiction to say that this person is obliged to confess venial sins and this one not.

76. Again, suppose someone has lived without mortal sin up to the middle of Lent. If he were then to confess so as to keep the precept of the Church, he would, for you, be bound to confess venial sins, because he only has those ones. Let him on that day sin mortally. If he want to fulfill the precept of the Church about confession, he is, for you, not bound to confess the venial sins he had before; therefore by commission of a mortal sin he is absolved from that obligation, which seems irrational.

77. I say, therefore, that, as far as I grasp it from the general statutes of the Church, no one is bound to confession of venial sins in any case at all. Nor has the Church made the precept about confession specific on this point; and reasonably, because the Church uses the sacrament of penitence as the second plank after shipwreck, which there is no need of in the case of venial sins.

78. Nor is anyone bound to any contrition for venial sins; nay rather, someone dying in an actual will or act of venial sin will be saved. Nor does it seem that anyone is bound to the second part of contrition (which is confession) as to a sin as to which he is not bound to have contrition or attrition. This is plain too from something else, that (as was said above, [d.14, nn.149-150]) venial sins are sometimes deleted as to guilt and penalty without any special work, as by some fervent act of contemplation of God – just as a drop of water is at once consumed by a strong flame.

79. If you ask how then will a priest know the face of his flock if he who says he has lived innocently is not bound to confess his venial sins? – I reply: if confession were

made to the priest and only venial sins were confessed, how would the priest know that the penitent had not done any sins save venial ones only? From nothing save from his confession. Hence Gregory IX *Decretals* I tit.31 ch.6 [actually from Henry of Ghent, *Quodlibet* VII q.24], “Someone confessing penitentially is to be believed in everything, because it is not likely that anyone not be mindful of their own salvation.” Therefore if in the same way the priest believe him who comes to him and says, “Sir, I give thanks to God that from when I last confessed I am not conscious of any mortal sin; give me the Eucharist,” the priest has in this penitence only as much knowledge of the face of his flock as if the penitent had narrated his venial sins for two days. Nor could the priest have any certitude about the penitent’s proper venial sins other than he has now about his innocence, namely through his proper testimony.

80. Therefore the Church does not specify the precept about the ‘what’.

81. But as to the ‘to whom’, the Church seems to specify this by saying: ‘to the proper priest’. For there do not seem, from the Church’s first institution, to have been distinct proper priests. For, when the Apostles were going here and there preaching the word of God, this Apostle was then priest of one person, now of another, and now this Apostle was and then that one was; but afterwards are dioceses and parishes and priests in parishes distinct. However, for that time, those can be said to be proper priests who have ordinary or delegated jurisdiction, or only those who having ordinary distinction in contrast to the delegated ones, or rather only those who have immediate and proximate ordinary jurisdiction.

82. According to these understandings, there can be disputes today between delegates and ordinaries about the understanding of this chapter [n.72], if indeed proximate and inferior ordinaries do not dispute against superiors in order to be themselves alone, and no others, the proper ones (for curates do not dare to resist bishops as easily as to resist the privileged poor).

But if the force of the word ‘proper priest’ is considered, namely he alone and no other, or proper to this person and not to another – in neither way is anyone obliged to confess to his proper priest, because if many are equally in charge of some parishioner, each absolves equally; also the same priest absolves equally many parishioners; therefore the word is understood of someone having jurisdiction for immediate absolution of him.

83. And the precept on this point is not made specific because it was about ‘to whom’ in general, namely to a priest having jurisdiction. And if anyone could delegate to one person the immediate jurisdiction that another ordinarily has (which they themselves do not deny the Pope can do), then according to this understanding a delegate can become proper. Therefore the ‘to the proper priest’ does not specify the ‘to whom’ as this is included in the first precept, unless it be said that in the primitive Church any priest had jurisdiction over any penitent, and that now individual penitents are made determinate as subjects to individual priests. And at that time any priest was proper to anyone at all, in this way namely, because possessing ordinary jurisdiction over anyone; but not proper as proper is now, that is as determinate to him or his parish. But this properness bestows no special power on a proper priest that this priest would not have had but only limits some (people) to some (priests).

84. If, however, you ask whether, by the force of the first precept and the explication of it, that it is licit, as far as this article ‘to whom’ is concerned, to confess to a layman (the Master seems to say yes to this in the text, and he sets down authorities on his

side [Lombard, *Sent.* IV d.17 ch.4 nn.3-8; also Gratian, *Decretum* p.2 cause 33 q.3, d.6 ch.1; see n.35 *supra*]) – I reply: such a confession can be a matter for shame, which is one penalty due to sin, and when confessing in this way he does pay a penalty that he would be paying if here were to confess to a priest. But if accusation is made by precept for this purpose, and not for any purpose other than that a sentence may follow (and a layman has no authority for passing sentence in that forum), it follows that there is no precept about accusing oneself to a layman. And perhaps it would be more useful not to accuse oneself before him, if one could have equal shame before oneself thinking over the same sins, and thus be equally punished.

85. Someone might say that it is necessary not to confess to a layman, because no one should defame himself nor betray his secret sin, especially when he to whom he betrays it is not presumed to be a keeper of a secret; nor can he better advise him than he can advise himself. For perhaps for getting advice it would be licit for someone to reveal his sin to a more discreet layman.

86. But this is not clear, because advice could be sought by positing the case about someone universally, without revelation of his own sin.

87. What then about condemned malefactors confessing to laymen?

I reply: their simplicity excuses them, nor in this do they sin; and their humility is meritorious for them to the extent they want to supply, as they can, that which belongs to the sacrament of penitence. But for a discreet man, who would well know what confession was instituted for, it would neither perhaps be useful nor, without chance??, necessary to make such a confession.

88. The Church has as to ‘when’ determined the precept, namely ‘once in a year’; and this ‘once’ seems to be at least around Easter, at which time, according to the chapter [n.72], every Christian ought to receive communion, “unless...”

89. If you say that this specification is a relaxation, because they were bound before [sc. the time of the Apostles, n.81] to confess as soon as they had the opportunity for a confessor, but now [sc. since Gregory IX, n.72] they are not bound until Lent – I reply: both points are a source of doubt for some people; certain of them [William of Auvergne, William of Auxerre] saying that both then and now, as soon as one has opportunity of a confessor, one has obligation to confess; certain of them [Richard of Middleton, Bonaventure] saying that neither at that time [was their obligation] but only to intend to confess at some time before death, nor now, but to have in one’s intention to confess, save once in a year [sc. when one must have more than intention and actually confess]. The second [sc. the situation now] seems of greater weight, because ‘penal precepts are not to be amplified but restricted’ [Boniface VIII, *Decretals book Six*, V tit. 42, reg.15]. And when the affirmative precept binds or obligates is not found save as to ‘sometime’, and the ‘when’, before the specification of the Church, was indeterminate to any ‘when’ before death; after the specification it was indeterminate as to any single ‘when’ in a year. However, it is necessary to have the will to confess at the time when the precept obligates [sc. before death then and during Lent now] – I mean this simply in this way, that one is never unwilling.

II. To the Initial Arguments

90. To the first one [n.3] it can be said that the sacrament of penitence was not instituted at the time of Peter's denial, but after the resurrection when Christ said to his disciples, "Receive the Holy Spirit etc." [John 20.22]. And so Peter was at that time not bound to confession. Nor was he bound to it after the institution of the sacrament, because his sin was destroyed already before the resurrection by another remedy.

91. And reply can in a similar way be made about the unfaithfulness of all the disciples during the passion of Christ, that they were themselves not bound to confession because they repented after the resurrection before the institution of the sacrament of penitence. This well confirms that confession was not in the law of nature nor in the Mosaic Law.

92. But as to the words of Ambrose, "Tears wash away etc." [n.3], these are not to be so understood that without confession in act or habit transgression is washed away; but contrition can be so great that in it even before confession is the transgression washed away, which transgression, however, is so grave because subsequent confession of it is shameful.

93. To the authorities from Cassiodorus and Augustine on the verse of the *Psalm*, "I said, I will confess" [nn.4-5; 6-7], I say that this confession has purpose or promise of confession to follow, and thus sin is not deleted without purpose of confessing. This is plain from the end of the authority from Cassiodorus, where he adds, "the wish is judged for the deed," as if he were to say that the intention, that is, the will to make confession, is judged as the future confession. Nor does it follow from this that the sin is deleted as to due penalty without future confession, because this confession is one penalty and if it is not paid here, though yet there be a will to pay it, it will be paid elsewhere. But if there is no will to pay it, one is already turning back from true penitence and is sinning mortally, as was said above [Ord. IV d.4 nn.128-129] about someone baptized with the baptism of desire who afterwards disdains baptism of water.

94. To the first argument [n.8] I say that all the ceremonies both of the Old Law and of the New are reduced to some precept of the Decalogue, and can be reduced to the precept "Here, O Israel, the Lord your God is one God" [Deuteronomy 6.4, Mark 12.29], or to the verse, "Remember the Sabbath Day to keep it holy" [Exodus 20.8]. For whether we say it is through the first or through the second commandment that God has commanded that he is to be honored as God, it follows that these ceremonies, by which he wishes to be worshipped, fall under the relevant precept as a conclusion under premises.

95. If you argue against this that then these ceremonies would belong to the law of nature because the precept under which they are said to fall belongs to the law of nature – I say that from the major about the law of nature and the minor about the positive law there follows only a conclusion of positive law. The major is this, 'God is to be worshipped,' and this belongs to the law of nature, or is at any rate very consonant with the law of nature. The minor is 'thus to worship him belongs merely to positive law', for it varies for different times. The conclusion, 'therefore God is to be thus worshipped', belongs merely to the positive law, because a conclusion always follows the condition of the more imperfect premise.

96. To the next [n.9], it is said [Aquinas, *Sent.* IV d.17 q.3 a.4 ad 2] that such a person should confess through an interpreter, or through some signs, other than words, which can be known to a priest.

97. The second ['through some signs, other than words'] is to be conceded well enough, if any such signs be common to the dumb or barbarian penitent and to the priest. But the first ['through an interpreter'] does not seem necessary, because this forum [of confession] by its nature is very secret; therefore no one is bound to this forum that is in any way public. But although the interpreter wish and be bound as the priest is, yet he and the priest, if they want to be malicious, can be witnesses against the accused, and thus the accusation, from the nature of the accusation,⁵⁶ can come to public notice, and so it is not penitential.

98. From this it is plain that confession is necessarily not to be made to several priests together so that they may make a better judgment; because if this be done it is not a sacramental confession. But most of all does it seem that confession should not be made through an interpreter when there is fear that no secret place is suitable. And in such a case this [penitent] has no possibility of confessing to a suitable man. Let him therefore confess to God, with purpose of confessing to a man when opportunity is offered.

99. As to the next [n.10], it seems that sometimes confession is to be made in writing, as is read of [Theodore] the Bishop of Canterbury who, for absolution, sent it to the Curia [*Poenitentiale I* chs.4 n.5].

100. But this seems to be against the idea of confession, because all writing is naturally of the sort to be public by its very nature. For however much someone may keep secretly with himself what he has written, yet from when he sends it, whether by messenger or by him to whom it is sent, it can be made public, and it is of its nature always wide open, saying what is contained in it to any reader of it.

101. Anyone, then, who writes something does, in this respect, what is contrary to the nature of a sign suitable in confession. And in a piece of writing shame is taken way, which is a great penalty, and this unless the one confessing is present at the same time that the confession through writing is made. And therefore what is said in Gratian, *Decretum, with Glosses*, p.2 cause 30 q.5 ch.4, that someone can confess through writing, is given the exposition 'when the one who confesses is present, because he cannot do it licitly when absent', by Jerome [actually Ps.-Augustine, *On True and False Penitence* ch.10 n.26; in Lombard, *Sent. IV* d.17 ch.3 n.4]. Therefore, let him who is absent wait until he is present (having the intention to confess when there is opportunity).

102. To the final one [n.11] I say that someone innocent of mortal and venial sin is simply bound not to confess; hence if the Blessed Virgin had confessed to Blessed Peter after the Ascension, she, by confessing, would have sinned. But if one is innocent only of mortal sin and not of venial, one can confess venial sins, and not confess them, as was said in the third article about 'what' [nn.71-80]. Nor is it incredible that there are many in the Church of this sort who for a whole year live without mortal sin; indeed, by the grace of God, many keep themselves without mortal sin for a long time and perform many works of perfection, of whose merits the treasury of the Church is composed.

Eighteenth and Nineteenth Distinctions

Question One

⁵⁶ Sc. the accusation any penitent makes against himself in confession which, in this case, is communicated through a third party, the interpreter, who can now function as joint witness with the priest against the accused.

Whether the Power of the Keys Extends Only to Temporal Penalty

1. “Here is wont to be asked” [Lombard, *Sent.* IV d.18 ch.1 n.1].
2. The eighteenth distinction, wherein the Master treats of the power of the keys. And in the nineteenth distinction he treats of the conferring of the keys.

3. About this eighteenth distinction I ask whether the power of the keys extends itself only to the temporal penalty.⁵⁷

4. That it does not:

Because if it does, then either to remitting penalty or to inflicting it:

Not for remitting it, because then by frequent absolutions the whole penalty due to sin could be remitted, and thus any priest would have the power of absolving from guilt and from penalty by frequent absolutions, which is unacceptable and impossible.

Nor for inflicting penalty, because then any penitent would be bound to any penalty enjoined on him by a priest, which is false. Because if some priest indiscreetly impose an immoderate penalty, about which the penitent can know that it is a penalty disproportionate to the fault (namely he can know from Scripture, which contains the correspondence of penalties to fault), he is not bound to fulfill it, because he is not bound to obey an inferior against the will of the superior, nor even at a tangent to the will of the superior; because he does not obey an inferior save because of the will of the superior; and there is no will of a superior, namely of God, that inflicts so great a penalty for that fault.

5. Again, *John* 20.23, “Whose sins you remit they are remitted etc.” Therefore the power of the keys of the Church is for remitting sins; therefore it precisely does not extend itself to temporal penalty; therefore etc.

6. To the opposite:

The power of the keys is for, and extends itself to, something; but not for anything other than temporal penalty; therefore etc. The major is plain, because otherwise there would be no power. The proof of the minor is that the power of the keys is not for remission of eternal guilt or penalty because, according to the Master in the text (Lombard, *ibid.* [ch.4 n.6]), these two belong to God alone.

7. Before use of the keys, sin is remitted by contrition and the will to confess alone, from Augustine and Cassiodorus on *Psalm* 31 “I said, I will confess” [d.17 nn.4-5]. Therefore, if use of the keys has regard to anything in this matter, it will only be temporal penalty.

Question Two

Whether the Keys of the Kingdom of Heaven are Conferred on Every Priest in the Reception of Orders

8. “After it has been shown etc.” [Lombard, *Sent.* IV d.19 ch.1 n.1].
9. Because the solution to this question [n.3] depends on the solution to the following question, which is about the conferring of the keys, or how the Church has the keys that are here being dealt with, I therefore ask about this distinction whether the keys of the kingdom of heaven are conferred on every priest in the reception of orders.

⁵⁷ That is, and not to the eternal penalty as well [nn.86-95].

10. It seems that they are not:

In *Revelation* 3.7 it is said of Christ, “he closes and no one opens; he opens and no one closes.” Therefore, Christ alone has the keys.

11. Again, Augustine *On Baptism against the Donatists* V ch.21 n.29 [Lombard, *Sent.* IV d.19 ch.1 n.6], “Only the dove, that is, Christ, or the members of the dove, absolve from sin.” Therefore, no unjust priest has the keys by which he could absolve from sin, and yet an unjust priest can have the keys of the priesthood.

12. Again, one of the keys is commonly said to be the key of knowledge; but this is not conferred on everyone ordained to be a priest, because someone without knowledge before does not find himself to have knowledge after ordination, nor even does someone with knowledge before find himself to have more knowledge after ordination than before. But if knowledge were conferred on us, it would not escape our notice, according to the Philosopher, *Posterior Analytics* 2.19.99b26-28, “It is impossible for us to have the most noble habits and for these to escape our notice” [Scotus, *Metaphysics* 1 q.9 n.36].

13. Again, ‘a sentence passed not by its judge is null’ [Gratian, *Decretum*, p.2 cause 11 q.1 ch.49 d.5 ch.1, *Code of Justinian* VII ch.48 n.1, 4]; therefore no one has the key for opening heaven to anyone save to his subordinate; but by reception of priesthood he is not given a subordinate nor jurisdiction over subordinates; therefore not the keys either.

14. Again, if the keys are given, they cannot be held by a non-priest. The consequent is false because an archdeacon, who does not have to be a priest, can bind, absolve, excommunicate, and reconcile, as is plain from Gregory IX, *Decretals* I tit.23 chs.1-10; therefore etc.

15. To the contrary:

In *Matthew* 16.19 it is promised to Peter and to priests, “I will give you the keys etc.” and in *John* 20.23 the promise is fulfilled when Christ says, “Whose sins you remit etc.”

16. Again, he to whom what is greater is given is not as a rule denied what is lesser; but the greatest power possible given to a wayfarer is the power of confecting the body of Christ [in the Eucharist], and this is conferred in the reception of the priesthood; therefore power with respect to the mystical body, which power is lesser, namely the key of binding and loosing, is conferred to the same person in ordination.

I. To the Second Question

A. Solution of the Question

17. This second question, as said before [n.9], needs solving first, and here there are five things that need looking at: first that in the Church (and this in the hands of a priest ordained according to rite), there is a key which is the power of giving sentence in the forum of penitence; second, that there is in his hands a key that is the power of taking cognizance in the case of a culprit making confession; third, that this and the former key are not the same key but two; fourth, how he who has these two keys has power through them for their acts, or what sort of power through them he has with respect to the acts of the keys; fifth, whether besides these there is any other key in the Church.

1. About a Priest’s First Key

18. About the first: all those who transfer [a term] transfer it according to some likeness; now a material key is the proximate instrument for opening or closing a gate through which a house is entered, but not thereby is it the opening, or the opener, or the cause for which it is opened (namely the worthiness of the person to enter, or the lack of worthiness by which he is excluded). In this way is it possible spiritually to consider the *opening* of the Kingdom of Heaven, and it is done by a definitive sentence when sentence is given that heaven is to be opened to this person; for this opening is not the actual opening, but a declaration of worthy disposition in him for whom it is opened.

19. It is also possible to find the *opener*, and it is he who gives sentence.

20. And possible also to find the *cause* whereby, through sentence of introduction, it is opened to this person, and whereby, through sentence of exclusion, it is closed to this person, namely the demerit of the latter and the merit of the former.

21. None of these is the key, because the first is the opening, the second the opener, the third the remote cause. Therefore, the *power* in the one who passes sentence, which power is the immediate instrument as it were for giving sentence (and the giving sentence is called 'opening') is most properly called 'the key of the Kingdom of Heaven'.

This about the name.

22. About the thing as follows: the judiciary authority for passing the sentence that heaven is open, or is to be opened, for this person can be understood in one way to be the simply principal authority; in a second way not principal but excelling; in a third way neither principal nor excelling but partial and particular.

23. The first belongs to God alone, for two reasons:

First because he alone is just of himself, rather is he justice; and the first judgment can only belong to the first Just; for judgment is not perfect unless it is just, according to *Psalm 118.12*, "I have done judgment and justice," since to judge is to declare the right or the just. Now the first just should be most perfect and so most just; and so it is of the first Just.

Second because to judge belongs to him who presides, for in *Romans 14.4* it is said, "Who are you, who judge another's servant?" Now in the primary things just stated the first presider can only be God. Hence, just as he cannot communicate divinity to another, so neither can he communicate the first power of judging, nor consequently the simply principal key for opening heaven.

24. The second key [n.22], namely not principal but excelling, can be understood as to a double preeminence: one certainly in the universality of knowledge of causes to be judged, the other in the firmness of definitive sentence. And each preeminence can belong to him who knows all the merits and demerits that are the reason heaven is to be opened or closed, and who has, along with this, a will inseparably conformed to divine justice.

25. On account of the first [n.24] he has power to pass sentence in all cases, because he knows them all; on account of the second, his sentence can be simply firm and irrevocable, because always just.

26. This key, with each preeminence, belongs properly to Christ, who knows the merits and demerits of those to be judged, and who always judges in conformity with divine justice.

27. And this key cannot be in the Church Militant, at least it cannot fittingly be there, because no one in the Church knows all the causes to be judged, or has a will immutably just.

28. The third key [n.22], namely the one that is partial with respect to taking cognizance of cases and that is not firm as to passing sentence, namely because it is revocable from another source, can be conferred on someone in the Church Militant who is able to take cognizance of the case and to give, with right reason, sentence according to the Divine Law; and if sometimes he give sentence not according to it his sentence will not be firm, and if according to it his sentence will be firm.

29. In the Church therefore there can be a key for opening heaven, namely authority for giving sentence partially, and not irrevocably, that for someone heaven is open.

30. It is fitting too for this key to be in the Church, and that in a priest, so that the ecclesiastical hierarchy may be ordered and that everything may be reduced to the First through a middle. The hierarchy is in the middle between God and the sinner who needs to be brought back to God, about which there is Bernard *On Consideration* III ch.3 n.13. This is also fitting for the perfection of causes in their moral being, as it is for causes in their natural being. For God universally does not deny creatures the causality that can belong to them; rather he even communicates it and assists second causes in their action. From the fact, then, that it is possible for man to have, in gratuitous being, this causality for bringing back, which is called a 'key', it is fitting that it be given to him who is supreme in the Church, namely the priest.

31. Third [first n.28, second n.30] I say that this key has been given. The proof is from *John* 20.23, "Whose sins you remit etc." And this is rightly called 'the key of power', because the authority to give judgment rightly is a power, since to give judgment belongs to him who presides.

2. About a Priest's Second Key

32. About the second article [n.17] I say that what is ordained for this authority of passing sentence [n.29], or that whose use is ordered to the use of it, such that, of course, without the use of it there is no right use of the other [sc. the passing of sentence], can be called a 'key'. For it is a sort of instrument for opening, though not a proximate one; rather it combines with the proximate instrument into, as it were, a single one; for without it the proximate instrument does not rightly open or close. But the authority of taking cognizance in the case of a sinner is of this sort, because without this cognizance one does not rightly pass the sentence that heaven is to be opened or closed. Therefore, this authority can be called a key of the kingdom of heaven.

33. Now this authority can be distinguished in three ways like the preceding one [n.22].

34. And about the key taken in the third way [n.28], proof can be given that it is fitting that it be had, and that it is had, in the Church (from the preceding article [nn.30-31]). For he who has authority to pass sentence in a case definitively has the authority of taking cognizance in that case – unless passing sentence at his pleasure in a case without taking cognizance of the case were committed to anyone (which commission does not seem should rationally be given to anyone who may err in passing sentence, of which sort

is any wayfarer). God therefore, when rightly committing the first authority to the Church, which is called the ‘key of power’ [nn.21, 31], committed to it the second authority, which is called the ‘key of knowledge’.

35. And there is understood in the conferring of the first key, which is got from *John* 20.23 [n.31], also the conferring of the second key, as being something that precedes, in respect of use, the use of the second key.

36. Nor is this ‘key of knowledge’ any actual or habitual knowledge or any sort of discretion, as however the Master seems to say in the text [Lombard, *Sent.* IV d.19 ch.1 n.3], “Many indiscrete persons,” he says, “who have, neither before nor after [ordination to] priesthood, knowledge for discerning, presume to take the rank of priesthood, and therefore they do not receive this key in consecration. But although those do have discretion who, before [ordination to] priesthood, are endowed with the knowledge of discerning, yet the key is not in them because they are not able [sc. before ordination] to close or open with it. And therefore, when [such a one] is promoted to the priesthood, he is rightly said to receive the key of discretion, because the discretion he had before is increased and the key exists in him, so that now he is able to use it for closing and opening.”

37. But this knowledge, actual or habitual, is not the key, because the authority of taking cognizance, though it require knowledge or discretion to accompany the right use of it (in the way the key of power requires some justice for the right use of it), yet as the power of judging is not justice, indeed can be without justice, so the power or authority of taking cognizance in a case can be without discretion in cognizing.

38. And so the Master needs to be interpreted [n.36] – he who wants to hold to him and preserve the fact that knowledge is required for the key of knowledge, supply:⁵⁸ required for someone rightly using it, but not for its being present absolutely.

39. If it be objected, why then is this key said to be the key of knowledge rather than that key said to be the key of justice, or the key that is justice, if knowledge is only required here for right use as justice is required there for its right use? – I reply: he who without justice has authority and gives some sentence does what belongs to his power, though unduly. And so he who without knowledge has authority for taking cognizance in a case does do something if he attempt it, though unduly. What however the first one does is always an act of power, and so it is always said to be ‘the key of power’; and what the latter does belongs always to knowledge, that is, to taking cognizance in a case, though not habitual knowledge.

3. About the Distinction between the Aforesaid Keys

40. About the third article [n.17], some say that these keys are the same as the priest’s character, and then it would be easy to see how they, just as also the characters, are conferred in his ordination on any priest.

41. But against this there is argument as follows:

Those powers are distinct where one of them can be without another; but the power of confecting the body of Christ (or the priest’s character as it is for this purpose) can be without the power that is included in the keys; therefore etc. The proof of the minor is that so it was in the case of the Apostles at the Cena, when it was said to them,

⁵⁸ Punctuating the Latin as in the translation and not as in the printed text.

“Do this in remembrance of me” [*Luke*, 22.19, *I Corinthians* 11.24-25], where power of confecting the Eucharist was given them but, until the resurrection, not the power of the keys when, *John* 20.23, Christ says “Whose sins you remit etc.”

42. It seems one can argue similarly about any priest now ordained in the Church. For the bishop says first to the ordinands, “Receive the power of confecting or celebrating mass, both for the living and the dead,” giving them the chalice; and, after certain words interposed, he puts his hand on their heads and says, “Receive the Holy Spirit; whosever sins you remit etc.” Hence it seems that any priest receives the power of confecting first in time before the power of absolving; therefore it seems that they are a different power. And this proves that the power is not only distinguished from the character, if the character is something single [*Ord.* IV d.6 nn.279-359], but that they are distinct powers between themselves.

43. Again, the character (as said above [*ibid.* n.317]) can only be a relation; but a relation cannot be the same for several terms; the true and mystical body of Christ, or the consecration of this [sc. the true body in the Eucharist] and the absolution of that [sc. the mystical body in penitence], are distinct terms; therefore that which is the power for consecration, if it be this sort of relation, will not be the same as the power for absolution.

44. I say therefore that they are simply two keys, such that the word of Christ, “I will give you the keys” [*Matthew* 16.19], is absolutely true.

45. And these keys can, by the absolute power of God, be separated from each other; for just as someone who is now presiding can commit to another cognizance in a cause without authority to pass sentence in it (as if he were to say, ‘I commit to you the authority of examining this case, and you give it back to me so that I may pass sentence’), just as too he could confer authority to sentence without authority of cognizance (as if he were to say, ‘I commit to you to give sentence as you please without any cognizance of the case’, but such commission would not be in order for anyone whose will was twistable) – so could God commit authority to take cognizance without authority to pass sentence; and this commission, if it were simply in order, would also be reasonable. God could also, of his absolute power, commit to someone with a will that was not twistable authority to pass sentence in a case without cognizance of it.

46. But by his ordained power, or his power in fact, both are committed to any ecclesiastical priest, at least to one who is fully ordained – which I say to this extent, that if authority of celebrating is given to him first in time before authority of absolving, he is not a completely ordained priest as to both powers if, after the first has been done, the second were omitted.

47. But whether each power be given precisely together in time I do not assert.

48. But if one of them be given before the other, when is the character impressed, then, on the priest? And how is this double power related to the character?

49. To the first it could be said that, as there are two powers, so there are two characters, and each is impressed in its own sensible sign signifying that invisible mark, as that the first is impressed in the giving of the chalice with the words “Receive the power of celebrating etc.,” and the second in the imposition of hands in the words “Receive the Holy Spirit etc.”

50. And according to this would be plain what would be said to the second question [n.48], that each power is a certain character but that these two make integral the

total order of the priesthood. But there would, according to this, also seem to be two characters corresponding to the two keys, or they would be the two keys.

51. If therefore one is not pleased to posit so many characters corresponding to one priestly order, it can be said that by a single priestly character, whenever it is impressed, does someone have the power of confecting the body of Christ; and through it is he ascribed to the family of Christ in such an excellent rank, namely in the rank of feeding the people of Christ in the Church.

52. But just as someone promoted in this taking care of great things to an excelling rank in the family of a lord is by this fact disposed to having authority with respect to the other servants, so is he who is constituted by a character in an excellent rank in the family of Christ disposed by congruity to have over the mystical body of Christ power for binding and loosing. And then the priestly character is a disposition to these keys, at least the conferring of one key is not separated from the conferring of the other, because as was said [n.44], just as Christ in that same remark in *John* 20.23 conferred both keys on the Church, so the bishop in the same sensible sign and word confers both: one as it were excellently and explicitly [sc. the key of power], the other as it were implicitly [sc. the key of knowledge], whose use is antecedent to the use of this first one.

53. And from this is it plain how they can be called one key by unity of Order, because ordered to one ultimate act, namely that of opening; and as to that act one key is subordinate to the other, because more remote from the effect.

4. About the Double Power of the Priest in the Use of the Aforesaid Keys

54. As to the fourth article [n.17]: an active power to which at once a passive power corresponds, and which cannot be impeded, is always a power proximate to acting. But if there is a power to which there does not at once correspond anything passive in nature, or which, when the passive thing is had, can be prevented, it is not, while it is actually being prevented, the proximate power but a remote power. It is plain in *Metaphysics* 9.5.1048a5-7, where the Philosopher holds that the active and passive thing, when they have their active and passive power completely, at once act. And it is not necessary to add ‘with nothing preventing from the outside’, because this is included in the idea of what is potent, and it is not true save of the potent as this states a power proximate to act.

55. As to the issue at hand, the power of confecting has the matter at once in nature, because it has any wheaten bread. And it is a power that cannot be prevented, because whenever anyone through it attempts to act on determined and due matter, he does act. If it were this way with the key, namely that a penitent sinner would at once correspond to it as matter, and it could not by anyone else’s act be impeded but that he who is intending to use it would do what he intended, then the key would be the proximate power of absolution. And then it would follow that a priest, from the fact he had been ordained, could absolve any sinner who confesses – not indeed that he could do so licitly (but he would sin mortally if he were to attempt it against the prohibition of a superior), yet he would do it; just as a priest, however much prohibited, does consecrate if he attempt to consecrate.

56. But these two suppositions are not held to. For the first at least is not held, namely that from his ordination he has matter, but there must, before he have jurisdiction,

be someone who is subject to him – not so he may absolve ritually, but so he may absolve absolutely, because a sentence not passed by its judge is null [n.13]. And it would seem it should in consistency thus be said about the second, because a superior could for a time remove the subject by suspension of the priest; and then his power would be impeded simply, such that if he attempt to absolve he would not in fact absolve.

57. The power of confecting [the Eucharist], then, according to this opinion is a proximate power, but the key is a remote power: both because, from the fact that the key is in someone, nothing passive corresponds to it unless made passive from elsewhere; and because, if the key is in someone, it can be impeded by some prohibiting superior.

58. And a reason for the unlikeness might perhaps be posited, that from the beginning no one was harmed, nor was the ordination of the Church, by the fact that any priest consecrated any matter. But there would have been harm if, by the conferring of the keys in ordination, any priest would have been judge of any penitent, and could, however much he was prohibited, have performed the act of the key, because thereby he could act to the prejudice of someone else whose subject he is.

59. How, then, according to this common way, will the proposition be saved that ‘to every active power there corresponds a passive power’? For if in nature there were a power to which a passive subject could not correspond save through another active power, that power would not be an active power. Therefore, by similarity here, since there could, through the key, be no matter corresponding to it save through another active power, namely jurisdiction, it follows that the key is not an active power.

60. And there could be a confirmation about this judiciary power: for no one seems to have the power of judging who has no one subject to him as judgeable by him; therefore the key, by the fact it is the key, is not a power of judging.

61. If you say that an active power, however much it is perfect, requires matter, this is true; and the power of confecting [the Eucharist] requires matter, namely bread, but yet as soon as the power of confecting is possessed, there is no need to require another active power so that the bread be capable of being consecrated. For if, in order for the bread to be capable of being consecrated, it were necessary that there be an owner of the bread, the priestly power would now be only the remote power for confecting. So in the issue at hand, it is very necessary that there be some penitent offering himself to the priest for absolution; but if he can only be matter for absolution if he be made such through another concurrent power, this power [of absolving] does not seem to be an active power of absolving.

62. Similarly, this proposition is universally true in natural things, that when to an active power of one idea there primarily correspond a passive power of another idea, anything under the latter corresponds to anything under the former provided there is no loss of active force. But in the issue at hand it is not so, because this person corresponds to this key as absolvable by it and not to another key, unless it be said that to a key the sinner as penitent does not correspond but the sinner as the penitent subjected to that key.

5. About the Use of the Two Keys of the Church in the External Forum

63. About the fifth article [n.17] I say that there is a double forum in the Church. One is most secret, where accuser and culprit are the same, and the aforesaid keys belong to this forum. The other is a public forum, because the Church too has authority to correct

public transgressions. And a double authority is there required corresponding to the aforesaid double authority, just as for any right judgement knowledge in the case is required and passing of sentence.

These authorities, which belong to the public forum, can be called ‘keys’.

64. About this power given to the Church there is *Matthew* 18.15-18, when Christ says to Peter [Peter and the disciples; Peter alone at *Matthew* 16.18-19], “If your brother sin against you...,” and there follows, eventually, “tell it to the Church; if he will not listen to the Church let him be to you as a heathen and a publican;” and there follows, “Amen I say to you, whatever you bind on earth will be bound also in heaven; and whatever you loose on earth will be loosed also in heaven.”

65. This about the public forum, because God approves the loosing and binding done in the public forum by the Church, and he who despises the Church is to be held as “a heathen and a publican.” In this forum, the Church, that is, the communion of the faithful, is closed by excommunication, and opened by absolution or reconciliation from excommunication.

66. From this it is plain that these keys are not the same as the former keys, because the former are separated from these, since these are in those who have jurisdiction without priesthood (as in an archdeacon and certain others who have jurisdiction according to the ordination of the Church without priestly orders) – and these are separated from the former, as in the case of certain priests, to whom is not given the power of excluding from the Church, or of reconciling.

67. But surely anyone who has jurisdiction can excommunicate and reconcile?

I reply: an excommunication that is simply excommunication, which is by itself greater, is exclusion of someone from communion with the faithful – not indeed bodily exclusion (which happens through sequestration or incarceration or exclusion of this person from others), but exclusion by prohibition, so that he not communicate with others nor others with him. But no one who is not subject to a particular person is bound to keep what he institutes, as neither to keep his precepts. Therefore, it seems that he who is not subject to him is not bound to avoid someone excommunicated by him.

68. If therefore by excommunication simply any Christian is bound to avoid the one excommunicated, it is necessary that this be through a precept that any Christian is bound to obey. And then it follows that no inferior, even by his own authority, could excommunicate someone, though he could excommunicate him as far as his subjects are concerned, that is, he could command them to keep away from him. And then it follows that if any inferior excommunicates simply, he does so by commission from him whom all others are bound to obey, and they are bound to avoid the one excommunicated.

69. From this follows that it falls under the rule of the law: “what is not conceded is prohibited” [Justinian, *Digest* I ch.3 n.29, as expounded by Henry of Ghent, *Quodlibet* 10 q.2 a.2]. For this rule is true of things that do not regularly belong to anyone save by some special concession. And then Christians generally are bound to avoid the one excommunicated by authority of the same person by whose authority they incur the penalty of excommunication of the law if they do not avoid him. For they incur the penalty by authority of the legislator, and not of this particular judge.

70. If these conclusions are not pleasing, one must ask whence first from the beginning of the Church any such inferior, who commonly excommunicates in the Church, had authority over all Christians so that they are bound to obey him, and to keep from the

one excommunicated by him, because of his precept as it is his precept. And then one must ask how inferior authorities would have been more limited as to the number of subordinates, at least as concerns observance of the precept, and why it is not so of these as it is of others. Let him ask who will!

71. If the first opinion [nn.68-69] is true, then parish and other like priests are in no case able to excommunicate save when this is found expressly conceded to them, and when certain dangers are excluded that arise from the proneness for excommunication of certain vain persons, since frequent indeed is this striking with the sword in the Church, which sword however is rarely found drawn by the Apostles.

72. For in all the epistles of Paul he is found to have excommunicated only three times:

The first in *I Corinthians* 5.1-5, “The report is heard altogether that there is fornication among you, and a fornication of a sort not heard among the Gentiles, such that someone has his father’s wife,” and later, “I have already, as one present, judged concerning him who has done this deed, in the name of the Lord Jesus Christ, when you are gathered together and my spirit, to hand over a man of this sort to Satan for the destruction of the flesh, so that his spirit might be saved in the day of the Lord.”

73. Again, *I Timothy* 1.19-20, “Some have made shipwreck concerning the faith, of whom are Hymenaeus and Alexander, whom I have handed over to Satan that they may learn not to blaspheme.”

74. Again, *Galatians* 1.9, “If anyone preach to you a gospel other than that which you have received, let him be anathema.”

75. However, the Apostle is read to have prohibited in another way communion with the evil:

I Corinthians 5.11-12, “If anyone within who is called a brother is a fornicator, or covetous, or an idolator, or a curser, or a drunkard, or an extortioner, with such a one it is not licit even to take food.”

76. Again *II Thessalonians* 3.6, “We command you, brothers, in the name of the Lord, that you withdraw yourselves from every brother who walks disorderly;” and later he adds in the same place, 3.14: “If anyone not obey our words through this epistle, note him, and have no company with him, so that he may be ashamed.” But how it is licit to commune with him he adds saying, 3.15, “Do not reckon him as an enemy, but admonish him as a brother.”

77. Again, *2 Timothy* 3.2, 5, “Men shall be lovers of themselves,” and a little later, “avoid these.”

And in the same place, 4.14-15, “Alexander the coppersmith did me much evil...whom also avoid.”

78. Again, *Titus* 3.10, “A man who is a heretic after the first and second admonition, avoid.”

79. And *2 John* 10-11, “If someone comes to you and does not bring this doctrine, do not receive him into your house, nor say ‘hail’ to him; for he who says ‘hail’ to him shares in his evil works.”

80. In the first two authorities [nn.72-73] a sentence of excommunication seems to have been passed simply. Plain it is both that there was just cause there, because the sin was egregious and public; and due form, because there was a legitimate procedure; and right intention, because the correction of a delinquent was intended. Hence also the first

case is corrected by the excommunication, as is plain in the second epistle [2 *Corinthians* 2.7], where he bids them console him lest he be plunged in a deeper sadness. The others are not read to have repented; perhaps they were already apostates from the faith, and there they remained.

And the third, to the Galatians [n.74], is against someone preaching something that is repugnant to sound faith, of which sort were then the false apostles.

But in the others [nn.75-59], where he bids them avoid the evil either simply or as to certain acts, it does not as fully seem that a sentence of excommunication has been passed, because they do not seem to have thereby been handed over to Satan. For it is said that those whom the Apostle handed over to Satan, the devil at once had power to torment, and it is not probable that thus was it done in the case of all those evil people whom he writes should be avoided.

B. To the Initial Arguments

81. To the main arguments:

As to the first [n.10], it is plain that the authority from *Revelation* must be understood not of the ministerial key but of the preeminent key, which is the authority of passing sentence universally and irrevocably.

82. As to the second [n.11], the Master expounds the authority in this distinction ch.3 [*Sent.* IV d.19 ch.1 n.8], that only through the dove or his members is the remission or redemption from sins done worthily: “It is however done through others, but not worthily or rightly; for God gives blessing to him who, even through an unworthy minister, worthily asks.” This is proved by the authority of Jerome on *Matthew* 16.19, “I will give you the keys etc.” [in fact from Bede, *Homilies on the Gospel* I hom.20: “The other Apostles have the same judiciary power, and the whole Church has it in the bishops and priests...”], and through [Ps.-]Augustine *Questions on the Old and New Testaments* [q.11 nn.1-2], “The will of the priest cannot harm or help, but the merit of the one who asks a blessing.”

83. To the third [n.12] the answer is plain from the second article [n.36], that the key of knowledge is not some knowledge or awareness but is the authority for being aware, that is, for inquiring and examining the culprit’s case.

84. To the fourth [n.13] the answer is plain from the fourth article, that, according to one opinion, the key itself is only a remote power [n.54], and in order for there to be matter responding to it another power is required in the priest, namely jurisdiction; or at any rate, through another active power is matter made subject to it so as to become matter capable of the action of it. According to the second opinion [nn.56-58], the key is the proximate power and includes private jurisdiction; for what else is jurisdiction than the authority to declare the right? And what else is this than the authority of giving sentence and judging?

85. To the fifth [n.14] the answer is plain from the fifth article [nn.68-71]. For I concede that someone not ordained can have, and someone ordained not have, other keys pertaining to the extrinsic forum. However, in order to be a hierarch of the Church, that is, to be in eminent principality, and to have these exterior keys, the presupposition is that one has the interior keys; hence no one is consecrated bishop unless he will have first been ordained priest.

II. To the First Question
 A. Solution of the Question
 1. Two Conclusions of Others

86. As to the question asked about the eighteenth distinction [n.3] there are two conclusions:

The first negative: namely that the force of the keys does not extend itself to the removal of guilt or of eternal penalty [Thomas Aquinas, *Sent.* IV d.18 q.1 a.3; Richard of Middleton, *Sent.* IV d.18 princ.2 q.1].

87. The master seems to think this in this distinction [Lombard, *Sent.* IV d.18 ch.6 n.3], “God,” he says, “does by himself dismiss sin thus, because he both cleanses the soul from interior stain and releases it from the debt of eternal death.”

88. What then do Gospel priests do?

He replies: “God bestows on them the power of binding and loosing, that is, of showing that they are bound or loosed.”

89. He proves it about the leper who is cured before sent to the priest, *Luke* 5.14; similarly about Lazarus resuscitated before handed to the disciples to be loosed, *John* 11.44.

90. Again, Jerome in his *Commentary on Matthew* 16.19, “I will give you the keys etc.,” says “In *Leviticus* 14.2-4 lepers are bidden to show themselves to the priests, because the priests do not make them lepers or clean, but discern who are clean or unclean.”

91. Herefrom the Master says [*ibid.*], “What once the legal priests had in the Law in curing lepers, this now the Gospel priest has in retaining or remitting faults.”

92. The affirmative conclusion is added [n.86; Aquinas, *ibid.*, Richard of Middleton, *ibid.* q.2], that the force of the keys extends itself to the temporal penalty.

93. And in this the Master gives exposition in a different way [*ibid.* n.4] about how the Gospel priest looses and binds, because “he binds to the temporal penalty that he imposes on the confessing penitent, but he looses when he dismisses something from the penalty due, or admits the sinner who is purged by it to communion in the sacraments.”

94. But the point is added that this power is with respect to the temporal penalty, because the act of it is not ratified unless it is in conformity with divine judgment, namely, unless it imposes as much penalty as, according to divine justice, responds to the sins. Suppose, for example, that this man is by his sins bound according to strict rigor to such and such a penalty of ten days; the priest can remit, by virtue of the keys, a penalty for him of three days, and let it be that this priest, as dispenser of the Church’s treasury, could remit one or two days – after all this, the man remains obligated to six or five days, from which, if the priest dismiss something, this his obligation is not ratified, because the key of power is then erring in binding and loosing; for it makes him more loosed from temporal penalty than God judges him loosed,⁵⁹ and consequently, unless he pay those six days here, the remainder of them will be exacted in purgatory.

⁵⁹ That is, the priest, by virtue of the keys, remits to the penitent in confession three days of the ten that are due. Then, by virtue of being dispenser of the Church’s treasury (and not by the power of the keys), he remits another one or two days, leaving the penitent with five or six days still to pay. If the priest remits more, imposing a lesser penalty still on the penitent in confession (as Richard [n.92] at least allows he may do), the penitent’s obligation to

2. Refutation of the Conclusions
 a. Against the First Conclusion

95. Against the first [n.86]: because then the sacrament of penitence would not be a sacrament of the New Law. Nor would it have any causality or causal disposition for the first grace, because it would never be received save by one who already has the first grace, for no one is worthily shown to be loosed by God unless he was loosed before.

96. Again, the reception of this sacrament is an instrument for grace, that is, a disposition efficacious and necessary, by divine statute, for the reception of grace. But an instrument or preceding disposition is not a sign recollective or ostensive of anything as already past but of the future; therefore, the conferring of the sacrament of penitence, in order for it to be worthily done, does not need to be a sign of a preceding divine absolution.

97. I concede this point, as has been made clear at length in distinction 14 question 4 [nn.130-150], that the sacrament of penitence can be worthily received by someone who has attrition, and this with as much attrition as would not suffice by way of merit for receiving justification at the term of attrition. And if at the term it not in pretense be received, the first grace that is conferred by God is received; and sacramental absolution is an efficacious sign of the absolution that follows in the final instant of it, just as the speaking of the words is a sign of confection of the body of Christ.

98. Accordingly, it is plain how this sacrament is an instrument for the first grace as a disposition previous to it, in the way that alteration can be called an instrument with respect to the generation of substance, because it is a disposition previous to it.

99. There is no likeness, then, between the priest of the law [of Moses] with respect to leprosy and the Gospel priest with respect to guilt; because the former only performed something that was a sign recollective of cleansing from leprosy, and nothing that was an efficacious prognostic sign of a cleansing that follows. But the latter [sc. the Gospel priest] performs an act that is an efficacious prognostic sign of a cleansing that follows at the last instant; nor however is he lying, because the absolution [of the penitent] is understood to be for the instant at which he is absolved by God and the Church.

100. If you say that therefore the priest destroys the stain and eternal penalty of death, which is proper to God – I say that he does both, provided there are two there, which was spoken about elsewhere [d.16 nn.44-65]. But he only does them instrumentally, not indeed in reaching the effect either by his own power or that of another, but by reaching something prior, which is a necessitating disposition for the effect – necessitating, I say, by divine pact. And such an agent that causes a disposition necessary for the term is called an ‘instrumental agent’, just as is true of something that alters and generates [n.98]. But it is proper principally to God to cleanse and to remit the debt by also reaching the effect; and neither of these belongs to the priest.

101. The authorities, therefore, that the Master adduces for himself [nn.89-91], do affirmatively say that the priest does this, and it is indeed true that the Gospel priest shows this [penitent] cleansed and loosed at the instant at which his absolution is understood to be. But not this only; rather he thus shows that the showing is a disposition preceding and

this lesser penalty is not ratified by God, but the penitent must pay the full five or six days remaining, at least in purgatory.

necessary for that which is shown. For this is the excellence of the sacraments of the New Law, that the reception of them is a disposition sufficient for grace; but of the legal ones [sc. of the Mosaic Law] not even the reception was an efficacious disposition for bodily cleansing of leprosy, or that sort of foulness.

102. Now it would be similar if we were to speak of the priest of the law [of Moses] purifying someone, through certain washings, from some irregularity contracted in the Law by contact with leprosy or the like. For then the priest would perform an act that would be a sign efficacious of reconciliation from this sort of irregularity and of cleansing from this pollution, in the act or term of which cleansing the effect signified would follow, namely that this person was worthy to commune with the rest in the Synagogue.

b. Against the Second Conclusion

103. Against what is said secondly [nn.92, 94], it can be argued as follows: the power of judging in a case is not committed to anyone whose judgment will never, for any diligence whatever he is able to use, be ratified but only by chance or by special divine miracle; but whatever diligence a priest is able to use, he can never reach that indivisible point of the penalty that God judges this sinner to deserve. If he do, then, reach it, this will be by chance or special miracle, and it will not, for you [n.94], be ratified unless he do reach it; therefore he does not have the power of judging.

104. There is a confirmation, because it is not likely that God has given the Church a power of thus judging what he wants the judgment of the Church to ratify, and yet that it be impossible for the Church to judge correctly such that it not be ratified save by chance or special miracle.

105. Again, no one is constituted an arbiter between parties under the condition that he judge precisely according to the will of one of the parties, and this especially when he cannot determinately know the will of that party. But in a judgment of penitence the parties are God and the sinner, between whom the priest is arbiter. Therefore, the priest is not bound to judge precisely the penalty that God would inflict on the sinner, especially since he could not be clear about the will of God as to what it precisely is as the sinner is a member of the Church.

106. Again, if the priest impose a little bit more than correspond to the penitent's sins, it is not probable but that the penitent would be bound to fulfill it. Therefore, although he impose a little bit less than the deserved penalty, it seems to be enough; for if something less than the point that divine justice dictates were not enough, then he ought not to fulfil any penalty beyond that point of divine justice.

3. Scotus' own Response

107. I say, therefore that, as in other cases of exchange commutative justice possesses some latitude such that it has regard not to some indivisible point in an exchange but to the mean of right reason, so punitive justice, which is a certain exchange of penalty for guilt, does not necessarily have regard to an indivisible degree of penalty corresponding to the guilt, but there is some latitude below which a lesser penalty does not suffice and beyond which a greater penalty is not to be imposed. And a key that,

outside that whole latitude, binds below or beyond it, is in error; and then not undeservedly is what it loses on earth not loosed in heaven, that is, not ratified. But a key within that latitude is not in error. And therefore the judgment is ratified to the extent that, it is necessary to fulfill whatever is imposed within that latitude. And if it not be fulfilled, what is left over will be exacted in purgatory. And if less be imposed and be fulfilled, nothing more will be exacted in purgatory.

108. Now this middle within that latitude is possible for a man to know by the Law of God with the assistance of natural reason. And therefore obligation to this broad latitude is obligation to what is possible for a man without special miracle and without chance and fortune.

109. But is the penitent bound to fulfill the penalty imposed by a non-erring key?

I say that he is, if he will to submit himself to this priest both as to absolution of guilt and as to receiving or paying the corresponding temporal penalty; for he is then obligated to precept of the Church, to which he has voluntarily submitted himself.

110. But if he only wish to submit himself to this priest as to change of eternal penalty to temporal, and not as to the appraisal of the temporal penalty, but as concerns that, and the appraisal of it, he wants to submit himself to the hand of God either here or in purgatory – it would not be expedient to repulse such a one without absolution; for perhaps he would go away desperate.

111. Nor does it seem that he is in mortal sin because of this will, if he be contrite about the sin and wish to be punished for it (with a deserving penalty) by him to whom it justly belongs to inflict the penalty, though he not wish it to be inflicted on him by this priest, nor wish himself to accept it so as to make this priest the minister of the inflicting of it.

112. And it cannot be said that this penitent is disobedient to the Church, because he can submit himself to the decision of the Church as concerns the penitential judgment to which he is bound to submit himself, but he does not wish to submit himself to the judgment that follows. And it is plain that the judgment that follows is not necessarily included in the first one, because a priest, however uniform the first judgment is, considerably varies the following one. Hence frequently too, because of the will of the one confessing to undergo a great penalty, he gives him a moderate penalty telling him he must pay the rest in purgatory; and although that little penalty be manifestly disproportionate (outside the latitude) to the fault, not for this reason does such a one not receive the sacrament of penitence.

113. In the same way it seems that a priest could impose no penalty at all on him because of his resistance to receive it, telling him that he must pay the whole penalty in purgatory. And Augustine hints at this [Ps.-Augustine, *On True and False Penitence* ch.10 n.25], that if some displeasing penitence is imposed on someone who can scarcely be made inclined toward it, one must be afraid that he will take occasion therefrom to fall back into mortal sin, because taking occasion to throw the penitence away, wherein he will sin mortally after refusing to submit himself to the priest in the receiving of it.

114. But suppose that the key of science is in error but not the key of power, is the judgment not ratified in heaven?

I reply: the key of science errs when the things that belong to the judgment are not well inquired into or examined, as that if some empty circumstances are inquired into that neither aggravate nor alleviate the deed but are pleasing to the prurient ears of the

confessor, and if no inquiry is made into the attrition of the one confessing but the priest only listens to him as if he were narrating a single story. In the first case, indeed, although something be done that was not to be done, however provided nothing be omitted that was to be done, as that, along with circumstances being required that did not need to be required, those are required that did need to be required, then a correct judgment can follow; but in the second case, with the requiring of what displeases the one confessing omitted, a right judgment cannot follow save by chance.

115. In brief, therefore, I say that if the key of science err by pursuing things not necessary to the case or that are illicit, the confessor sins; but if he dismisses nothing of what is necessary for cognizance of the case, he can judge rightly. But if the key of science err by omitting something that is necessary to the cognizance of the case, the priest both sins and cannot judge rightly save by chance, and especially about the attrition of the one confessing.

116. But if the penitent show himself sorry although however he is not, he is in pretense and is departing from true penitence, and with a new sin. And the key of science does not err, but the penitent himself is wandering into his own peril. And then the judgment of the priest is ratified in heaven, for he did what it was his to do, because, as a man, he could only see the heart through external signs. But it is not ratified as concerns the one who receives it, because he is not capable of it in the way he shows himself capable of it.

117. But suppose that, when something necessary has been omitted from the case, the confessor brings in a right sentence – I say that it will be ratified as concerns the one who receives it (provided he is not in pretense), such that it will be sufficient for him to fulfill the penalty. And in this way must distinctions be drawn, that sometimes a judgment is ratified on both sides, both that of the priest and that of the recipient; and sometimes on the part of the latter and not the former; and sometimes on the part of the former and not the latter.

B. To the Initial Arguments of the First Part

118. As to the first main argument [n.4], I concede both members of the distinction.

119. And when it is said against the first member that then a priest could remit the whole of the penalty that was due, this does not follow, because there is there some mean determined by right reason, and while standing thereon the priest does the remitting.

120. And when it is said that at least he would remit [the whole penalty] by several remissions, this touches on a good difficulty, whether repeated confession of the same sins remits, by the power of the keys, more and more of the penalty. It seems probable that it does, because a second absolution is of the same idea as the first; therefore it can have the same virtue with respect to any part of the penalty that needs to be remitted; and consequently by the giving of several absolutions the whole penalty, since the fault is partible, could be remitted, if indeed ‘everything finite is totally consumed by the removal of finite parts taken several times’ [*Authorities of Aristotle* 2.25, Aristotle *Physics* 1.4.187b25-26]. What, then, is better than to be confessing always until, after the hundredth or the thousandth confession, the whole penalty, due to whatever sins had been done, would be remitted?

121. It seems more probable that by virtue of the keys the second absolution remits no part of the penalty, for to take flight here to parts of the same quantity or same proportion is nothing, because there is no reason why the second absolution could not take away a part of the same quantity, if it could take away any, nor is it a surprise if it can take away none, for the same judgment, passed once without error, is ratified by God in heaven, and it is irrevocable. Therefore, it is reasonable that it be so ratified that it is unrepeatable. I do not say that it be illicit or impossible for it to be repeated, but yet it is with the fruit it has now unrepeatable.

122. We see this in the case of definitive sentences in the legal forum, by which the accused are absolved when they are found innocent; nor is the examination continued so that there may be a procedure in the same case; nor, if it were repeated, would the accused be absolved by the second sentence as he was by the first; for he who is once released is not absolved further, for only he who is bound is released.

To the second part of the division [nn.4, 118] I concede that the penalty inflicted by the priest that does not exceed the total latitude of justice is the penalty the confessing penitent is bound to pay, and it is enough.

123. But you will say: how will the one confessing know if it exceed that latitude or not?

I say either from the Divine Law if he is an expert in it per se, or if he is not he can inquire of another confessor in whose prudence he has more confidence. Or if he not want to submit to another confessor and he is not by his own industry sufficient to judge if this penalty is merited by the fault or not, let him keep the penalty imposed on him, especially if it seem to him to exceed the merited penalty; but if it seem to him deficient, it is safer to go to another prudent confessor than to expose oneself to purgatory.

124. To the second argument [n.5], I concede that the use of the keys extends itself to remitting guilt and the debt of eternal penalty, but instrumentally.

C. To the Initial Arguments for the Opposite

125. Through this is plain the answer to the first argument for the opposite [n.6, sc. the keys extend to remitting temporal penalty, and instrumentally to remitting eternal penalty].

To the second [n.7] I say that just as baptism of water first confers grace on someone who does not have it and increases grace for him who does first have it, and often in adults the baptism of desire precedes the baptism of water (but if it not precede, as in children, the first grace would be conferred through the baptism of desire), so frequently here; for commonly adults are justified by attrition, as through merit by congruity, before they confess, according to the authorities of Augustine and Cassiodorus [n.7]; and then in the reception of the sacrament grace is increased in them. But suppose they did not have attrition sufficient by way of merit for justification, and consequently they are existing in sin and yet they in some way confess with attrition in the last instant – they receive grace by virtue of the sacrament. The authorities, therefore, are speaking of those justified in the first way, but they do not thereby exclude justification in the second way, as is plain by likeness with baptism in the second way.

Twentieth Distinction

Single Question

Whether Penitence in Extremities Avails for Salvation

1. “It is necessary to know also etc.” [Lombard, *Sent.* IV d.20 ch.1 n.1].
2. The twentieth distinction, about which I ask whether penitence in extremities avails for salvation.

3. That it does not:

Augustine in a certain sermon [Ps.-Augustine, *Sermon* 393, ‘On Penitence’, in Lombard, *Sent.* IV d.20 ch.1 n.2, taken from Gratian, *Decretum* p.2 cause 33 q.3 d.7 ch.2] says, speaking of someone thus penitent, “We do not presume that he departs hence well.”

4. The same [Ps.-Augustine, *On True and False Penitence* ch.17 n.33] (and it is in Lombard’s text [*ibid.*, nn.4-5] and in Gratian [*ibid.* d.7 ch.6]): “It is very dangerous and near to destruction to put off the remedy of penitence until death.” From this authority the argument is as follows: he who exposes himself to danger of eternal death sins mortally; but the sort of person who delays penitence until death is like this; therefore etc. There is confirmation from Augustine in a sermon on the Holy Innocents [Ps.-Augustine, *Sermon* 220 n.2], “The sinner is struck by this observation, that he dies forgetful of himself who, while he lived, was forgetful of God.”

5. Again, on *Ecclesiasticus* 17.27, “Alive and healthy will you confess,” there is this remark of Augustine [Ps.-Augustine, *Sermon* 393, *ibid. supra* n.3], “Do penance while you are healthy. If you have done so, you have done so at the time you could have sinned. If you wish to be penitent when you cannot sin, sins have dismissed you but not you them.” From this as follows: no penitence suffices for salvation unless it be voluntary; but he who is penitent at the extreme of death has dismissed his sins but they him (according to Augustine); therefore etc.

6. Again, nothing is ordained by a legislator that is an occasion for transgressing the law, and especially an occasion for many (this is plain, because then the legislator would *per se* do something that was for the destruction of his own law); but that a late penitence avails [for salvation] is an occasion for continuing sin for the whole of life; for who would not continually sin for his whole life if a brief penitence would in the end save him? Therefore etc.

7. Again, mortal sin is dismissed for no one save through some temporal penalty corresponding to the sin; but such a one who is penitent at the extreme of death pays no penalty, or at any rate not sufficient or corresponding to the sin.

8. If it be said that he will pay in purgatory the temporal penalty due – on the contrary: he who dies in mortal sin will be damned at once; therefore he who dies in grace will be saved at once, and consequently will pay no penalty after this life.

9. On the contrary:

Augustine [Ps.-Augustine *On True etc.* ch.17 n.33, Gratian, *ibid.* ch.5, and Lombard *ibid.* n.6; *supra* n.4]. “If penitence come in the final opening of life, it saves and frees.” Lombard proves it by adding at once [citing Hugh of St. Victor, *On the Sacraments of the Christian Faith*, II p.14 ch.5], “Very late was the penitence of the thief, but Christ’s indulgence was not late,” about which thief is *Luke* 23.42-43. He proves it again through *Ezekiel* 18.21-22; 33.14-16 [Ps.-Augustine, *On True etc.* *ibid.*, Lombard,

ibid. supra n.4: “I believe that he who said, ‘in what hour the sinner laments and is converted [lit. turned around], his life will live’, said that the one ‘turned around’ not ‘turned’ merely will live; he is ‘turned’ I think who grieves over a crime, but he is ‘turned around’ who grieves over every variety of it” [d.14 n.128 *supra*]

I. To the Question

A. Two Conclusions

10. In this question are two conclusions that are sufficiently certain.

The first is this: true penitence, whether interior, or exterior along with reception of the sacrament of penitence, suffices for the salvation of anyone in extremities.

11. The second conclusion is this, that the penitence that seems to be obtained in extremities is scarcely true penitence sufficient for salvation, because it is difficult then to have true penitence.

B. Proof of the Conclusions

1. Proof of the First Conclusion

12. The first conclusion is plain from Augustine, and it is in the text [Ps.-Augustine, *On True...*, n.4 *supra*]: “Since God is always powerful, he is able to help even in death those whom it pleases; since therefore fruitful penitence is the work not of man but of God, he can inspire it whenever his mercy wants.”

13. It is also plain by reason, that whether interior penitence alone through merit by congruity (if had in extremities) dispose to justification, or whether the sacrament of penitence operate by way of sacrament – if the latter or former is had by anyone in extremities, the same idea of receiving grace is had by him as is also had in another penitent; and consequently grace will be received and so salvation.

2. Proof of the Second Conclusion

14. Proof of the second conclusion:

First, because then the use of free choice, or the use of free reason and will, is impeded, by inherent pain or fear. Now I do not mean that he is in extremities who is burdened by a sickness that is of common rule curable (as by a tertian fever or the like), nor he who dies suddenly, the cause of whose death still not appear. But I mean him who is judged, from evident causes already in place, to be near death, according to the lower causes that operate for the most part (as in the case of an infirmity when he is already reaching a level despaired of in the judgment of doctors, or in the case of other dangers, as drowning, wounding, and the like, when death is at once imminent). In these cases, I say, there is either very great pain in the sense part of the soul or very great fear. And both vehement sufferings are of a nature to impede free use of reason and will, because according to Augustine *83 Questions* q.36 n.1, passions caused by distressing things move more than passions caused by delightful things. But a vehement passion of delight sometimes wholly, or almost, impedes the use of reason, as is said in *City of God* XIV ch.16, and an act of displeasure about sin, in order for it to be sufficient for true penitence

(whether internal only or for worthy reception of the sacrament of penitence), requires free use of reason and will [*Ord. III d.15 n.62*, a fuller treatment].

15. If you say that the pain or fear that is present does not totally impede intellect or will, I concede it. But it does impede them a lot, and consequently it is possible to have a weak and imperfect use of intellect and will, which scarcely suffices for the displeasure sufficient and required for true penitence.

16. This argument [n.14] is touched on by Augustine [cited by Lombard; the words from Hugh of St. Victor, n.9 *supra*], “So great a torment sometimes binds the members and pain oppresses the sense, that scarcely is a man able to think of anything else.”

17. Second, in order for displeasure to be ordered, it must have its due circumstances, and especially the circumstance of the end and the principal active principle, namely so that it may be voluntary and for the sake of God. But it is difficult then to have an act thus circumscribed. First, because he who up to then was impenitent does not seem he is then wresting from himself a new displeasure save by fear of imminent penalty (for the presumption is that if he were removed, as before, from the penalty, he would not wrest from himself such displeasure, as he did not before). Second, because the cause of this displeasure seems to be something at least simply involuntary, namely the near expectation of death; but that is involuntary; and what does not happen save on the supposition of something involuntary is not simply voluntary (just as someone does not altogether voluntarily throw merchandise into the sea if he only throws it on the supposition of an endangerment he does not want) – at any rate, what is only voluntary in this way does not seem accepted much by someone else, nor does it seem done much for love of him.

18. This argument [n.17] is touched on by Augustine in the text [Ps.-Augustine, *On True...*, Lombard, *supra* n.4], “It is necessary,” he says, “not to fear death much but to love; for God seeks liberty not necessity of choice, charity not fear, so as to be able to delete sins committed; let not him, then, who is penitent fear so much the penalty, but be anxious for the glory.”⁶⁰

19. Third reason, because a bad habit continued up to that point [of death] draws one away from act of penitence.

20. And this argument is touched on by [Ps.-]Augustine in the text [*ibid.*], “One must be afraid for a late penitent, since the children whom he wrongly loved are present, and his wife and the world are calling to him; a late penitence is wont to deceive many;” meaning: these delightful things are present in themselves, or in strongly impressed imaginations. And whether this way or that, habits long continued draw to themselves, by their vehemence, things to be loved inordinately, and consequently they put much difficulty in the way of having much displeasure about them.

21. The fourth reason: the more that someone is less a lord of his own acts, the more is an intenser displeasure required for a disposition to be there that is sufficient for deletion of guilt; but this person [on the point of death] is less a lord, because in no way lord of the external act of committing sin. Therefore, according to strict justice, an

⁶⁰ More accurately: “for God, so as to be able to delete sins committed, seeks liberty not necessity of choice... Not therefore in fear alone does man live. He then who repents late should not only fear God the Judge, but love also God the Just; let God not be feared for penalty, but loved for glory.”

intenser motion is required for his justification than for the justification of someone healthy, although scarcely, however, could he have one as intense.

22. And this reason is touched on by [Ps.-]Augustine in the text [*ibid.*, nn.3, 5 *supra*], “Do penance while you are healthy. If you do so, you are secure, because you have done it at the time you could have sinned. If you wish to be penitent when you cannot sin, sins have dismissed you, but not you them.” At least you do not as freely dismiss them as the healthy man does. And therefore, the more of freedom there is lacking in you the more is an intenser motion, in strict rigor, required of you, which scarcely or never will you be able to have. Therefore does Augustine say, “a great thing is it for him (if there is anyone) in whom God then inspires true penitence,” because there is scarcely anyone, or there is no one, who may then have the disposition, by congruity, for inspiration to be given him.

C. Two Corollaries

23. From these conclusions follow two corollaries:

One that the healthy man be persuaded to be penitent while healthy, by exciting in himself the fear how dangerous it is to await a late penitence, for the reasons just stated [nn.14, 17, 19, 21].

24. The other corollary, that he who is infirm, now brought to this point [of death], must be persuaded to work, according to his possibility, for an ordered penitence, namely so that, notwithstanding his pain or fear, he use reason as much as he can and strive to have voluntary displeasure for the right end, that is, for the sake of God; and so that he strive against the bad inclination of habit and present delights and labor to have as much displeasure, though brief, as he can have about them; and, so that he not be sent into despair, he must extol the divine mercy, by proposing to himself the example of the thief, whose penance was late but not late his indulgence [n.9].

II. To the Initial Arguments

25. To the first argument [n.3] I say that presumption goes along with what happens for the most part, and it is more apparent to right reason that for the most part it seems difficult or impossible for such a person to repent well because the reasons stated before [nn.14-22]. However, the conclusion of this presumption is not necessary, because the opposite can occur, though for the least part and with difficulty. And therefore does Augustine say [n.3, *ibid.*], “I do not say that he will be saved, but neither do I say that he will be damned,” because about neither of them can a man be certain.

26. As to the second [n.4]: I concede that he who knowingly exposes himself to risk of his salvation sins mortally; and so this man, if in any elicited act he determine himself never to repent save in extremities, he exposes himself by that act to such risk and sins mortally. But even of that act, if he has so sinned, he can repent in extremities.

27. To the third [n.5] I say that as long as anyone has the use of free choice he can sin with interior (though not exterior) sin, at least by taking pleasure in sins already committed before, and so he can then dismiss the sin by being displeased with it – though it is necessary he not sin with exterior sin; but this too to the extent it can then be voluntary for him to have then the will. But if he could sin with exterior sin he should

altogether flee from it, and then he would have about what he committed before not only displeasure but also an additional exterior penitence, at least in desire, should he survive.

28. To the fourth [n.6] I say that a legislator should not pass over things that are in themselves fitting in ordained law though someone take from them occasion to transgress, otherwise God should never have instituted penitence in any law, because someone could take from it opportunity to transgress, which he would not take if he could not afterwards be penitent. Now as to a law ordained simply for this state of fallen nature, it is required that penitence be capable of being fruitful, and a reason it should be so in any instant of health is an equal reason it should be so in extremities; indeed it is more necessary for the imperfect many that it then be of avail to them. I say therefore that this is not an occasion given by the law but only an occasion taken by the imperfect; but in itself it is an occasion for keeping the law out of love for the legislator, who is of so great mercy toward the wretched that he never closes to them the bosom of his mercy.

29. And this response can be confirmed, because when a greater good comes directly from something than a bad comes indirectly from it as from an occasion taken, then it is to be done and in no way left undone because of such occasion. But that some, bad until the end, be saved by penitence is a greater good than the sin is bad that is done by occasion of it, because many through this penitence finally reach the term of divine predestination; but by the occasion of it none fall from that end, and if they sometimes sin, yet not with the sin by which they be finally damned.

30. As to the fifth [n.7]: I concede that this person should be punished by some penalty for his sin. But it should not be imposed on him here, because he cannot fulfill it here; nor should it be imposed on him that he be for so much time in purgatory, because the priest does not have authority to inflict that penalty. But a penalty corresponding to his sins should be proposed to him in this sort of way: 'if you were healthy, such a penitence would have to be imposed on you, which, if you recover, you are to study to fulfill; but now you are in the hand of God; have confidence in his mercy, because though he punish you, yet he will mercifully punish you'. Or, in a case where it is impossible to protract much talking, there is no need to inform him of any penalty but only to instruct him about the merciful justice of God.

31. As to what is objected against the response [n.8], I say that the case is not alike: for someone dying in mortal sin has nothing holding him back from deserved penalty; but this man dying in charity, yet a debtor for sins committed for which he has not done penitence, does have something holding him back from glory, because no one, while he is debtor to any penalty, can be glorified; for just as glory allows no penalty along with itself so no debt to penalty either, because the penalty is neither to be paid at the same time nor later.

Twenty First Distinction

Question One

Whether after this Life any Sin can be Dismissed

1. "It is also wont to be asked etc." [Lombard, *Sent.* IV d.21 ch.1 n.1].

2. About this twenty first distinction I first ask this question, whether any sin can be dismissed after this life.

3. That it cannot:

Because no one dying just can afterwards sin; therefore no one dying in sin can afterwards rise up. The consequence is plain: first by likeness, because to be able to sin and to rise from sin seem similar for any state; second by what is greater, for it is easier to fall than to rise up; third, because to rise up from sin seems to belong only to him who can merit, but he who cannot in some state fall cannot merit.

4. Again, no mortal sin can be remitted after this life, so neither any venial sin. The consequence is plain because they are of the same idea, since immaterial things only differ as to more and less.

5. Again, Damascene, *Orthodox Faith* ch.18 says, “What the fall was for angels, this death is for men.” But an angel after the fall cannot at all vary from the state in which he fell; therefore man too after death cannot at all vary from the state in which he dies.

6. Again, a venial sin can be dismissed by the least penalty provided it be voluntary, as by sprinkling with blessed water and the like; but the penalty of death is the greatest, because death is the ultimate of fearful things, *Ethics* 3.9.1115a26; therefore by it, if it be accepted voluntarily by this person about to die, every venial fault can be deleted; therefore after death none of them remain to be deleted for anyone.

7. If you say that death is inflicted for original sin and therefore it cannot be the penalty due for another sin, nor consequently can it have force to delete or dismiss venial sin – on the contrary: original sin is dismissed in baptism, which is specially ordained against it; therefore death is not in this man a penalty due for original sin; therefore as before [n.6].

8. To the opposite is the Master in the text [*Sent. IV d.21 ch.1*], and he proves it from *Matthew* 12.31, *Luke* 12.10, *Mark* 3.29-30: “He who sins against the Holy Spirit, it will not be forgiven him either in this age or the future one.” And the Master adds, “From this is given to understand, as the holy doctors had on to us, that certain sins will in the future age be dismissed.”

I. To the Question

A. About the Penalty Due for Sin Dismissed in this Life the Conclusion is Certain

9. In this question one conclusion is certain, namely that, when sin has been dismissed in this life, the penalty due for it can be paid after this life.

10. There is proof for this by reason, because no one in debt for a penalty is beatified; for either the penalties are to be paid along with glory or after glory; but in neither way, because penalty cannot either stand with glory or succeed to glory; therefore if anyone is at some time in debt for a penalty, he must first pay it before he be glorified. Now he who was in extremities worthily penitent, which is possible (as was said in the preceding distinction [d.20 nn.12-13, 24]), did not pay a worthy penalty for the sin of which he was penitent; therefore he will pay it after this life.

11. There are authorities too for this, which the Master adduces in the text [*Lombard, Sent. IV d.21 ch.2*]:

One from Augustine *City of God* ch.26 n.4, where he treats of *I Corinthians* 3.12, about those who build wood, hay, stubble. He says, “After the death of this body until the

day of damnation or reward is reached, if in this interval of time the spirits of the dead, who have built wood, hay, stubble, are said to suffer a fire of tribulation that is transitory, burning up venial sins, I do not refute it." And there follows, "That fire will be more grievous than anything a man could suffer in this life" [*Exposition of Psalms* ps.37 n.3].

12. The same [Ps.-]Augustine, *On True and False Penitence* (and it is in Gratian, *Decretum* p.2 cause 33 q.3 d.7 ch.6) about a late penitent says, "If he live with life and not die (understand this of the life of grace), we do not promise that he escape all penalty, for he who has put off the fruit of conversion to the next age is to be purged first with the fire of purgation; but this fire, although it not be eternal, is in a marvelous way grievous; for it excels every penalty that anyone has ever suffered in this life."

13. And this opinion is stated by the Master, *Sent.* IV d.20 ch.2 n.1, "If," he says, "they have departed before fulfilment of their penitence, they will feel the purgatorial fire and will be punished more heavily than if they had fulfilled penitence here." And no wonder, because the less voluntary a penalty is the less satisfactory it is.

14. And this whole opinion about purgatory is founded on the word of the Apostle in *I Corinthians* 3.13, "he himself will be saved, but so as by fire" (he is speaking of someone dying imperfect).

B. About the Penalty for Sin not here Dismissed, and About Sin itself not here Dismissed

15. But the other point is not so certain, namely about sin not here dismissed, whether the penalty due for it can be paid in the future and so be remitted; secondly whether such a sin not here dismissed can be dismissed there.

1. About Mortal Sin

16. About the first point [n.15]: it is held as certain that this is not so for mortal sin, because the penalty due for mortal sin when not dismissed is the penalty of damnation, which will not be remitted.

2. About Venial Sin

17. About venial sin one needs to see what penalty corresponds to it according to divine justice.

a. Opinion of Others

18. And it is said [Alexander of Hales, *ST* II-II n.285 q.1] that an eternal penalty corresponds per se to venial sin, but per accidens a temporal one.

19. Proof of the first, that if someone is damned for mortal sin and along with venial sin, he will always be punished for the venial sin, otherwise there could be redemption in hell from some sin; but he will not be punished by God for it eternally unless an eternal punishment were justly due to it.

20. Proof of the second, that venial sin stands with the charity by which a man is ordained to the kingdom, and consequently for that reason a temporal penalty is due to venial sin.

b. Rejection of the Opinion
 α. Against the first Proof

21. Against the first proof [n.19] in three ways:

First, because debt for eternal penalty does not stand along with charity; but along with charity stands not only venial sin not deleted after the act, but also the actually committed venial sin (this is plain according to everyone); therefore etc.

22. Proof of the minor [n.21], because through charity one is worthy of eternal life; if therefore along with this there stand a debt for eternal penalty, then one is at the same time worthy of eternal life and eternal penalty; but this is impossible, because no one can be debtor to eternal penalty for what he is ordained to glory in company with, because then glory and a penalty could stand together.

23. The major is also proved in another way, because after the act of mortal sin nothing remains of mortal sin save the debt of the penalty, as was said in d.14 q.1 nn.28-34. Therefore, if the debt of eternal penalty could stand along with grace, a mortal sin not remitted could, in the way in which it remains after the act, stand along with grace, and then the same person would be friend and enemy.

24. Again, second: the essential penalty of the damned is not the penalty of sense but the penalty of loss; but the penalty of loss is necessarily concomitant to any penalty, because no penalty can stand along with glory; therefore the debt for any eternal penalty includes the debt for the eternal penalty of loss, and consequently for the essential penalty of damnation; but damnation does not correspond to venial sin.

25. Again, third: venial and mortal sin are incommensurable in idea of malice or offense, for an infinity of venial sins, if they existed, would not equal one mortal sin in idea of offense, because neither would all of them turn one away from the end as a single mortal sin does. Therefore, the penalty that, according to justice, corresponds to mortal sin exceeds incommensurably and infinitely the penalty due to venial sin. But it does not incommensurably and infinitely exceed in intensity, because any infinite penalty exceeds or is exceeded finitely by another in intensity; therefore the excess will be in extension.⁶¹ Therefore eternal penalty is not due to venial sin.

26. And this conclusion I concede.

27. To the reasoning for the opposite [n.19] it is said in one way [Bonaventure, Aquinas, Richard of Middleton] that eternal penalty is due to venial sin per accidentis (when it is conjoined with mortal sin), and not by reason of itself.

28. But this I do not understand, because God always punishes less than is deserving. And let it be that he would, according to rigor simply, punish up to what was fitting, it would be altogether unjust to inflict an eternal penalty for that for which in itself a temporal penalty is due. For however much it may be conjoined with another, this does not make it infinitely exceed the genus of its guilt; therefore, neither does a penalty exceeding to infinity justly correspond to it.

⁶¹ Sc. the pains due as penalty to sin are not infinite in intensity (any actual pain will be determinate in how intense it is), so if the pains due to mortal sin exceed infinitely those due to venial sin, the infinity cannot be in intensity; so it must be in extension, that is, in the former lasting forever and the latter not.

29. I say therefore that to venial sin, whether by punishing it here or in hell or elsewhere, is only due, whether in itself or per accidens, a temporal penalty, because it is in itself the sort of offense that in itself is sufficiently punished by temporal penalty.

30. Nor is it unacceptable for this penalty due to venial sin to have a limit in hell, because someone who is both truly penitent first, and fulfills part of the imposed penitence, and who, before he has fulfilled the whole of it, falls back into mortal sin, and dies in that mortal sin, will pay the penalty in hell for the remaining unfulfilled part of the penitence – but only a temporal penalty because, from the fact that, in the remission of prior sins, the debt of eternal penalty was changed into debt of temporal penalty, he is never in debt for those sins save for temporal penalty, and consequently when the total penalty is paid, he will be free of them.

31. Nor yet will there be redemption for him in hell, namely of the sin for which he is damned, because the debt of eternal penalty for that sin was never commuted into a debt of temporal penalty; and therefore the debt always remains, nor can that penalty ever be totally paid.

β. Against the Second Proof

32. About the second conclusion [n.20]:

It can be said that in one way it is so, because the remission of venial sin is nothing other than payment of the temporal penalty due for it.

33. The proof is that, after the act ceases, the guilt, which remains, is nothing but conviction for the due penalty; but being convicted for venial sin is nothing but being convicted for temporal penalty (from the preceding article [n.29]), and consequently, when the temporal penalty has been paid in purgatory for this venial sin, by this very fact is the venial guilt remitted.

34. But it is not so with mortal sin, because the penalty due for it cannot be totally paid unless the eternal penalty is first commuted into a temporal one; and this commutation is called remission of mortal guilt. But this remission only happens through an ordered voluntary displeasure of a sort that is not had after death.

Thus is one way plain as to how, after death, mortal sin cannot be remitted, but only the penalty due for mortal sin previously dismissed.

35. But venial sin previously committed and not dismissed can be dismissed after death, because the total penalty due for it can be paid, and thereby will it be remitted.

36. But this way is not satisfactory, because the saints seem to distinguish between remission of guilt of any sort and remission of penalty, and especially between remission of guilt and payment of the penalty due for the guilt.

37. It can be said in another way that venial sin in this life can be remitted, not only through interior or exterior penalty (because for this purpose that is not necessary), but through some act more accepted by God than the venial sin displease him – and this either referred by the doer himself to the remission of venial sin, or not referred by him but by God accepting it in its order thereto.

38. To the issue at hand: the works of this man who dies in charity, although after death they not be referred by him for the dismissing of the venial sin in which he died, and although too he not have any meritorious new act by which venial sin may be deleted, yet

the works he did before can be referred by God to the remission of his venial sin after death.

39. And that in the following way: a cause that can be impeded does not, while it is impeded, realize its effect; however when it is not impeded it does realize it; but the merits of this man dying in charity would be sufficient cause for deletion of his venial sins, whether referred by himself or referred by God accepting the works in their order to this. Now his merits are, while he lives, impeded if he remains always actually in venial sin; after death, however, they are not impeded because then he is not continuing the act of venial sin; therefore his venial sins will be destroyed by them after this life.

C. Two Corollaries

40. From this follow two things: first, that at the moment of death venial sins are remitted, because the act of venial sin does not then remain and consequently the impediment then ceases; the other, that the venial sin of someone dying in charity is remitted in this life, unless he continue the act of venial sin until death or the moment of death.

41. This second one seems probable, unless you say God has ordained that the good merits of this person will be reserved in divine acceptance until the moment of death, when, of course, he ceases to be a wayfarer, and consequently that then God gives back to him the good corresponding to his merits, but not so for any prior instant when he was a wayfarer.

42. This is probable in other cases because, since any merit (as I believe) merits an increase of grace (because it merits some determinate degree of glory for which some degree of grace is required as preceding disposition), and since God does not always, after any meritorious act, increase grace proportionate to merit, it seems that the increase due to remitted merits he keeps in reserve until the moment of death.

43. And it is the same way about this deletion of venial sins, which is a sort of non-principal reward of these merits, just as it is also an increase of charity in such or such a degree.

44. And this is reasonable, because at that moment [sc. of death] a man first comes to be in another state; and the state of being wayfarer (or something concomitant to this sort of state) was what prevented the reward of merits being rendered to him. And it is not necessary to indicate here that this reserving for the moment of death is reasonable because a man is then, on account of impending very great trials, most of all in need – for this is not true, because at the moment of death the soul is separated from the body and consequently is not a wayfarer but at the term, nor consequently is it then exposed to trials.

45. If neither of these ways [n.40] is pleasing (neither the first, namely that it is the same thing for venial sin to be remitted and for the penalty due to it to be paid; nor the second, namely because by merits acquired as wayfarer and reserved in divine acceptance, venial sin may be destroyed at the moment of death), let another way be looked for, which it is difficult to find. For that there is some good movement by which, as by a disposition or merit by congruity or desert, venial sin be destroyed in the soul after death, does not seem consonant with theological doctrine, which posits that that state is immune from these things.

II. To the Initial Arguments

46. To the arguments.

To the first [n.3]: when taking ‘rising from sin’ to stand for ‘to be freed from sin’ I deny the consequence,

47. To the first proof [n.3], I say that there is no likeness, because ‘to sin’ is to act freely even as to this state of life; but to rise up, that is, to become immune from sin, does not require acting freely even as a wayfarer on the way; because, according to the first opinion [nn.18-20], to rise is only to pay the penalty, and this is to suffer it; or, according to the second opinion [nn.21-23], only through merits possessed as wayfarer before, and for that time accepted, is guilt now dismissed.

48. To the second proof of the consequence [n.3] I concede that it is easier to fall than to rise up, insofar as ‘rise up’ states a simply ordered act in the power of the one who rises; but in the remission of venial sin ‘rise up’ is not taken in this way [n.47].

49. To the third proof I say that it assumes something false, namely that ‘to rise’ is by a meritorious act that is then present. However, it is by a meritorious act that was present before, according to the second opinion; or by no meritorious act but only by suffering a deserved penalty for the sin, according to the first opinion.

50. To the second argument [n.4]: the consequence is not valid, and the reason is stated in the first opinion (and this according to that opinion). But according to the second opinion one would have to say that merits done in this life cannot be accepted at the moment of death for the deletion through them of mortal sin; because God has disposed mortal sin to be deleted only through the voluntary reception of the sacrament, or through some disposition meritorious, as it were, by congruity that is inherent then, or up to then, when the sin is destroyed. This is not so of him who dies in mortal sin.

51. To the proof [n.4] I say that although mortal and venial sin are of the same idea in genus of nature, or perhaps in malice of mores, just as the genus of virtue is distinct from what is of grace and what is sin (for it is not the same thing to be virtuous and vicious morally and to be just and a sinner theologically); but yet these are not of the same genus or idea in idea of divine offense; and so they are not remitted in the same way.

52. To the third [n.5]: the likeness goes this far, that as an angel when falling is at the term and not a wayfarer, so also is a man in death. But there need not be a likeness as to stable permanence in everything, but as to stable permanence in that which is principal in one who is already reaching the term. Off this sort is spiritual life by grace or spiritual death by mortal sin; and if a man die in the life of grace he will always live; but he who dies in mortal sin will remain so.

53. But about venial sin there need not be such stability, because venial sin is not something according to which the good or bad state of way or term is *per se* assessed. Or venial sin can stand with a good state and with a bad state, whether of the way or of the term; but when venial sin exists with a good state of the term, it must be deleted first before the ultimate term be fully possessed.

54. As to the fourth [n.6], it could well be conceded that death voluntarily accepted is a sufficient penalty as to the penalty of any venial sin, and perhaps as to a great part of the penalty due for mortal sins that have been dismissed. Nor is it a problem that it is a necessary penalty, because someone can voluntarily accept what is necessary. And so by this is what is said in the second opinion (that venial sin is deleted at the moment of death)

consonant with what is said in the first opinion, that if it be remitted by the payment alone of the penalty, the penalty is paid in death; and in this way is venial sin remitted.

Question Two

Whether a Confessor is in Every Case Bound to Hide a Sin Uncovered to him in Confession

55. Second I ask whether a confessor is in every case bound to hide a sin uncovered to him in confession.

56. It seems that he is not:

Because it is licit for anyone to renounce his right; therefore, since it is a confessing penitent's right to hide his sin, it is licit for him to renounce this right by giving his confessor permission not to be bound to hide it.

57. Again, Bernard *On Precept and Dispensation* ch.2 n.5, "What was instituted for charity should not militate against charity." But the hiding of a confessed sin might in some case militate against charity; therefore etc. Proof of the minor: sometimes a confessed sin would be against the common good, as a crime of heresy or betrayal of the republic; and most of all, if it were perceived from confession that this was not only done but to be done, it seems to be contrary to charity to make light of the common good because of some good of a private person.

58. Again, suppose that some persons have agreed together to kill a priest in such and such a woodland, and the priest is traveling with them; before the entrance to the woodland one of them repents and confesses to the same priest; the priest is not bound, since the others are not penitent, to expose himself to death without cause, and therefore not bound to enter the woodland. But by not entering it he by that fact reveals to the other associates the confession of the associate who confessed (for he would not have turned away from accompanying them if this associate had not confessed); therefore in this and the like deeds it is licit to reveal a confession [Richard of Middleton, *Sent.* IV d.21 princ. 4 q.2 arg.5].

59. Again, a priest has absolved in fact a simoniac bishop whom he cannot by right absolve; this priest is bound to confess this sin specifically and with that circumstance, because it is a mortal sin and these circumstances make the sin worse; but by thus confessing he reveals the sin of this simoniac bishop; therefore etc.

60. It is licit to reveal what is not a sin or a circumstance of sin; but such is the person (suppose her to be this woman or that woman) with whom a confessing penitent has sinned – since this is not an aggravating circumstance.

61. Again, an abbot who has a monk in a place belonging to his monastery knows through confession that the monk has sinned in that place and there keeps suspect company, by whom he is often enticed to sin. It seems that the abbot could consult the salvation of his soul; therefore he can remove him from that care or that office, so that he not have an occasion of this sort for sinning. But by removing him the abbot, by that fact, reveals his confession, because he does the sort of thing he would not do if this person had not confessed to him, whereby others too can come to knowledge of the sin, at least in universal terms.

62. Again, Gregory IX, *Decretals* V tit.30 ch.14, 'On Sentence of Excommunication', "You must keep away from communion with him who, for raising his

hands against a cleric, has fallen under edict of excommunication, unless perhaps to you alone the fact lie open, in which case you will avoid him only in private;” and there follows, “so that he may, in confusion at least by blushing for shame, be compelled to make satisfaction for his hidden excess.” From this is obtained, it seems that, if in secret or by confession I know that this person has fallen into sentence of excommunication, I must avoid him in private so that he may be put to confusion; therefore, it is licit, because of confession, to inflict confusion on someone and therefore, by parity of reasoning, to reveal his sin.

63. On the contrary: Gratian, *Decretum* p.2 cause 33 q.3, ‘On Penitence’, d.6 ch.2 [Lombard *Sent.* IV d.21 ch.9 n.1], “A priest should before all things beware lest he tell to another the sins that have been confessed to him; for if he do this, let him be deposed and let him for all the days of his life go through his pilgrimage in ignominy.”

64. Again, Gregory IX, *Decretals* V tit.38 ch.12, ‘On Penitences and Remissions’, “Let a priest altogether take care lest by word or sign or in any other way he betray a sinner;” and there follows, “If he have presumed to reveal a sin uncovered to him, we have decreed that he not only be deposed from priestly office, but that he is in the strictest monastery to be thrust down into performing the strictest penitence.”

I. To the Question

A. Statement of Five Conclusions

65. In this question let the first conclusion be that a priest is bound by the law of nature to hide sin uncovered to him in confession; let the second be that he is bound to it by divine positive law; the third that he is bound to it by the positive law of the Church; the fourth that he is bound as to the ‘when’ and the ‘how’ and other pertinent circumstances; fifth that he is bound as to other things secret or in secret uncovered to another.

B. Proof of the Conclusions

1. About the First Conclusion

a. Proof of the First Conclusion by Others

66. The first conclusion is proved as follows [Richard of Middleton, *Sent.* IV d.21 princ.4 q.1]:

“The same person can, when speaking in the person of another, truly affirm something that he would truly deny speaking in his own person (proof: the angel speaking to Moses in the person of God truly said, ‘I am the Lord your God etc.’, *Exodus* 20.2, which he would have truly denied speaking in his own person). Therefore, by similarity a man when representing the person of God in the forum of confession can truly affirm something that he can truly deny outside that forum when speaking in his own person. Therefore, when saying outside the forum that he had heard or knows those things, he is lying, because they only came to his knowledge insofar he was representing the person of God. But to avoid a lie belongs to the right of nature, and especially a pernicious lie; therefore etc.”

b. Refutation of the Aforesaid Proof

67. Against this reasoning it can be argued:

First as follows, that it belongs to the same person, and as the same person, to take cognizance in a case and to give sentence in it (this is manifest because it is this person and as this person who is for this purpose taking cognizance). But a priest does not give sentence in God's person but in his own when absolving a confessing penitent; therefore as such does he hear and take cognizance. Proof of the minor: a priest does not absolve principally but ministerially; but to absolve ministerially only belongs to him in his own person. For if he were to speak in the person of God when absolving a confessing penitent he could, without preceding prayer (which is "May the Lord absolve you"), say "I absolve you principally and I infuse grace into you," as the angel truly said in the person of God, "I brought you out of the land of Egypt" [Exodus 20.2].

68. Again, in the forum of confession a priest does not hear or absolve in the person of God more than he confects the Eucharist in the person of God, because the former act is excellent just as the latter is and a sacramental act where divine virtue operates as here. Indeed, the priest seems to act more in the person of God or in the person of Christ in the latter than the former; for in the latter he speaks the words of Christ 'my body' and in the person of Christ, about which words he prefaces, "Who on the day before he died etc.," such that he himself says the whole of "Take etc." and "this is etc.," by reciting the words of Christ. It is not so in the issue at hand. Hence the priest does not preface in confession "Christ, wishing to absolve the sinner, spoke thus, 'I absolve you,'" but the 'I' stands here for the person of the minister himself. From this is it plain that the priest confects in the person of Christ more not less than he absolves or hears confession. But he confects in his own person, and what he knows as confecting he knows in his own person; hence he does not lie when after mass he says, "I know that I consecrated today." Therefore in confession too.

69. Again, to speak of sins uncovered in confession, albeit universally and not referred in particular to the person confessing, is to speak according to the same way and according to the same truth [n.68], as will be proved later [n.97].

70. This is also proved by Gregory IX, *Decretals* V tit.38 ch.9, 'On Penitences and Remissions', where Innocent III responds to a certain cardinal legate who had written to him of a case he had heard in confession and sought his advice. The Pope did not refute him as to the revelation in general, in writing too, but replies how one should advise such a person confessing.

71. This is also plain from the common practice of confessors for, whether in common speech or in preaching, they sometimes say, "Such a case occurred," "Someone sinned in such or such a way." The proposition, therefore, is obtained that a confessor can licitly state outside confession a sin confessed to him, but so that he in no way state something related to the person confessing from which knowledge of him could be reached.

72. But if the aforesaid reasoning [of Richard, n.66] were valid this would not be licit, because the confessor would be lying. Proof: because he who does not know a particular save as a determinate singular does not know the particular if he not know the singular; but this confessor does not know that some person has done such a sin save as this person confessed by him and as this sin confessed to him; therefore if he would be

lying about this person and this sin because ignorant of them [sc. outside confession], he would be lying similarly about other person and other sin.⁶²

73. I concede, therefore, these arguments [nn.67-72], for it is not because a revealer may be lying⁶³ that revelation [of confession] is against the law of nature. And so I do not hold this first argument [n.66].

74. I reply to the argument, therefore, that it is not the same thing to speak in the person of another and to speak with his authority or as his minister. For commonly he who speaks in the person of another simply projects the person, as is commonly the case in those who jokingly imitate others. For when he imitates the stutterer or the like in a like act, and does so by talking as he would talk, it is in his person that he is speaking or doing what he does; and therefore as soon as he fails to act as that person would and to talk as he would it is said to him 'You are lying' or 'you are doing it wrong', although then he is acting or speaking in his own proper voice. This is how it is with the speakings of angels in the person of God [n.66].

75. Not thus does a priest hear confession or absolve in the person of God, but he is only a minister of God in the act and as a minister he acts; therefore he acts in his own person.

76. I concede, therefore, that if he were to hear in the person of God and to speak in the person of God, he could say something truly that he could not say in his own person; for in the person of God he would truly say this, 'I am God', 'I created the world', and the like; but speaking so in his own person he would lie. But the priest in confession neither hears nor speaks in the person of God but in his own person, although with the authority of God and as his minister. The same way in other sacraments. Hence as minister of God he baptizes and consecrates, and yet as man or in his own person he knows that he has baptized, and he can say without lying that he has baptized.

c. Scotus' own Reasons for the First Conclusion

77. I maintain the first conclusion [n.65], therefore.

78. But I set down four other reasons, the first of which is taken from the idea of charity, the second from the idea of fidelity, the third from the idea of truth, the fourth from the idea of unity or mutual utility.

79. The first is of this sort: the law of nature about fraternal charity is expressed in *Matthew* 7.12, "Everything that you want men to do to you, do it to them; for this is the law and the prophets," and *Luke* 6.31, "As you want men to do to you, do you also to them." The proposition of natural law about fraternal charity must be understood in like way: "What you want for yourself," that is, what you should want according to right reason, and this is understood in the proposition of *Matthew* 22.39, "Love your neighbor as yourself." But each should according to right reason love his own reputation, therefore love also the hiding of his confessed sin; and consequently the confessor should love and

⁶² Richard claims [n.66] that a confessor who says outside confession what he knows in confession would be lying, since he does not know it outside confession. Scotus counters that this claim entails confessors would be lying if outside confession they speak, as they do [n.71], of such and such sin and sinner without mentioning singular instances. For confessors only know such cases because they know the singular instances; so if they do not know the singular instances outside confession, neither do they know the cases outside confession and would be lying if they said they did.

⁶³ The Latin text misprints 'mentiarur' for 'mentiatur'.

want the same thing for him who has confessed. But revelation [of his confessed sin] would take from him his reputation. Therefore etc.

80. Proof of the major:

From Scripture, *Ecclesiasticus* 41.15, “Have care for your good name,” and it gives a reason for this, “For this will be more lasting for you than a thousand great and precious treasures.” It proves it too by something else it adds, “There is a number of days for a good life; but a good name will last forever.” And *Proverbs* 22.1, “Better is a good name than much riches.”

81. Again, this is proved by reason: for everyone should according to right reason want civil life for himself; but this is taken away by the removal of reputation, because one lives with civil life in this, that one is fit for the legitimate acts that belong to oneself in that civil existence; but when reputation is lost one is deprived of one’s fitness for such acts, because one has lost the status of undamaged dignity, that is, fitness for the acts that one would otherwise be worthy of.

82. The second part of the minor, namely that the revealing of confessed sin takes this sort of reputation from him who has confessed [n.79], is proved by the fact that a reason whereby it can be revealed to one is a reason whereby it can be revealed to another, and so to everyone; but in such revealing it is manifest that the status of undamaged reputation (which consists in his reputation among fellow citizens) is taken from him.

83. The second reason: everyone is by the law of nature bound to keep with his neighbor the fidelity he wants and should want to keep with himself; but he who commits to another a very great secret wants and should want it to be kept secret; therefore another to whom he has committed it is bound to keep it for him. This reason is touched on in *Proverbs* 11.13. “He who walks deceitfully reveals secrets; but he who is faithful hides what a friend has done.”

84. The third reason: everyone is bound by the law of nature to keep a lawful promise; but he who receives a secret, especially what is uncovered in confession, promises, if not explicitly yet implicitly, that he will keep it, because without such a promise, at least implicitly understood, such a secret would not be committed to him; therefore etc. This reason can be taken from the remark, “Speak ye truth everyone with his neighbor” [*Zechariah* 8.16, *Ephesians* 4.25].

85. The fourth reason: any community has a unity proportionate in this to the unity of the body of Christ, that there is an order there of superior and inferior; and the superior is bound to exercise influence over the inferior, and the inferior is bound to minister to the superior, according to the parable of St. Paul about the mystical body of Christ in diverse places [*Romans* 12.4-5, *I Corinthians* 6.15-20, 12.4-7, *Colossians* 1.18]. But in civil society the inferior is less sufficient to himself and less knowing, and in the Church the sinner is unknowing but the superior is a hierarch who is able both to advise and to reconcile. Therefore, it is of the law of nature that no one exclude the inferior from recourse to a superior in necessities, nor exclude the superior from influence over an inferior, because this is the common utility of the members with each other. But the revealing of a secret excludes the inferior from such recourse to a superior in advice of soul, and consequently excludes the superior from influence over the inferior; because no one would have recourse if that about which he asks advice or remedy did not regularly have to be kept secret; therefore the superior is bound to hide this secret by the same law

of nature by which anyone is bound to keep the unity of the mystical body of Christ, and bound to keep the common utility of others as the members do in the body.

2. About the Second Conclusion

86. Proof of the second conclusion [n.65], namely that the priest is bound by positive divine Law:

First as follows: every Christian is bound not to give to another an occasion by which he may be called away from a law of Christ; there is a law of Christ about making confession, as was shown in d.17 [nn.48-57]; therefore everyone is bound not to draw another away from making confession; but he who reveals a confession, once the occasion has been given, draws back others from confession.

87. If you say that although this priest reveal [a confession] yet another will be a hider of the secret – this is nothing, because this priest, as far as his own part is concerned, gives occasion to the other to be wary of individual confessors in the same way.⁶⁴

88. Again second thus: Christ establishment the judgment of penitence to be on earth the final one as to confessed crime. This is plain from the verse of *Matthew* 16.19, “Whatever you loose on earth will be loosed also in heaven,” that is, it will be finally and ultimately approved, and from *John* 20.23, “Whose sins you remit etc.,” supply: sins remitted receive final approval in divine judgment. Therefore, whoever takes something discussed and ended finally in this forum [of confession] to another forum sins against the Law of Christ; but he who reveals [a confession] makes it, as far as concerns himself, something that could be taken to another forum, namely the public forum; therefore etc.

89. Third as follows: he who gives occasion to sin mortally in the carrying out of a precept of Christ sins mortally because, as far as concerns himself, he makes what needed to be duly carried out to be unduly carried out; but he who reveals a confession gives occasion for unduly carrying out the precept of Christ about confession, because occasion for doing it deceitfully; because he gives occasion for someone to praise himself in confession and to blame another whom he hates, so that thus he himself may by the confessor be unworthily promoted and the other punished; therefore etc.

3. About the Third Conclusion

90. The third conclusion, namely that such concealing belongs to the positive right of the Church, is plain from what was alleged for the opposite [nn.63-64], the second argument of which was better and more reasonable. For [against the first argument, n.63] it is not expedient that someone be made a vagabond because of a crime, provided however his common or solitary sojourn among men can in some way be tolerated; for a vagabond would be more abandoned to his evil will, and so would sin and cause harm more, both as regard himself and as regard others, than if he were delivered over to a strict custody.

4. About the Fourth Conclusion

⁶⁴ That is, someone who hears a priest reveal to him a secret of another's confession will now himself avoid confession for fear that his own secrets will be revealed by any priest he confesses to.

91. About the fourth conclusion it is necessary to look at ‘who’ and ‘for whom’ and ‘when’.

About ‘who’ I say that not only is the confessor bound to concealment but also he to whom the confessor, though illicitly, reveals it. The proof is that he who transfers something to another *de facto* that he cannot licitly transfer *de iure* does not give the other the right to use it or the right to transfer it to another; because he is, from the fact of not having the right, unable to transfer the right to another, for no one gives what he does not have [Aristotle, *Sophistical Refutations*, 2.5/ ch.22.178b1-7]. But a confessor who reveals something does not have the right to transfer it to another; therefore, if he in fact transfers it, the other does not have the right to transfer it further.

92. I say the same of him who, being someone other than the confessor, hears the confession of a confessing penitent; for if he hears by chance he does not sin but he is bound to silence; if he hears by deceit he sins mortally, and along with this he is bound to silence.

93. These two conditions about ‘who’ [nn.91-92] are proved by the reasons set down above for the first and second conclusion [nn.78-89].

94. But ‘when’? I say always and at all times [sc. one is bound to conceal what is said in confession, n.65], because the precept is a negative one.⁶⁵ And from this follows that after the death of the person confessed no more [sc. is one released from concealing] than when he was alive, because the reasons posited for the first and second conclusion are conclusive as equally about concealment at both times as they are about a negative precept.

95. But as for the ‘to whom’ [one may not reveal a confession] it is said [William of Auxerre]: to anyone save a superior.

But the aforesaid reasons [nn.91-94] are conclusive about a superior as about an inferior, save in a case when the inferior cannot absolve but receives [a confession] so as to refer it to a superior who can absolve; and then he himself is not confessor, but one must reckon that the one confessing to him as to an inferior is telling it to him as to an interpreter only. And then the whole thing stands as a single act of confession, where the one confessing and the superior (who alone is then the confessor) are the to be judged and the judge; and the intermediary (who hears and refers) is only an interpreter, yet he is bound to silence as regard everyone beside him for whom he is interpreter.

96. If you say that thereby is a response given to a certain argument previously made in Gregory IX, *Decretals* etc. [n.70], because there an inferior tells a superior a sin confessed to him, and consequently the chapter is not proof that it is licit for anyone universally to state sins heard outside the forum of confession – this is nothing, because the cardinal did not write to the Pope so that the Pope might absolve, but he wrote requesting advice about what he himself should do, as is plain from the response of the Pope, who does not immediately absolve the woman as to what he supposed was a birth foreign to her, but replies to him how a discrete priest ought to advise the woman. And similarly could advice be requested in such a doubt not only from a superior but from any other prudent man, who of course would know how to give advice.

⁶⁵ Negative precepts are binding always and at all times because there is never a time when one should not be obeying a negative precept (such as the precept not to tell lies). Positive precepts are always binding but not at all times because a given time need not be a time when a positive precept applies. So the positive precept to follow the rules of driving is always binding but not at all times, as specifically when one is not driving.

97. Hence what is said there against the first reason [n.69] is true generally, namely that the sin of a confessing penitent that is not referred back to, or made determinate relative to, the person confessing can be stated by the confessor, and usefully so, indeed necessarily so, when the priest is not so skilled that he know himself how to advise; and then he usefully can and necessarily should state it to someone prudent who knows how to advise him.

98. But surely a Pope can command that it be revealed to him? I reply: one should say that a Pope can never go beyond the right of nature.

99. About the ‘what’ I say that not only [must be concealed] the main sin of the one confessing and the circumstances of the sin (because circumstances cannot well be revealed without revealing the fact), but also the second person with whom the sin was done.

100. This is plain from the reasons posited for the first and second conclusion [nn.79-89], because even the one confessing wants to preserve the reputation of the person with whom he sinned, that is, he should want it as he wants his own reputation, indeed more so because that person was joined with him in the crime; for he is so much the more bound to that person for restitution of the good that he lost through him, and for guarding the good that, notwithstanding the evil committed, can be guarded.

101. Fidelity too and truth and unity or community [n.78] are plain here as before [nn.79-85].

102. Plain, likewise, for the three reasons for the second conclusion [nn.86-89] because not concealing draws away from confession; it also takes what is aired in this forum to another forum, and is an occasion for lying in this forum, as was said before.

5. About the Fifth Conclusion

103. About the fifth conclusion it is said [Richard of Middleton, *Sent. IV d.21 princ.5 q.4*] that one is bound by the law of nature to keep every secret, for the reasons given for the first conclusion [nn.79-85]; not only when the one confessing himself makes it express that he wants to commit it as secret, but also whenever it appears from the manner of committing that he wants to commit it as secret.

104. But the reasons for the second conclusion [nn.86-89] do not prove this with equal evidence save the third [n.89], that occasion would be given for lying when committing some secrets to someone.

105. As to this article [sc. this fifth conclusion] I say that the same ecclesiastical penalties are not inflicted for any secret as for this this secret [of confession]. But if someone were to reveal publicly some other secret a different penalty would be imposed on him, namely bad reputation. For he who imputes a false crime or anything that he cannot prove is to be regarded as a calumniator [Gregory IX, *Decretals V tit.2 chs.1-2*]; such is he who reveals any secret crime that he cannot prove.

II. To the Initial Arguments

106. To the arguments.

To the first [n.56] I say that it is a right not only of the one confessing that a confessed sin ought to be concealed but it is a right of the community, for there would

follow from the opposite (namely from the revelation of it) continual disturbance in the community, because everyone everywhere would reckon the other abominable; and it is not licit for this person to renounce the right of the community, though it is licit for him to renounce his own.

107. It could be said in another way: let it be also that it were only his own right and a right granted in his favor, it would not be licit for him to renounce it so that the confessor would be free to reveal things; for a confessor is bound by multiple right, namely the right of nature and positive right, the revoking of none of which is in the power of the one confessing.

108. What then will the confessor do when the one confessed is willing for his sin to be made public?

I say that the one confessing is able to state his sin afterwards outside confession, and if he state it as secret the subsequent permission still does not absolve the confessor from the law of nature without him being bound to conceal it. But if the one confessing state it so it not be held secret, and especially before some person or some certain persons for whom it is perhaps licit because of some good end that can follow from the revelation made to them or him – then the confessor can say it as something said to him publicly outside all secrecy.

109. But surely he cannot then say “I heard this in confession”?

I reply: it might be said [Thomas Aquinas, *Sent.* IV d.21 q.3 a.3] that these words by themselves “I heard this sin in that person’s confession” include mortal sin, because they include a revealing of the sin as known in a way it is not licit for it to be revealed. Hence, he to whom it is revealed outside all secrecy after confession should be wary in his manner of speaking and talking, lest he tell it as something said to him in a way in which it is not licit for it to be revealed.

110. Against this: it is licit for him to say to whom he will what is told him outside confession, and the telling is not special by the fact he says it was confessed to him; therefore, it is licit for him to say it.

111. To the second [n.57] I say that there can be no case in which silence militates against charity; on the contrary, the opposite would militate against common charity, as was shown by the four reasons for the first conclusion [nn.79-85].

112. And when you make objection about the common good [n.57], I say “you shall do justly what is just,” *Deuteronomy* 16.20; therefore you shall do charitably what is of charity; but he does not act charitably who, against the law of nature in the aforesaid ways [nn.79-85], does not conceal some evil committed or to be committed. Therefore, the verse of the jurists is to be rejected that “Heresy is a crime that not even confession conceals” – not that the metre is not good but the opinion is false.

113. To the third [n.58] it can be said that the priest can possess multiple occasions for not entering the woodland other than from the malice of the thieves uncovered to him – at least he can think out multiple others and say in their presence, “I wish to do this and that,” “I wish to turn aside to that and that place before I proceed further;” and if he seem to turn aside for this sort of alleged occasion, he reveals the confession neither in word nor deed.

114. But if he cannot turn aside for any occasion without it appearing to the others that he was turning aside because of a confession, and without in this revealing a confession, someone says [Richard of Middleton, *ibid.* n.58] that he is bound to enter the

woodland, and if he expose himself to death, this is for a right cause, namely that he may keep the Law of God about the seal of confession; and consequently if he dies he is a martyr.

115. But it can be said in another way that facts can be ambiguous signs, because they can be conceived in diverse ways by diverse people, namely for this or that fact. Therefore [the fact of not entering the woodland] should not be reckoned a revealing of confession unless of its nature it make public the confessed sin. But to turn aside from the woodland does not so lead, because if they had said nothing beforehand about the killing, never would they recognize, from the fact the priest turns aside, that that other confessed about their intention to kill him. But if turning aside were of its own nature a sign leading to knowledge of the sin of the one who confessed, it would lead anyone to this knowledge, and them equally too if they had not spoken just as if they had spoken.

116. It can therefore be said in general that a sign that is of itself indifferent as to the fact that such a sin was confessed or not confessed, though it be for some a more determinate sign because of some supposition, is not a sign that of itself is revelatory of confession, nor consequently is it simply illicit for a confessor.

117. To the fourth [n.59] I say that a confessor who incautiously ministers the sacrament of penitence is not bound to confess at once his incautious deed, namely when his confessor will be able at once to arrive at the knowledge of the person about whom he incautiously exercised the use of the keys; and this at least, he is not bound to express in detail the fault about which and the manner in which he acted incautiously, but either precisely in universal terms, "by my fault I unduly and incautiously ministered the sacrament of penitence," or if his conscience about giving confession in this matter specifically weigh on him, as the argument says [n.59] (because it is a special and a mortal sin and the circumstances make it specifically worse), he is bound to wait for an opportunity to confess to someone who cannot, from such confession of sin and circumstances, arrive at a knowledge of the person who confessed to him.

118. But if such a confessor can never be obtained without being able, from the explanation of the sin and the circumstances, to arrive at the fault and the person who confessed to him, he is in a case of being unable to confess to man, for he is more bound to the precept of not making public a sin confessed to him than to explicit confession of his own fault; because he is bound to the first in many ways by the law of nature (as the reasons for the first conclusion prove [nn.79-85]), and in many ways by the divine positive law (as the reasons for the second conclusion prove [nn.86-89]); but to the second he is bound at most by the divine positive law, as was said in d.17 {nn.42-57}; therefore let him confess⁶⁶ to God.

119. From this follows that anyone ministering the sacrament of penitence must beware most of all lest he minister incautiously, precisely in the case where from his incaution he will not be able to be penitent explicitly without betraying the confession of another who confessed to him

120. To the fifth [n.60]: let it be that the second person not make the sin worse, as the fact that it be Bertha or Alice does not make fornication worse, other things being equal (as that she is not married, not a close relative, and the rest of the sort), and then it is fatuous to confess the second person. And one might doubt whether to make her explicit in this way be a mortal sin (whether in other respects or whether the second person was

⁶⁶ The Latin text here misprints 'confiteatur' as 'confineatur'.

then made explicit in a way in which she necessarily had to be made explicit); always does the second person fall under the seal of confession, as was said in the fourth article [nn.99-100].

121. And then the major is to be denied in the first case [n.60]: “it is licit to reveal what is not a sin or a circumstance of sin,” for in order for this to be true it must be added “nor anything by which one could reach the person or knowledge of the person confessing.” Or more should be added to the major, namely “nor anything that must be held to be secret by the law of nature or the divine law.” And the minor is manifestly false about the second person, as is plain from the fourth article [nn.99-100].

122. To the sixth [n.61] I say that if in a college there is a common custom that anyone prolonging a stay outside the monastery (whether having a curacy or without a curacy) may, without notice, be recalled at the will of the president, or even not at will everywhere, but sometimes for another honest cause (so that now he rests in the cloister, now labors with Martha in exterior ministry, and now this one does and now that one, insofar as it has seemed useful to the president) – I say then that a monk who has made confession of a crime committed in some place outside the monastery where he is staying can be recalled by the abbot to the monastery, because in this the abbot does in no way make public a sin confessed to him; although someone may say that a confessor can, by reason of confession, in no way be disposed to the one who confessed as to any act outside that forum otherwise than if he had heard absolutely nothing. But if the custom in the college is that a monk is not thus transferred to the cloister from a place outside save by reason of some failing or insufficiency in his curacy of the place, it does not then seem licit for the abbot to recall the confessed monk to the monastery.

123. If you say that ‘he is not applying or procuring a remedy for the salvation of his sheep’ – I reply: let him consult him in a better way in the forum of penitence, whereby he may know to dismiss him a place that is dangerous. But if he will not [sc. be consulted in penitence], let the abbot not attempt to be God, but let him dismiss hidden failings to the correction of God that, according to justice, cannot be corrected by himself.

124. To the last argument [n.62] I say that that chapter is not expressly speaking of him who knows through confession that someone is excommunicated, not even by way of a secret committed to him; but he knows it privately, that is, he thus knows what the community does not know, or what he believes the community does not know, and knowing thus in private he must avoid him in private. And no wonder, because he is not in debt to the other for it as it is secret [sc. he has no debt to associate with him in secret].

125. But if he knew through the form of confession only, what should he do?

I reply as to the third argument [nn.113-116], that if he can avoid him in another way than through an avoidance that betrays his excommunication, he must avoid him; but if not he should not only not avoid him, but rather is it not licit for him to avoid him. For avoidance of someone excommunicated is by ecclesiastical positive right only; he is bound not to betray him by the law of nature and by ecclesiastical and divine positive right. And when precepts seem contrary, that which is superior is more obligatory and is therefore to be kept more firmly. Nor by keeping it and omitting the other does he sin, because no one is in perplexity because of divine law and ecclesiastical law.⁶⁷

⁶⁷ Natural law precedes divine law and ecclesiastical law, since divine is revealed on the basis of nature and ecclesiastical is ordained by the Church with authority from divine law. In case of conflict, then, there is no

Twenty Second Distinction

Single Question

Whether Sins Dismissed through Penitence Return the Same in Number in the Recidivist who Backslides

1. “And with many authorities.” [Lombard, *Sent.* IV d.22 ch.1 n.1].

2. The twenty second distinction. About this distinction I ask a single question: whether sins dismissed through penitence return in the recidivist the same in number.

3. It seems that they do:

Augustine *Against the Donatists* 1 ch.12 n.20 [Lombard, *Sent.* IV d.22 ch.1 n.7], “That dismissed sins return where fraternal charity is not is very openly taught by the Lord in the Gospel, in the case of the servant from whom his lord sought back the debt that was dismissed, because the servant did not wish to dismiss his fellow servant’s debt,” *Matthew* 18.32-34. And on this authority of Christ are founded all the statements of the doctors who say that sins return, many of whose authorities are put in the text [Lombard, *ibid.*, nn.2-7].

4. Again, *James* 2.10, “He who offends in one thing is made guilty of all.”

5. Again, if one who is contrite about sin afterwards despises confession, then either the same sin returns, and so the proposed conclusion is obtained, or it does not, and thus it will be dismissed without the second and third parts of penitence [d.16 q.1, nn.9-15], which is unacceptable.

6. Again, a shadow can return the same in number, because a privation is only numbered from the numbering of the subject or from the numbering of the positive habit it is opposed to; but a shadow, which follows light, has the same subject as the preceding shadow, and it is the privation of the same light in number, because the same light would remain in number if the shadow were not present; therefore in the same way a sin, which is a sort of spiritual shadow in the mind, can return the same in number.

7. To the contrary:

Something successive does not return the same in number; sin is of this sort; therefore etc. Proof of the minor, because then contradictories could be true at the same time; for let one contradictory be true at this instant; if this instant returns afterwards the same in number in the recidivist, it will be possible for the other contradictory to be true.⁶⁸

8. Again, sin is not in anyone save through some act of the sinner; but the act does not return the same in number in a recidivist.

I. To the Question

9. In this question one must first see if it be possible by the absolute power of God for the same sin to return the same in number; second if by the ordained power of God it

perplexity which to obey, because natural law takes precedence over divine law and divine law takes precedence over ecclesiastical law.

⁶⁸ Successive things are things that follow each other, so if the same successive thing returns it will precede and follow itself, which is contradictory.

can in any way return the same in number; third, how in fact it can be said to return in the recidivist.

A. Whether it be Possible by the Absolute Power of God for the Same Sin in Number to Return

1. Opinion of Others

10. About the first it is said [Richard of Middleton, *Sent.* IV d.22 princ. 1 q.1] that it is not possible, because “nothing can return the same in number save by divine power; but sin cannot by the power of God return as to guilt the same in number, because, according to Augustine 83 *Questions* 83 q.3, ‘No one through God’s authorship becomes worse’.”

2. Rejection of the Opinion

11. Against this: a lie, as was said in d.14 q.1 nn.17, 30, 34, can be understood, in relation to the issue at hand, in two ways, when speaking of actual sin, of course: in one way the actual disorder, in the other way the obligation to penalty following the act. The first is called ‘fault in act’, the second ‘guilt following from the fault’. Now the wrongness that properly is of a nature to be in the act does not properly remain after the act: first because a privation of a nature to be in a proper and determinate subject does not properly remain without that subject; second because then opposites could exist at the same time. For if some disorder proper to the fault of fraternal hatred remained after the act, and enjoyment of the same brother were to follow later, opposite faults would exist at the same time, because immoderate hatred and immoderate enjoyment of the same person would remain. By this fact, then, is what was said there true [*ibid.* n.34], that after an act of sin passes away nothing besides habitual injustice, that is, lack of grace, remains in the soul save the proper obligation to the penalty corresponding to the actual sin.

12. From this follows that the aforesaid reason [n.10] does not prove the point at issue, because if it be speaking of the disorder or wrongness that is in the actual fault, it is doubtful whether it proves that that cannot return; but the question in the point at issue is not about that but about the obligation to penalty.

13. And the proof drawn from Augustine [n.10] is not valid, because although a man through God’s authorship not become worse with the evil of fault, yet he can become bad with the evil of penalty and be much more obligated to penalty, since no one is justly obligated to a penalty save by act of God’s will.

14. Again, God can obligate this person at time *b* to the same penalty that he obligates him to at time *a*; therefore this person also can be obligated to the same penalty and consequently have the same guilt (and I call *a* and *b* instants between which succeeds an intermediate time in which he is not thus obligated). The proof of the antecedent is that my will too can want this, namely to want first to order this person to a penalty and second to want not to order him to a penalty under this condition, namely if he not offend again; and if he do offend again, to want from that point to order him to the same penalty.

15. If you say that my will in this is not just and consequently the like cannot belong to the divine will – on the contrary, Gratian *Decretum* p.2 cause 12 q.2 ch.58, “he

who has been set free can again, because of ingratitude, be justly subjected justly to the penalty of servitude;” therefore similarly in the issue at hand.

16. If it be said that this reasoning does not prove that the same obligation in number returns to the same penalty in number, although an obligation to the same penalty in number return (for these are diverse: ‘obligation to the same penalty’ and ‘the same obligation to the same penalty’; and there is confirmation, because God’s volition to inflict a penalty on this person at time *a* and time *b* is not the same volition in idea, although it be the same volition in reality, for a divine volition is different in idea according to diversity of objects) – on the contrary: if he not be penitent in the intermediate time, not only would an obligation remain to the penalty but also the same obligation; but whatever God can do concerning a creature while some continuation remains that is no part of what is willed, that can he do with the continuation removed, because it is not anything of the essence of what is willed; therefore etc.

3. Scotus’ own Response

17. Thus therefore can it be said as concerns this article that, whether in a recidivist or someone who is not a recidivist (because the divine act does not depend on an extrinsic sin of the recidivist), God can of his absolute power bring back an obligation of him to the same penalty as before, and even to the same obligation. And so in the same way in which a sin remains after the act (because only the obligation to a penalty remains) can the same sin in number return, by the absolute power of God, not only in the recidivist but in the non-recidivist.

B. Whether by the Ordained Power of God the Same Sin in Number could in Any Way

Return

1. Response

18. About the second article [n.9] I say that God has disposed that the sins of the penitent are covered over after penitence, that is, that, according to Augustine expounding *Psalm 31.1*, “Blessed are they whose iniquities are forgiven etc.” [*Expositions of Psalms* ps.31 exposition 2 n.9], they are seen no more for vengeance and, according to *Nahum 1.9*, “God will not pass judgment on it twice.” And therefore, by the ordained power of God, the same obligation cannot return, nor return to the same penalty, after it has been extinguished. And this is what is contained in Gratian, *Decretum* p.2 cause 33 q.3 d.4 ch.24, “The divine clemency does not suffer dismissed sins to return for vengeance anymore.”

2. Objection and its Solution

19. To the contrary:

Good works made dead by sin revive afterwards in him who rises, as [Ps.]Augustine says [*On True and False Penance* ch.14 n.29], and it is in the text [Lombard, *Sent. IV* d.15 ch.6 n.3], “It is a pious thing to believe that, when he has by the grace of God destroyed in man prior evils, he will also reward goods, so too, when he has destroyed what he finds not to be his own, he loves the good that he has planted in him.”

20. Again, evils are related to punishment as goods are to reward; but goods previously done come alive again for reward; therefore, evils too return for punishment.

21. It could in one way be said [sc. in reply to n.19] that this is superabundant divine mercy, that good things always live in his acceptation (meritorious goods, I say) and a reward would always have to be returned for them unless, because of a new fault, there were an indisposition in the receiver. But evils are totally extinguished such that neither in themselves, nor in the divine understanding or will, do they remain ordained for vengeance. And therefore Augustine, in response to a certain objection by infidels who prove that God does not always want to dismiss sins ("for they say that then God is an inciter of evil and that they to whom he always gives grace always please him"), replies [*On True and False Penance* ch.5 n.11]: "It is agreed that sins much displease him who is always at the ready to destroy them; for if he love them, he would not thus destroy them;" and it is in Gratian, *Decretum* [p.2 cause 33 q. 3; Lombard, *Sent.* IV d.14 ch.5 n.2].

22. And, according to this way, an example from the jurists would be good for the purpose in hand, that some right remains for someone for whom, because of some impediment, action does not remain, or does not belong. Thus in the case of someone who possesses good merits in the divine acceptation, but ones deadened by mortal sin, there remains the whole right that corresponds, for eternal life, to those merits. But the action of them does not remain as long as he is an enemy; and if he is always an enemy, the action ceases permanently. But when enmity contracted by a new mortal sin ceases, a new right does not return, but action according to the old right is due to him. And in the case of remitted evil the right does not remain nor the action, because God does not have the right of revenge over remitted sin; for penitence has so perfectly covered his sin and remitted it that no action remain to God for taking vengeance.

23. Although this be said well in commendation of the excellent mercy of God, it can yet in some way be reduced to justice, in this way: sin is not remitted unless at least the debt for eternal penalty is commuted into debt for temporal penalty; and when the commutation has been done, never is the guilt as a rule remitted unless the temporal penalty is in itself paid or in an equivalent penalty. And consequently, after mortal sin has first been remitted in itself and its penalty paid, nothing of right remains afterwards whereby any penalty for the sin is to be required from the penitent. But after merit worthy of eternal life, never is this worth for eternal good commuted, according to justice, into some temporal good; therefore never does that right expire until the eternal good is paid. But it is not paid to the wayfarer while he is wayfarer. Therefore the right always remains, though extinct through mortal sin, because the carrying out of his right is not then due to him.

24. The cases, then, of reward for dead merits and of the coming back of sins remitted are not alike, not only because of divine mercy (which is indeed true), but also because of the justice that commutes the eternal there to the temporal. But not so here [sc. the case of dead merits].

25. The answer to the second [n.20] is plain from the same point, that evils do not have the like relationship in this respect to punishment that goods have to reward, because evils can be punished temporally and sufficiently (if the eternal penalty have been commuted into a temporal one), but good merits cannot be rewarded sufficiently by such commutation, nor rewarded consequently unless the eternal reward itself be conferred on

them, which never happens to a wayfarer. And therefore his right always remains safe for the glory that he has acquired through those merits.

3. Objection to the Last Statement and its Solution

26. Against this [n.25]: in that case everyone who rises from mortal sin would rise in greater grace than the grace from which he fell, because he would rise in all the now revived goods that he had before; and, besides this, in the act of penitence through which he rises and which he adds to the past ones; and so he would rise in greater grace. But this is unacceptable: first because not everyone who falls always falls more seriously than he fell before, nor does he therefore rise, when he rises, more graced than he was before; second because the first grace can be greater or lesser, and consequently can be least; but the first grace is acquired through penitence; therefore it is possible that sometimes the grace recovered through penitence is the least.

27. To this I say that to have more merits in divine acceptation (merits kept in their order to the reward that is to be rendered for them) is not the same as to have greater grace intensively. For universally, to every merit there corresponds and is due not only some accidental reward but some essential reward. The fact is plain, because if someone had this merit alone [sc. first grace through penitence, n.26], without any other merit, he would be beatified not precisely in the degree in which, without merits, he would be beatified on account of grace alone (as a baptized child is) – for the grace of anyone who has his own merit exceeds the glory of such a child. Therefore, every merit, following other merits already possessed, requires, corresponding to it, its proper essential degree of glory; and yet grace is not at once increased by any merit, nor is he who has more merits always in greater grace.

28. Although therefore grace alone suffice for some glory, yet to merits there corresponds some determinate degree, at least, of glory, though to a greater grace without merits there correspond a greater glory than to a lesser grace. However, in every person the same there is put a merit of grace that is added on, although by it grace is not immediately made more intense. However there does correspond to it a degree of glory beyond the degree that corresponds precisely to the grace.

29. Through this I say to the argument [n.26] that he who rises has more merits in the acceptation of God than when he fell, and consequently, in this respect, he is ordained to a greater glory; but it is not necessary that he rise in greater grace, because a greater or lesser grace is given then to him according to his disposition to detest intensely or weakly the sin he committed.

4. A Further Objection and its Solution

30. But on the contrary [to n.29]:

Then he would carry back an advantage from his fall, since he rises more worthy of reward in acceptation.

31. Besides, the response given [n.29] seems to include things repugnant to each other; because if he is worthy of a greater glory when he rises than when he fell, and he fell from a great grace whereby he was worthy of a great glory, then he does not rise in a little grace, because that single merit, which by rising he adds on, would not add as much

glory as was the glory taken away by the deficiency of second grace (or its being lesser with respect to first grace); therefore etc.⁶⁹

32. To the first [n.30] I say that he does not obtain an advantage but a great disadvantage, not only because he sinned, but because (as to the issue at hand) the whole time he remained in sin is lost to him, and in that time he could have multiplied merits, had he then remained in grace.

33. To the second [n.31] I say that if one removes what in glory corresponds to merits (and let it be called *b*) from what in it corresponds to grace (and let it be called *a*), perhaps *a* does exceed *b*; and when he rises, because all his prior merits live in God's acceptation, the right and dignity for the whole of *b* returns; but the right for *a* does not return to him, if the second grace is less than the first; therefore the merits live again, but the prior grace does not live again.

34. And this is sufficiently consonant with justice, because the prior grace was a gift of God only, but the merits were in some way the works of man; and therefore are they always preserved for him in divine acceptation; but the grace is not so preserved for him that he should, because he had it, be always equally ordered to a reward on account of it – but only if he now has it.

35. This way, by holding that the essential degree of glory corresponds to merit [n.34], is consonant with Scripture, which in many places asserts this sentence of divine justice, that it "renders to each man according to his works" [*Psalm 61.12, Romans 2.6*]; but nowhere in Scripture does one get that he renders to each according to what he has. And it is consonant with the observance of divine Law, because it is useful to do continually, as far as possible, meritorious works according to the Law, though the works are weak to such degree that through them grace is not at once increased; because a determinate degree of glory corresponds to individuals in God's acceptation.⁷⁰

36. Nor is it as expedient to preserve grace as it is to do a weak work that grace is not increased by, because although he who thus weakly acts not have greater grace through his work than he who sleeps (in whom grace is preserved without such work), yet he does not labor in vain, nor does he exceed in nothing him who slept; rather by the fact that he worked he is now worthy of some eternal good which the former is not worthy of.

5. Two Corollaries

37. From these points follow two corollaries:

One is that there is someone, worthy of greater glory (speaking of what in glory corresponds to merits, and about worth not proximately but remotely, namely according to right, but suspended right), who is damned, and there is another, worthy of much less glory, who in this way is saved. But this is for the reason that this other is worthy in an accessible way, because he now has right that is unsuspended. He is also worthy of the

⁶⁹ It was argued in n.29 that someone who rises from sin can rise with greater merits and for a greater glory than when he fell, even though the grace he receives in rising is less than the grace he first had when he fell. The objection is that if he had great grace before, the merit he gains in rising will not add as much glory as was taken away by the loss of the first grace. So if he rises to greater glory, the difference cannot be in the merits he gains but in the grace he is given, and that grace cannot be little but must be more than he had before, if he rises now to a greater glory than before.

⁷⁰ That is (as n.36 makes immediately clear) the works, though weak, are accepted by God for glory if not immediately for increase of grace.

other element in glory corresponding to grace, of which he who is damned is not worthy; and to no one is what corresponds to merits given without what corresponds to grace, but conversely.

38. Also, if what corresponds to merit is of the same idea as what corresponds to grace, and if what corresponds to merit is by every merit increased in divine acceptation, then to completed merits corresponds as much glory as what corresponds to grace. Since, therefore, he who has grace in a determinate degree would be saved, and he who has all the merits, but dead merits, would be damned, then he who is worthy, but with remote and suspended worth (and is thus worthy of much greater glory), will be damned; and he who is worthy with an accessible worth of much lesser glory will be saved. And it is no wonder that to an enemy, while he is an enemy, all past goods whatever are not sufficient for obtaining reward.

39. The second corollary is that the merits, to which a great degree of glory corresponds, while they are dead, cannot merit the least grace – otherwise he who had fallen from many merits would already have merited to rise from his fall through the first grace that, because of those merits, was to be conferred on him. And yet I do not believe that the dead merits have altogether no effect in divine acceptation for giving first grace to him who has lapsed; because although, in strict justice, this enemy of God is not worthy with worth accessible to any grace and glory, yet the excellent mercy of God, because of that person's preceding though now dead merits, more quickly gives him grace for rising up again.

40. Hence, just as I believe that a more perfect man falls, because of his greater ingratitude, more gravely, so I believe that, other things being equal, he rises again more quickly because of the kindness of God, who in some way accepts his past merits for this purpose. Hence, I heard one time of a man, before very perfect and afterwards fallen very deep, who, although he would, because of his evil deeds, have to be adjudged for death, was most mercifully visited, and suddenly the most perfect penitence was breathed into him. This should well attract anyone to act meritoriously as much as he can always, because whether he is going to remain or whether he is going to fall, [his past merits] will not be totally forgotten before God.

C. How in Fact the Same Sin in Number can be Said to Return in the Recidivist

1. Response

41. About the third main article [n.9] I say that sin dismissed returns as a circumstance worsening the sin by which the sinner fell back.

42. And this in two ways:

First, because the more someone receives from another a benefit that is more undue to him, the more is he bound to that other by the law of gratitude – even if the benefit received be less undue, and consequently more if the benefit received be equally undue. But to someone existing in sin God owes nothing save a penalty; therefore, if God confer grace on him, this will be a gift most gratuitously and liberally conferred, and especially if the grace is equal to the grace of the innocent. Therefore, by the law of gratitude he is, because of this freely conferred gift, especially obligated to God – and consequently, when offending afterwards against him, he sins, because of the ingratitude, more gravely.

43. Second, because the more someone is bound to something by more obligations, the more, if he transgresses, does he sin more gravely. But a penitent, as often as he is worthily penitent, obligates himself, at least in desire, to not committing sin in the future, because without such purpose the penitence is not worthy; and besides this, he is constrained to not committing sin by the same law as that by which the innocent is constrained. Therefore, if he sins afterwards, he transgresses a double law obligating him to not committing transgression, namely both the general one [sc. not to sin] and this special one about keeping a promise [sc. the promise made in penitence], which obligates most of all as to a promise made to God, and as to something that pertains to the honor of God.

2. Objections and their Solution

44. On the contrary:

A sin is not made worse by that by which, when it does not exist, nay when its opposite exists, the sin is as equally or more grave. If this person had not been penitent before, nay had always been innocent, and if now he sin, he would sin more gravely than he sins now; therefore etc. [sc. therefore a penitent does not (contrary to n.43) sin more because he sins after penitence]. Proof of the minor, because he who falls from a state of innocence sins more gravely than he who falls from a state of penitence, both because he for whom God has preserved innocence receives a greater benefit than he to whom God conceded penitence after sin, and because the innocent has less occasion for falling.

45. Again, when one falls from penitence one does not have to sin necessarily with two sins at the same time; therefore it is possible to sin with a single sin only; but by that one sin one could, by falling before from innocence, have sinned as equally gravely – as is plain by comparing it to any intensity of malice that belongs to sin,⁷¹ therefore etc.

46. [To the first] – As to the first [n.44]: I concede that to preserve innocence is a simply greater divine benefit than to allow penitence after sin. Hence God conferred a greater benefit on his Mother than on Mary Magdalene. Hence it is a singular glory and ornament in the blessed never to have fallen into sin.

47. And then to the argument: I deny the major, because it is possible for some sin to have now one circumstance making it worse and now another, and the one that makes it worse there can be graver than the one that makes it worse here; and these two circumstances can be repugnant to each other. And so here, the fact that penitence precedes makes sin worse, because it bestows ingratitude on it.

48. Likewise, to fall from innocence, because of the ingratitude, makes sin worse, and innocence and penitence are in a way repugnant; but to fall simply from innocence makes sin worse more.

49. But on the contrary is the verse of *Luke* 7.42-43: when about two debtors, one of whom the creditor forgave more to and the other less to, Christ asked Simon the question who would love the creditor more, Simon replied, “I suppose he to whom he gave more.” And the Lord approved this and said, “You have judged rightly.” But God

⁷¹ A sin from a state of penitence could be as evil as a sin from a state of innocence as regard the intensity of the malice it involves. Therefore again (contrary to n.43) a sin from a state of penance need not be worse than a sin from a state of innocence.

gives nothing to the innocent in this way, and to the sinner he gives many things; therefore, a sinner is more bound to God, wherefore he is more ungrateful simply when he falls back.

50. I reply: 'to give' can be understood absolutely, as it is an act of will freely communicating something, or as in 'to condone' or 'to remit', the way it is taken when it is said 'he for-gave sins'. In the first way it is true that he to whom more is given is more bound to the giver, and in this way I say that God gave a greater gift to the innocent than to him for whom he remitted sin. In the second way, God gives more to the penitent than to the innocent, because the innocent does not have what may in this way be 'for-given' him. And if the major then is taken, namely that 'he is bound to love more who has been given, that is, remitted more', it is true that, when comparing the two, less is given to one of them and more to the other, and this if the only benefit given were only what is meant by 'to remit'.

51. But there is no one to whom God for-gives few things (because he has committed few things) without some other gift being given to the same person, a gift greater than 'to for-give' (that is, to remit) more things, namely to preserve him from other things into which he could or would have fallen if he had not been preserved by God.

52. This agrees with the gloss of Augustine on *Luke 7.47* [*Sermons on Scripture*, Sermo 99 ch.6 n.6], "things committed and things not committed are for-given," because "there is no one who commits something without someone else being able, unless he were preserved, to commit the same thing." Therefore he for whom they are dismissed is bound to love more, supply, 'by reason of the remission'. But the other is bound to love for another reason, that he did not have things that needed to be dismissed, which was through divine preservation. And this reason requires a simply greater gratitude.

53. An example of this: if someone from his liberality concedes to someone all his property to use at will, but to another concedes some things as a loan and later, when he must repay them, remits them for him – who will love him more? I say that the first will, because he received a greater benefit, and yet more is remitted to the other. But the fact that the first has nothing needing to be dismissed for him, this is by the favor of him who freely conceded to him all his property.

54. Hence the proposition that 'he for whom more is dismissed loves more the forgiver' is only simply true of the forgiver by whose favor it is not the case that the one is not bound to as many things as the other is.

55. [To the second]: As to the second [n.45] I say that it is possible for a recidivist to sin with many sins, or as it were with many sins, if he deliberately act against the common law and against the law of gratitude and against the law of promises. But commonly the sin is not done in this way, because a sinner commonly desires only delight (though in disordered fashion), and he does not will that so many prohibitions be annexed to the delight. And to every sin is in this way conjoined disobedience and contempt and hatred of God and ingratitude and the like – not that the sinner have then an elicited act pertaining to each one of these, but he does implicitly insofar as he wills something to which all these are concomitant. I concede, therefore, that it is possible for a recidivist to sin with a single sin.

56. And when you infer 'therefore he could have sinned equally gravely with that one sin when he fell from innocence' – I concede it as far as concerns this part of the circumstance, namely of ingratitude and multiple obligation; yet he would have more

gravely sinned then as concerns another circumstance, that he is more ungrateful in falling from innocence than in falling from penitence.

57. But on the contrary: suppose that he was penitent ten times, and on each occasion about ten mortal sins; after the tenth penitence he falls away sinning with as much lust as he sinned with in the first sin; then this sin will be one hundred times more grave than the first sin, because he is bound, by reason of each dismissed sin, not to fall, and so by reason of any of them there is a special ingratitude in falling; and he is bound not to sin by reason of any penitence, in which he promised not to sin.

58. I reply: no new fault is thus grave by some circumstance respecting a preceding penitence, because the circumstance may equal the gravity of the sin in itself or in its malice, and not perhaps in a hundredth part. Yet I concede that this circumstance of ingratitude and promise makes the sin worse – and the graver the more the good first conferred on him was not due (which is regularly the case of him who had more gravely sinned), and the more he promised many times (which is regularly the case of him who repented many times).

3. A First Doubt and its Solution

59. But what is simply graver: to fall looking back to a greater benefit, or to something bestowed more undue, or to more promises about not falling?

60. I reply: absolutely is the precept of the law of nature pertaining to gratitude more binding than is a new obligation contracted through one's own promise, unless perhaps the principle or precept 'keep promises' is more obligating than the precept 'be grateful to a benefactor according to his rank in giving benefit'.

4. A Second Doubt and its Solution

61. There still remains a doubt in this article: whether it is necessary in particular to confess preceding sins as aggravating circumstances?

62. I reply that although this be licit and perhaps useful, yet it does not seem necessary to confess them in particular, because insofar as they make things worse, they can be sufficiently expressed in confession without expressing the sins in particular previously dismissed, namely, by saying: 'I have repented elsewhere of great and many sins and believe God has remitted them for me; and for that reason was I in now sinning more ungrateful'.

II. To the Initial Arguments

63. To the initial arguments:

As to the first [n.3], it is plain that the parable principally tends toward this, that the same penitence is demanded of the servant who did not want to dismiss his fellow servant's debts as would have been exacted of him because of his main debt. For what is said there to him [*Matthew 18.30, 34*], send him to prison until he pay "the whole debt," I understand relative to the issue at hand, that he would only pay the whole debt in paying the debt of damnation for it, by being sent to the prison of the damned; and so, to the issue at hand, he who falls back again is adjudged for the same penalty of damnation that he

would have had because of his prior and previously dismissed sins – and a penalty equal as to duration because it is ‘until he pay back etc.’ But it does not follow that he would have an equal penalty as to intensity.

64. And so, one should say to all the authorities of the saints [n.3] founded on this parable of the Savior, that ‘sins return’, that is, that the obligation to damnation returns, and a graver obligation because of the re-sending of the dismissed sins.

65. To the second [n.4]: in this way is the authority of Blessed James to be understood, namely as to damnation, which is the general penalty for all mortal sins, “he is made guilty of all.” Or in another way (and it returns to the same) it is understood as to the turning away from the ultimate end, which turning away is common to every mortal sin. But ‘he is made guilty of all’ is not to be understood as to the special gravity of individual sins and not in any way as to grave sins the same in number or species.

66. To the third [n.5]:

In one way can it be said that if he who was contrite before despises confession later, he sins with a new mortal sin in that contempt; and yet the fault that was dismissed through contrition does not return, either as to the malice or as to the guilt. But there only always remains the temporal penalty due to it, though the penalty of damnation be due to a new mortal sin.

67. In another way it could be said that, when complete penitence is obtained (understand ‘complete’ as to the three parts of penitence, namely contrition, confession, and satisfaction [d.16 nn.18-24]), then the penalty of damnation is commuted into temporal penalty; but not so as to a sin for which contrition is had without the other two parts of penitence.

68. But the first response [n.66] is more acceptable, because sin is simply deleted in contrition, so that only the obligation to temporal penalty remains there; but if afterwards contempt of confession or of satisfaction follows, it is a new mortal sin, and made worse because of the earlier fault that in contrition was dismissed.

69. To the fourth [n.6] I say that the same shadow in number cannot return, at any rate by nature; because there cannot be the same negation, as neither the same affirmation, when an interruption is posited on this side and on that.

70. As to the proof [n.6], I say that unity of subject and of opposed habit is not sufficient for unity of privation, but unity of its continuation in the subject is required, in the way in which it can have being in a subject. This is shown by a likeness, that for unity of negation unity of affirmation does not suffice, for ‘non-Socrates’, which is the negation of one affirmation in number, can be not only many in number but be in many things diverse in genus and species, and be as many ‘beings’ as there are entities that are not Socrates. So too a privation can be a privation of the same form and yet not be the same. A privation can also be multiplied in the same receptive subject if there is an interruption, just as also the habit (of which the privation is the privation) would be multiplied if it were with interruption in the subject. For to repair something numerically the same, whether positive or privative or negative (as will be said in the material about resurrection [Ord. IV d.43 q.3 n.22, q.5 nn.4-6]), belongs to infinite power alone, namely God.

Twenty Third Distinction

Single Question

Whether Extreme Unction is a Sacrament of the New Law

1. “Besides what has been said before” [Lombard, *Sent.* IV d.23 ch.1 n.1].

2. Twenty third distinction. About this distinction I ask this question, which includes the whole matter of the distinction: whether extreme unction is a sacrament of the New Law.

3. That it is not:

All sacraments of the New Law are instituted by Christ, as was proved in *Ord.* IV d.1 nn.18-25. But this one seems to have been instituted by St. James in his canonical letter 5.14-15, “Is anyone sick among you? Let him bring in the priests and they will pray over him etc.”

4. Again, one sacrament has one matter and one form; but this sacrament, according as it is ministered by the Church, has many matters, because many anointings, and many forms, because many prayers conjoined to the anointings.

5. To the opposite is the Master in the text [Lombard, *Sent.* IV d.23 ch.3 n.1].

I. To the Question

6. Here there are two things to look at: first whether it is possible for there to be a sacrament of the New Law that is an efficacious sign of final remission of venial sins, and that it is fitting, and that it has been done; second, that extreme unction is such a sacrament and about the total idea of extreme unction.

A. About the Possibility, Fittingness, and Reality of this Sacrament

7. First as follows: it is possible for God to remit venial sins finally; therefore it is possible for him to institute an efficacious sign of this remission. The consequence is plain, because it is possible for man to institute a practical efficacious sign of any work of his; therefore much more forcefully is this possible for God; and thus is he able to institute any sensible sign whatever, whose institution does not include a contradiction, as a practical efficacious sign of this effect.

8. This is also fitting, namely that someone about to depart this life be finally absolved of venial sins, because when not remitted they would be an impediment to attaining glory, and they could fail to be remitted up to the point of departure, because a sinner is as it were continually sinning with such sins.

9. That this was also done is proved by the words of *James* 5.15, “If he is in sin, they will be remitted him.” He does not mean it about mortal sins because these are only remitted in baptism or penitence; therefore about venial sins.

10. Let the first conclusion be, therefore that, with respect to final remission of venial sins, it is fitting to be and it can be and it is a sacrament of the New Law.

B. About Extreme Unction and its Total Idea

11. About the second main conclusion [n.6], one must say that the sacrament is called 'extreme unction'.

12. Of which the following idea [or account] can be assigned: 'Extreme unction is the anointing of an ill, penitent man, on determinate parts of the body, with oil consecrated by a bishop, ministered by a priest who speaks at the same time certain words with due intention, efficaciously signifying by divine institution the final curing of venial sins'.

13. This idea appears good because it is not in itself false, from *Metaphysics* 5.29.1024b29-30, for no part of it is repugnant to another.

14. In explanation of the parts, then, first is set down what unction is, whose fittingness is that this sensible sign is congruent with the effect, namely interior anointing in the curing of man.

15. There is added 'of an ill man'. Therefore, it should not be conferred on a healthy man, nor on someone exposed in just any way to danger of death, because not on him who is threatened by death from danger of extrinsic violence (as of weapons, of drowning, and the like), nor on him who is ill in any way whatever but dangerously ill, so that exit from the state of wayfarer to the final destination probably threatens him.

16 As to the words 'of a penitent man' which is added, the thing is plain, because no one is worthily capable of this sacrament unless he is in grace. For this sacrament is not a remedy to acquire grace, because only baptism and penitence are sacraments for that purpose. And by this are excluded those who do not have the use of reason, as children, and who do not have matter for penitence, at any rate who do not have penitence about venial sins (as the perfectly innocent). Also, because those who do not have the use of reason cannot be penitent, the mad are excluded and the demented – and this unless they, by an express preceding will, be presumed to want it.

17. As to the addition of 'on determinate parts', these parts are the organs of the powers by whose acts venial sin is frequently committed, as the organs of the five senses and the powers of motion. And this is sometimes in respect of the same sense and generative power, as the organs of the seeing power (two eyes), the organs of the hearing power (two ears), the organs of the smelling power (nostrils), the organs of the touching power (hands). And in the aforesaid, as the organs are double, so are the anointings double. The organ of taste is the tongue, on which an anointing is not done (for avoiding abomination), but exteriorly on the mouth. For the organ of the generative power, unction is done at the loins, according to the remark of Gregory [*Homilies on the Gospels*, 1 hom.13 n.1] on *Luke* 12.35, "Let your loins be girded about etc.," who says, "For men [the vice of] luxury is in the loins." Because of the organ of progressive motion, which is the chief motive power, there is a double unction on the two feet as the organs ordained for that motion. The other motion by which sin is frequently done is the motion of the tongue, according to *James* 3.2-4, 15, "He who does not offend in word is a perfect man," and many other things he says there about the tongue. And against this is the anointing of the mouth so that it is a remedy against a double venial sin, just as the tongue cooperates in two works of nature (*On the Soul* 2.8.420b16-18), namely taste and speech. There are therefore eleven partial anointings; but those that are double are as it were single anointings, so that there are seven main anointings, namely on the five organs of sense, the sixth on the main organ of the power of progressive motion, the seventh on the main organ of the generative power.

18. There follows [in the definition] ‘with oil’. And it is not necessary that there is anything made of oil and balsam there, as there is in the matter of confirmation. Because confirmation is for the confirmation of the faith, and so in the one confirmed is required not only purity of conscience, signified by oil, but the odor of a good name, signified by balsam; but for him who is having to exit from the way of pilgrimage to the finish point, a pure conscience is enough. Now episcopal consecration is necessary so that the matter be suitable, because commonly in sacraments consisting in use only baptism does not require a specially consecrated matter, because Christ, by the touch of his most pure flesh (when he wanted to be baptized by John), consecrated all water, that is, dedicated it for this use [*Ord. IV d.7 n.20*].

19. As to what follows, ‘ministered by a priest’, it expresses the appropriate minister – not only who may licitly do it but who alone ministers this sacrament. Because if another attempt it he does nothing – just as if a non-priest were to attempt to confect [the Eucharist], he would do nothing. And the determination of this minister is got from *James 5.14*, “Let him bring in the priests.”

20. As to what follows, “who speaks at the same time certain words with due intention,” it belongs to the form of this sacrament and its simultaneity with the matter and the intention of the minister. The simultaneity and intention were sufficiently explained above, in the material on baptism [*Ord. IV d.6 nn.102-132*]. And this sixfold form for the seven main unctions is: “Through this holy anointing and the Lord’s most pious mercy, may he spare you whatever delinquency you have done by vice of the nostrils, the tongue, the touch, or the like.”

21. The idea set down is complete, because it contains the receptive subject, because it contains the ill penitent man, and this on the determinate parts before expressed; and the remote matter, namely the oil consecrated by the bishop, or the immediate anointing itself done with the oil; and this as to the principal seven organs and, counting the partial ones, eleven. Also, it contains the form, because it contains certain words, that is the seven prayers spoken by the priest with the seven main unctions. It contains the minister too, because it contains the priest.

22. And these points are collected from *James 5.14* (as has been said) and *Mark 6.13*

II. To the Initial Arguments

23. To the arguments.

To the first [n.3] I say that this sacrament was instituted by Christ, as was plain above in the aforesaid distinction and question [n.3, with reference]. And James was only the promulgator or herald of this sacrament instituted by Christ.

24. To the second [n.4] I say that this sacrament is one by unity of integrity but not one by unity of indivisibility, just as neither is its effect indivisibly one (because it is not remission of one venial sin) but one by unity of plenary remission of all venial sins, so that, with them all remitted, nothing remains holding him back from reception of beatitude.

Twenty Fourth Distinction

Single Question

Whether there are Seven Orders in the Church in the Way in which Order or Ordination is Posited to be a Sacrament

1. “And now to the consideration...” [Lombard, *Sent.* IV d.24 ch.1 n.1].

2. About the twenty fourth distinction I ask one question only: whether there are seven Orders in the Church, in the way in which Order or Ordination is posited to be a sacrament.

3. That there are not:

Because then in the Church there would be thirteen sacraments, because in addition to the sacrament of Order there are another six.

4. Again, any Order has a character proper to it; therefore, seven characters correspond to those seven Orders. The consequent is false, because either they would be of the same species, which is false (because several accidents of the same species cannot be together at once in the same subject, from *Metaphysics* 5.10.1018a1-b8), or they would be of a different species, and this seems unacceptable (because there is an essential greater and lesser nobility in species; an essential excellence in these characters would not seem capable of being assigned).

5. Again, in the primitive Church there seem to have been only two Orders, namely the priesthood and the diaconate, since we do not indeed in *Acts* read that there were then other Orders in the Church. Therefore, there are not now either, because the Church has not added further any Order after the time of the Apostles; for in this sacrament, as in the others, one must find an instituting of it by Christ.

6. Again, Dionysius, *Ecclesiastical Hierarchy* ch.5, has set down only three Orders: episcopacy, priesthood, and diaconate.

7. Again, Isidore *Etymologies* 7.12 sets down episcopacy to be an Order, and it is none of these seven; therefore there are more than seven.

8. The same is held about episcopacy in Gratian *Decretum* p.1 d.21 ch.1.

9. Again, ‘first tonsure’ seems to be a sacrament, because it is a sign of a sacred thing [*Ord.* IV d.1 n.178; Augustine’s definition], and because those who have the first tonsure enjoy clerical privilege, which seems to be proper to Order.

10. To the opposite is the Master in the text [Lombard, *Sent.* IV d.24 chs. 1-2].

I. To the Question

11. About this distinction there are four things to look at: first, what is an Order, according as we are now speaking of Order; second how many orders there in the Church in this way of speaking; third, if Order is a sacrament; and fourth how it is one.

A. What an Order is According as we are Now Speaking of Order

1. Opinion of Others

a. Statement of the Opinion

12. About the first point it is said [Bonaventure, *Sent.* IV d.24 p.1 a.2 q.2] that the sacrament of Order is “a spiritual power for carrying out some act in the ecclesiastical hierarchy;” and consequently, Orders in the Church would have to be distinguished according to order of diversity for such acts.

b. Rejection of the Opinion

13. On the contrary:

From this description it follows that episcopacy is an Order, which is against them.⁷² For it appears that episcopacy is a spiritual order for some special act in the Church, as for act of confirming and conferring Holy Orders – and not just a power for carrying out these acts fittingly, but for carrying them out simply, because a non-bishop, if he attempt to do these acts, does not, as it seem, do anything.

14. Second, it follows that under the priestly order there is not any Order in the Church, which is against everyone. Proof of the consequence: for spiritual power, speaking of power simply, is not had by a deacon or a sub-deacon, because although he could do something fittingly that a layman would not do fittingly, yet if a layman were to attempt to do it, he would simply do it.

15. Third, it follows that priesthood is two Orders, because a double spiritual power belongs to a priest, namely of confecting the body of Christ and of absolving the penitent, which are not one power because one seems to have existed before the other; for in the Cena the Lord conferred the first power, and the second only after the resurrection, *John* 20.22-23.

2. Scotus' own Opinion
a. About Order Taken Generally

16. One needs to understand, then, that order is in one way taken as Augustine describes it in *City of God* 19.13 n.1, that “order is the fitting disposition of equal and unequal things bestowing on each of them their place.” We commonly take order in this way when we say that there is an order of beings in the universe; and thus does Aristotle speak, *Metaphysics* 12.10.1075a16, “all things are in some ordered,” and he explains how. Also in this way is order in well-disposed polities taken, where the fitting disposition of equal and unequal persons in the polity is called the order of that polity, by which it is said to be ordered.

17. But in another way is the preeminent rank in such polity called order. And thus is a person in an eminent rank said to have order, in the way that ‘having a rank’ is said quasi-antonomastically, because those who are in a lower rank are not said to have a rank thus.

18. In this way there is fittingly in the Church, which is an ordered polity, an order according to this double acceptation. For according to the first acceptation is the whole Church ordered with the fitting disposition of equal and unequal persons each in their place. In the second way is a person who has an eminent rank in the Church said to have order. And although these two significations posit each other mutually (because when

⁷² Bonaventure held, along with others, that the episcopacy was not an order but an ‘eminence or dignity of order’, *ibid.* p.2 a.2 q.3 [n.12].

there is order in the first way in a polity there is eminent rank there and so order in the second way), yet this signification and that are not the same, as is plain enough. The way, then, that we are speaking here of order, order is taken here for the second signification, not for the first.

19. Further, an eminent rank in the Church is said to be in order to an eminent ecclesiastical act; not, to be sure, in this way, that rank is a power for carrying out the act (as the earlier rejected opinion said [n.12]), but that it be a rank disposing one fittingly or simply to carrying out that act in due way, so that order thus could, as we are here speaking of order, be called a preeminent rank in the Church disposing one to some preeminent act. And because the acts especially preeminent in the Church are acts respecting the sacraments, therefore can it more especially be said that order is a rank disposing one to some sacramental act.

b. About Order Taken Specifically

20. From this, as it were, general idea could inquiry be made into the more special idea of order, as we are here speaking of order; but on this point there is a certain controversy.

21. For those [Bonaventure, Ps-Isidorian Decretals, Ps.-Alcuin, Lombard, Albert the Great, Thomas Aquinas, Richard of Middleton] who posit that the priesthood is the simply first order, denying that episcopacy is an order, would, from the fact that the priesthood is a rank disposing one to the consecrating of the Eucharist as to the more excellent act agreeing to that rank (and the idea of all the inferior ranks ought to be in their order to the first rank) – these say that the fitting description of order would be that it is ‘a preeminent rank in the Church, disposing one by congruity to some act pertaining to the consecration or dispensation of the Eucharist’.

22. Others [Godfrey of Vendôme, William of Auxerre], who say that episcopacy is an order, because some rank belongs to it in the Church that does not belong to the priest, do not restrict the idea of order to the fact that it disposes one to an eminent act pertaining to the Eucharist, but in general that it is an eminent rank in the Church disposing one to carrying out some sacramental act. And in this way the power that episcopacy adds over priesthood has regard to some sacramental act, namely to confirm and to confer orders, which acts are proper to bishops.

B. How Many Orders there are in the Church in the Way that Order or Ordination is Posited to be a Sacrament

1. First Position of Others, Understood in Two ways

23. About the second article [n.11], those who rely on the words of Dionysius and Isidore (cited for the first side [nn.6-7]), and the canonists [e.g. Gratian, *Decretum* p.1 d.21 ch.1], say that the episcopacy is properly an order.

24. In favor of this seems to be the argument that, since a certain special power belongs to a bishop insofar as he is a bishop, it is either one of order, and then the conclusion is gained, or it is one of jurisdiction, and then it could be taken away by a superior – which seems unacceptable, because a consecration much lesser than a bishop’s cannot be taken away without the one who was once consecrated remaining always

consecrated. The proof is from the Gloss on Gregory IX *Decretals* III tit. 4 ch.9 [“Sacramental anointing is perpetual and cannot be lost, though the exercising of it may sometimes be suspended”].

25. This approach [n.23], comparing the episcopacy to the priesthood, could be held in a double way.

26. In one way as follows, because ‘rank’ can be called eminent either because of the universality of the acts that it has regard to, or because of the nobility of the act that it has regard to. And this distinction appears in other polities where many acts belong to someone and fewer to someone else, but a nobler one can belong to the latter (as a judge can pronounce sentence, which is a nobler act than many others that belong to a lower person). But he who has universality for acts has also the nobler act, because in the universality for acts is included the nobler act. And therefrom does it seem that the rank which includes and regards the universality of acts is simply superior to the one which regards precisely the noblest act. And thus would the episcopacy be called a simply superior and nobler order, because it has an order to all ecclesiastical acts, but the priesthood does not have an order to them all, though it does have an order to the noblest of them.

27. And then the argument of a certain doctor [Richard of Middleton, *Sent.* IV d.24 princ.5 q.2] against this conclusion [n.26], which is that “the one order does not depend on the other as concerns necessity for the sacrament, but if a non-priest were to be ordained a bishop, nothing would happen etc.,” proves rather the opposite, for by how much the order of the episcopacy more includes the priesthood and other lower ranks, by that much is it simply more perfect, because it more essentially regards the acts of the ranks it includes.

28. Holding to this conclusion [n.23], namely that the episcopacy is properly an order and different from the priesthood, it could yet be said that it would not be nobler, because although, by its including the priesthood and episcopacy, it is a more eminent rank (since it is for more acts than by the other rank alone), yet what the episcopacy precisely adds above the priesthood is not as excellent as is the priesthood. For acts as noble as belong through the priesthood to the priesthood do not belong to the episcopacy through what, above the priesthood, is added to it.

29. Nor would those [who hold this view] regard it as unacceptable that an imperfect order presuppose (and necessarily presuppose) that it receive a more perfect order when the more imperfect one is adds to ecclesiastical acts some universality – a universality that the one that is more perfect does not include, but only includes order to a more perfect act.

2. Another Position of Others

30. Others [William of Merton, *Questions on Sacraments*, tr.4 q.74; Thomas Aquinas, *Sent.* IV d.24 a.3 a.2; Richard of Middleton, *Sent.* IV d.24 princ.5 a.2] contradict the conclusion that these two ways hold to [nn.26-29], because they deny that episcopacy is an order properly speaking; and so neither do they posit it to be an order superior to the priesthood (as the first way says [nn.26-27]), nor inferior to it (as the second way says [nn.28-29]).

31. Nor do they say that a character is there imprinted.

32. But whether a character can be deleted by the Pope when he deposes a bishop, or cannot be deleted because of the consecration with which it is conferred, they dispute among themselves [*Ord. IV d.6 nn.201, 233-237*].

33. But the dispute seems empty when denying episcopacy to be an order; for any jurisdiction in the Church can by a superior either be suspended (so that if he attempt to do anything during the time of suspension, he does nothing), or totally taken away for all time.

3. Scotus' own Position

34. Whatever, at any rate, may be the case as to this controversy about episcopacy, the simply noblest act in the Church is the consecration of the Eucharist, and so the supreme or noblest rank (because of the nobility of the act for which it disposes) is the priesthood. And consequently, taking the description of order in this way, according to the description put in the first article [n.22] and to the distinction of order in the Church, there are only seven orders. Of these the first is the rank that disposes for consecration of the Eucharist, and it is the priesthood; the second rank, that disposes for the dispensation of the Eucharist (at least of the blood), is the diaconate; the third, that disposes for the offering of the Eucharistic matter to be consecrated, is the subdiaconate.

35. And the reason why these three are called orders is sufficiently plain, because they immediately dispose someone for an act or ministry about the Eucharist, or about presenting the matter of it.

36. Further, some ranks dispose for acts that are remotely related to the Eucharist: either for suitable disposition in the people, for adoring or receiving the Eucharist, or for removing impediment or unsuitable disposition. In the first way, a suitable disposition (pertaining to affection) is devotion, and for this devotion the acolyte attends by lighting the waxen candles. Another disposition, pertaining to understanding, is knowledge, and for this does the lector act. If the ranks dispose in the second way, namely by removing impediment or preventing the unworthy from coming near – then either unworthy men and to this pertains the office of gatekeeper, or demons and to this pertains the office of exorcist.

37. From these points it is plain that the first act of the deacon is not to read the Gospel, nor of the subdeacon to read the Epistle, but these are remote and less perfect acts; and the most perfect acts of them and proper to those orders are the acts that the one has immediately as to dispensing the Eucharist and the other as to offering its matter.

C. Whether Order is a Sacrament

38. About the third article [n.11] I say that, speaking properly of sacrament, order is not a sacrament, because every sacrament is a sensible sign, and order, as was said, is a certain spiritual rank. However, taking sacrament for an invisible sign, the way something is said to be ‘thing and sacrament’, it can in this way be called a sacrament, because it is a sign of the fitting execution of an act due to that rank, and also a sign of the act fitting that rank.

39. What then is the seventh sacrament? I say that it is ordination.

40. Whose description can be this: ‘Ordination is the instituting of someone in a preeminent rank of the Church, to which belongs some ministry as regard display of the Eucharist, carried out by a suitable minister speaking certain words and with due intention at the same time, representing with some visible sign the ranks of it, signifying by divine institution the preeminent grace whereby the ordained person may worthily carry out some ministry’.

41. And according to this universal idea of ordination can the special ideas of ordinations be proportionately taken, as for example the ordination of someone to the priesthood: ‘The instituting of him in a simply preeminent rank of the Church, disposing him who has it for consecrating the sacrament of the Eucharist, done by a bishop, speaking certain words with due intention’.

42. And if as to the parts of the universal description [n.40], and proportionally as to any particular description, you ask who the suitable minister is, I reply and say that the bishop and he alone is the minister in Holy Orders; but in the other non-sacred Orders, sometimes by commission some are ministers who have the privilege, as abbots.

43. But what words or what form?

I say that the words or the form that bishops have in episcopal books.

44. But in the priesthood it seems probable that there are two partial forms there, in one of which the power of confecting the Eucharist is conferred, in the other the power of absolving the penitent in penitential confession. And with these are conjoined two proper matters, that is, two visible signs: the matter of the first form is the handing over of the chalice and the paten with hosts: “Receive the power of celebrating etc.”; and of the second form the imposition of the bishop’s hands on the head, “Receive the Holy Spirit,” so that thus the bishop acts agreeably with the supreme bishop, Christ, who, as was said [n.15], conferred on the Apostles the power of confecting before that of absolving.

45. From these points is plain how there are seven ordinations, which are institutings in the case of orders; and the seven are said to be contained under the sacrament of order, or more properly under the sacrament of ordination, insofar as it is one sacrament.

D. How the Sacrament of Order is One

46. But now as to the fourth article [n.11], how the sacrament of order is one, I say that it is one by unity of proximate genus, as the moral virtues are said to be three according to genus: justice, fortitude, temperance. And in the first division of moral virtue these occur first; however, each of them is divided specifically into many, as was said in *Ord. III d.34 nn.54-80*.

47. But there is another unity between the orders, because there is a unity of order; for it is fitting to receive a lower order first before a higher one, nor yet is this order simply necessary such that, if it is omitted, nothing happens, as is plain in *Gregory IX, Decretals V tit.29 ch.1*, ‘About a cleric promoted by bounds’, where one gets that ‘what has been done is not to be repeated but what was passed over is to be cautiously supplied’. And consequently, it is not the case that, if a lower order has not been conferred first, nothing is done in the conferring of a higher order. But this unity of order is not that by which order or ordination is one sacrament, but is rather a prior unity, namely unity of genus [Scotus more fully in *Rep. IV A d.24 q.1 n.14*].

II. To the Initial Arguments

48. To the first main argument [n.3] I say that, in the primary division of sacraments into seven, order or ordination there is only one member, although it could be further divided into certain special ones contained under it. For that first division is not into the most specific species but into certain things contained more nearly under it.

49. As to the second [n.4] I concede that there are several characters, and it is more probable that they are of different species, as appears from the acts for which these ranks make disposition; and these ranks are either characters or have proper characters corresponding to them. And when argument [n.4] is made about the specific excellence, it can be conceded that they have such excellence in the same way that characters are beings. If they were also posited to be of the same species, the refutation (that then 'they would exist together') would not be probative. For that proposition is not true even of real relations; and as was said above, *Ord. IV d.6 nn.333-334*, it is not necessary to posit that a character is an absolute form.

50. To the third I say that in the primitive Church there were few believers, and therefore a few ministers were sufficient for dispensing the Eucharist to them, and so there was then no need for ministers to be instituted in the several ranks. But afterwards the faith increased and devotion to daily communion accompanied it; and then it was necessary to have many ministers for the individual ministries pertaining to the Eucharist. And then the Church instituted many ministers in the several ranks.

51. Nor yet were those orders newly instituted; indeed, the Master says in the text [*Sent. IV d.24 ch.1 nn.2-11*] that Christ exercised the acts of the several orders in himself, and also that they were anciently prefigured in the Mosaic Law (in certain ranks corresponding to them). But the orders anciently instituted were, after the number of the faithful was multiplied, then conferred on ministers, which orders did not need before to be conferred on certain persons, because the ministry of them before was not necessary.

52. The reason why now in the Church there are not determinate ministers in the several orders is because, although now the multitude of the faithful has multiplied, yet the happiness of devotion has changed; hence many scarcely want to communicate once in a year. And therefore there is not need now for there to be so many ministers involved in dispensing the Eucharist. And that is why the four non-holy orders are conferred together, so that no one is deputed to minister in the rank of the lower orders as if that order was proper to him and another order to another.

53. As to Isidore and Dionysius and the *Decretum* [nn.6-8], the thing is plain from what was said in the second article [n.30], for those who deny that episcopacy is an order expound that they [Isidore, Dionysius] take sacrament for a sacramental.

54. As to the final argument [n.9], I deny that the first tonsure is an order. And when you say it is a 'sign of a sacred thing', I say that it is not a practical sign effective of the sacramental thing, that is, of grace, in the way that a sacrament must be understood to be a sign of a sacred thing, as was said in *Ord. IV d.1 nn.179, 201, 206*. As to what is added there about clerical privilege, it is not valid because converted layman in Religion [sc. lay members of religious orders] enjoy clerical privilege, and the legislator could have given that privilege to a prince or to anyone simply a layman. The proposition therefore that the privilege is proper to the ordained is false.

Twenty Fifth Distinction

Question One

Whether Canonical Penalty Impedes Reception and Conferring of Orders

1. “It is wont to be asked if heretics etc.” [Lombard, Sent. IV d.25 ch.1 n.1].

2. About this twenty fifth distinction I ask two questions about those who receive orders: the first is whether canonical penalty impedes reception and conferring of orders.

3. That it does not:

If someone excommunicated or irregular attempt to confect, he does confect; therefore, by similarity, if an excommunicated or irregular bishop attempt to ordain or to do what the Church does, he does ordain; and if the recipient, being excommunicated or irregular, intend to be ordained, he is ordained. The consequence is plain by argument from similarity, because there seems to be similarity on this side and on that [sc. on the side of the ordaining bishop and of the ordained recipient]; and also by the argument *a minori*, because what does not prevent the execution of a nobler act does not seem to impede the execution of a less noble act.

4. Again, someone excommunicated or irregular is not so excluded from partaking of the other sacraments that he not receive them if he intend to receive them; therefore neither in the case of receiving orders. The consequence is plain by the argument from likeness. The antecedent is plain because someone irregular can receive the sacrament of penitence, otherwise salvation would be cut off from him.

5. Again, no canonical penalty excludes one more from some ecclesiastical rank or act than heresy does; but heresy does not so exclude, as is plain from Gratian, *Decretum* p.2 cause 1 q.1 ch.97.

6. To the opposite:

Gratian *ibid.* chs.108-110, “We altogether condemn simoniacs;” and later, “We decree that such receiving or conferring is invalid;” and, “Those who have knowingly permitted themselves to be consecrated, rather execrated, by simoniacs – we decree their consecration to be altogether invalid.”

7. Again, the Church can give the power of conferring orders (as is plain of consecrating a bishop); therefore the Church can take it away. Therefore the Church can inflict some tacit penalty on a bishop on account of which he would not be able to confer orders.

8. Again, the Church makes it illegitimate for certain persons to contract marriage, so that, if they attempt it, they do nothing. Therefore much more can the Church make a bishop illegitimate as to a spiritual act, such that if he attempt it he do nothing. The consequence is plain, because those things that are of positive right are said to be more subject to the Church than the things that are of natural and divine right; but any ordination of the Church through these dignities of the episcopacy and the like seems to belong to the positive right of the Church – at any rate it does not so much seem to be of the law of nature and the divine law as matrimony does.

I. To the Question

9. In this question one must first look at the canonical penalties that the question is asking about; second one must look at how, according to the canons, they exclude one from conferring or receiving orders.

A. About Canonical Penalties

1. About Canonical Penalty as it is here Understood

10. About the first [n.9]:

A canonical penalty, as we understand it in the matter at hand, is a penalty inflicted according to the canons, prohibiting or restraining the one punished from any ecclesiastical act that would otherwise be permitted to him (this last clause is added because for a layman it is no penalty that he not be able to confect the Eucharist, because this does not belong to him but to an ordained priest).

11. Now I said ‘according to the canons’ because whether a penalty be inflicted by a canon or by a judge and not by a canon, yet in order for it to be just it must be inflicted according to a canon.

12. And I said ‘prohibiting or restraining’ because the penalty we are now speaking of is understood either to constrain as a prohibition only or, if in any way to do more (which is discussed in the second article [nn.55-56]), that way is contained under ‘restrain’ or ‘constrain’.

2. About the Six Canonical Penalties

13. Now there are in specifically six canonical penalties of this sort, namely: deposition or degradation, infamy, irregularity, excommunication, interdict, suspension. About these in order: both about individual ones in themselves (and how they are incurred and by what remedy they are remitted), and by comparing them to each other as to seriousness and permanence.

a. About the First Penalty or about Deposition

14. The first, namely deposition, is the greatest, because it is the total removal from the clerical state. And if degradation be removal from every clerical rank, then deposition and degradation are the same thing. But if degradation is deposition only from a determinate rank, with however some other rank kept (as from the rank of the priesthood with some clerical rank remaining), then degradation is a penalty that is partial with respect to deposition.

15. But how is the one deposed removed from clerical state and rank? I reply: not because the character of order is taken from him, nor consequently the orders he received; but the license to execute the act of any order is taken from him, and he is also deprived of everything that belongs to the ordained. Hence such a one is handed over to secular care so that, as concerns ecclesiastical acts and the protection of ecclesiastical persons and as to forum, he is totally excluded from the number of ecclesiastical persons.

16. How is this penalty inflicted? I say that never by the law, but it has to be inflicted precisely by a judge. And the form according to which it has to be inflicted is

contained in Boniface VIII *Decretals Book Six*, V tit. 9 ch.2. Now the causes for which it is inflicted are enormous sins, as heresy, schism, revealing confession. About the first is Gregory IX *Decretals* V tit.7 ch.9, about the second Boniface VIII *ibid.*, tit.3 ch.1, about the third Gregory *ibid.*, tit.38 ch.12.

17. How is it remitted? I say only through complete restoration by him who is able to restore, who is posited to be the Pope alone, although someone legitimately deposed is not read to have been restored afterwards.

b. About the Second Penalty or about Infamy

18. The second penalty is infamy, which is the state of injured dignity concerning life and morals, as reputation is the state of uninjured dignity concerning life and morals.

19. And this injury is incurred in diverse ways.

Here one needs to know that being infamous and being defamed are not the same thing. He is defamed who is publicly accused of some crime. But someone is not infamous because of such imputation of crime, but either because of a public crime publicly committed (as that if he has committed perjury or publicly committed any other crime because of which the law determines someone to be infamous), or because he is judged infamous by a judge before whom his crime is proved, such that everyone infamous has been publicly noted of a crime that the law punishes with the penalty of infamy. But sometimes one is not convicted of this in a court, and then one is infamous only by law and not by a judge; sometimes one is convicted and punished with such penalty by a judge, and then one is infamous in both ways, both by law and by judge.

20. From this the second point, how infamy is contracted, is clear. For the first infamy is contracted by the imposition of a crime that makes infamous; the second is incurred by law or judge punishing such crime with such penalty.

21. But what is the cause because of which infamy is incurred in the second way? Gratian, *Decretum* p.2 cause 6 q.1 ch.2: "We say that all those are infamous whom the secular laws call infamous." Therefore, those secular laws that punish the crime of infamy are canonical laws, and those laws are contained in the *Digest of Justinian*, III tit.2, 'Of those who are noted for infamy'.

22. What is the remedy against this penalty? I say that against infamy in the first way, when someone is defamed [n.19], there is a canonical cleansing, from Gregory IX *Decretals* tit.34 ch.8, 'On Canonical Cleansing'. For the cleansing totally takes away the first infamy. Against infamy in the second or third way (which are as it were the same, though from diverse sources, law and judge) there is no remedy save complete restitution by him who can so restore it, *ibid.* tit.20 ch.54, 'On Witnesses', 'Testimony' ["He is turned away from testimony who has been convicted of or confessed a crime...; if he has not done penitence, let him be turned away even in a civil case"].

23. This penalty is graver, as to civil life, than deposition, unless deposition include it, because it is a prohibition against any legitimate act, even after penitence has been done, for such a person is base, Boniface VIII *Decretals Book Six* V tit. 42, "To the infamous the gates of dignity should not be open."

c. About the Third Penalty or about Irregularity

24. The third penalty is irregularity, and this is unfitness for receiving and carrying out the acts of Orders.

25. This is incurred frequently by law, though it can sometimes be inflicted by a judge according to the laws. And it is incurred by law from certain crimes and from certain non-crimes and from certain that can sometimes be crimes and sometimes non-crimes.

α. Irregularity arising from Crimes

26. From crimes there are four that pertain to orders or to their acts. One of these is simony, another is theft in an order, a third is ministry in an order one has not received, a fourth is stubbornness in not keeping ecclesiastical penalties.

27. Simony can be either in an order or in a benefice.

But if it is in an order and knowingly, namely such that the one ordained know that he was ordained simoniacally, only the Pope gives dispensation, Gregory IX, *Decretals* V tit.3 ch.27, as was argued for the opposite [n.6]. For from the fact that the legislator does not altogether invalidate their consecration, it belongs to the Pope alone to relax [the penalty]. But if the one ordained is ignorant with invincible ignorance, as that his father paid the price for his being ordained, he is not made irregular unless, after it has been made clear to him, he carry out an act of the order so received. Hence after the fact about the order thus received is clear to him, he is suspended from act of the order until he is set free from such suspension.

28. But a simoniac in a benefice is not as seriously punished. However from when it is clear to him that he obtained the benefice simoniacally he is bound to resign it, and for the whole time he holds it unjustly he is bound to restitution of everything that he took part of. This is proved in diverse chapters by Gregory IX, *Decretals* V tit.3 ch.24, 26, 44.

29. About theft in receiving an order, draw distinctions: because either he is prohibited by the excommunication that someone may not come to the order save from that episcopacy and who has first been legitimately examined and received; or because there is no such excommunication or prohibition. And in both cases he who inserts himself furtively is irregular, but in the first case he cannot be dispensed save by the Pope; in the second he can be dispensed by the bishop. The proof is from Gregory IX, *Decretals* V tit.30 chs.1-2, 'Of those who receive order furtively'.

30. About the third crime, that irregularity follows on it, is proved in Gregory IX, *Decretals* V tit.28 chs.1-2.

31. About the fourth there is *ibid.* tit.27 ch1.1-9, through the whole of it. And understand this with the greater excommunication, because as is contained there, ch.10, "although in a minor excommunication the celebrant sin gravely, yet he incurs the mark of no irregularity" – understand, even after he knew he was excommunicated.

For if he had invincible ignorance he would not be bound to keep away from the acts of order; nor would he, by exercising them, incur irregularity, as is contained in the gloss on Gregory IX, *Decretals* V tit.27 ch.9, namely if someone has excommunicated another by letter and wanted him to be excommunicated from the time of sealing the letter, he is not bound to hold himself to be excommunicated until the letter reaches him.

But if there not be invincible ignorance, nor incertitude in any way, as that by report or public rumor the penalty of excommunication has come to him, he is irregular,

although he is to be treated more mildly. The proof is Gregory IX, *Decretals* I tit.7 ch.2, tit.27 ch.5. So too if the penalty of interdict not be kept, as is contained in *ibid.* tit.31 ch.18, 'About the excesses of prelates and subordinates', yet the chapter could be given a good exposition; irregularity also follows him who does not keep the suspension, as is contained in Boniface VIII *Decretals Book Six* V tit.11 ch.1, tit.14 ch.4.

β. Irregularity arising from Non-Crimes

32. Irregularity also follows three non-crimes, as servitude, Gregory IX, *Decretals* I tit.18 chs.1-8, 'About not ordaining servants', the whole of it. Now the reason is that a servant is the possession of the lord, and therefore ought not to be taken from him against his will; and when he is ordained he is unfit for certain servile acts. But if he has in fact been ordained, while the lord does not know and is again not consenting, the servant ought to be returned to him; however the lord should not apply him to acts that are not becoming his order, but he must serve the lord in acts befitting his status.

33. Irregularity also follows illegitimacy, Gregory IX, *Decretals* I tit.17 chs.1-2. And the reason is plain, because the illegitimate are presumed to be imitators of their father's incontinence; they are also presumed to be ill compliant and badly educated. However, dispensation can easily enough be made for them; hence Benedict XI [d.1304] made dispensation easily enough for one such who without dispensation was ordained and was ministering in orders; I myself, for example, have seen the Bull of dispensation.⁷³

34. It also follows the third non-crime, namely an unsightly or major mutilation or infirmity, as is contained in Gratian, *Decretum*, p.1 d.55 ch.13, 'About not Ordaining the Disfigured in Body', about someone with a gouged eye, and Gregory IX, *Decretals* III tit.6 chs.1-6, 'About a Debilitated Cleric'. But if the mutilation is not disfiguring, and he himself was not at fault in the mutilation, he is not excluded, as is contained in Gratian, *Decretum*, p.1 d.55 chs.7-9, 'If anyone by doctors' and the two following chapters. But if he was at fault, as if he mutilated himself, as is contained *ibid.*, 'If anyone has cut off', dispensation is scarcely made for such a one. Hence Nicholas IV [d.1292] with great difficulty dispensed someone such, although he was a religious. The like must be said of an egregious or non-egregious illness.

γ. Irregularity from Two Other Sources, at Times with and at Times without Fault

35. Two others follow, that can sometimes be with fault, sometimes without fault, namely homicide and bigamy.

36. Under homicide is contained egregious active mutilation of another. And on this matter is Gregory IX, *Decretals* V tit.12 chs.1-9, 'On Voluntary and Involuntary Homicide', and Gratian, *Decretum*, p.1 d.55 ch.13, d.50 ch.4, 'I wonder', and this because of the horror of shed blood. Hence even David did the Lord not permit to build a house for his name, by the much blood shed, *II Kings* [*II Samuel*] 7.1-17.

37. But distinguish here between voluntary and involuntary. Voluntary homicide is deleted only through baptism, and then there is fitting reason [sc. to allow ordination] because the reason [sc. not to allow it] is deleted, since a man now become new through

⁷³ A possible reference to a dispensation given by Benedict XI in 1303, but the identification of the relevant Bull is not certain.

baptism is not further to be held as an object of horror. But if the homicide is simply involuntary, as when another runs on a person's sword, he is guilty in nothing; but if involuntary in a certain respect, as that he could not escape death unless he killed, he is irregular, Gratian, *Decretum*, p.1 d.50 chs.52-54.

38. But if it is accidental, and he was focused on something licit and used due care, he incurs no penalty; when the second of these conditions is not met, he does incur penalty.

39. As to bigamy, which does simply introduce irregularity, as will be said below in the material on marriage [*infra* d.33 nn.34-39], it is contained in Gregory IX, *Decretals* I tit.21 chs.1-7.

d. About the Fourth Penalty or about Excommunication

40. The fourth penalty is excommunication, about which there is what was said in distinction 19, the fifth article of the solution [dd.18-19 nn.67-80], and this as concerns the greater excommunication,^a which is excommunication simply – for indeed the lesser excommunication is only excommunication in a certain respect, because it excludes from the communion of the faithful in a certain respect, namely in the sacraments.

a. [Interpolation] The greater excommunication is exclusion of someone from the communion of the faithful – not indeed the bodily exclusion that happens in sequestration or incarceration or exclusion of that sort from others, but by excluding him through prohibiting him communicating with others and others with him.

41. Plain too is it from where it is incurred, because sometimes from the law sometimes from a judge. And indeed, it is sometimes possible to state the number from the law; nay, it was a small number when the *Decretals* were first compiled under Gregory IX [1234AD; from the *Prolegomena* to the *Collection of Decretals*]. But today who is sufficient to number them? And though the numbers are growing to infinity, with the growing movements of heads, it is not necessary to fill up whole pages about the matter.

42. However I say this, that it should not be inflicted by law or judge save for mortal sin, and not for any mortal sin but a grave one, a sin that stubbornness also accompanies; for as long as someone is ready to make satisfaction for fault and hears the Church, why is he to be regarded as a heathen or a publican? – since, according to Christ [Matthew 18.15-17], this penalty is inflicted as the ultimate one on him who does not wish to listen to the Church, who is finally stubborn.

43. Now it was stated above [dd.18-19 nn.66-68] who the minister of law is in inflicting this penalty; and, as for excommunicating simply, no one is suitable as minister save he to whom all the faithful are subject, and therefore no one else save as delegated with his authority.

44. How is excommunication relaxed?

I reply with an absolution given by him who did the excommunicating, if it is excommunication by a judge or by his superior.

45. But if it is by law, through absolution of him who established the law – and not this alone, as many say [Bonaventure, Thomas Aquinas, Richard of Middleton], but

through absolution by any priest when the legislator not reserve the absolution for himself. And they prove it [Richard of Middleton] through Gregory IX *Decretals* V tit. 29 ch.29.

46. But this proof is of little force, because the inference ‘he does not reserve it, therefore he conceded it’ does not hold when speaking of form of consequence according to laws, because ‘able to absolve’ falls under the rule “what is not conceded seems to be prohibited” [a juridical axiom or ‘brocard’ cited, among others, by Henry of Ghent], because to absolve from a sentence of excommunication inflicted by a superior does not belong to anyone unless it have been conceded to him.

47. And comparing this penalty to the preceding penalty [sc. the third, irregularity], this one is simply more serious as to intensity, because it excludes from any communion that is otherwise permitted, while the preceding one excludes from those that pertain to orders; but this one is reckoned lighter because it is more easily remitted.

48. But it is to the opposite effect: for this one is more easily remitted for the reason that it is the most serious and excludes from more things. And these two penalties, namely of irregularity and excommunication, can be both public and private, and insofar as they can be private they are less serious than either of the preceding ones [sc. the first and second penalties of deposition and infamy], which two preceding ones are always public.

e. About the Fifth Penalty or about Interdict

49. The fifth penalty is interdict, which is restriction from exercising certain ecclesiastical acts, or from assisting in certain such acts. And although this penalty sometimes could be inflicted on a place and not on a person, sometimes on a person and not on a place, sometimes on both (and as it is inflicted so must it be kept), yet, as it is a penalty distinct from the rest, it is more frequently inflicted on a place and not on persons not yet in the place, as namely that in such a place it is not licit solemnly to celebrate divine service, or for others to take part.

50. And this penalty of interdict is sometimes contracted by law, sometimes by a judge. An example by law occurs about those who receive usurers from outside, Boniface VIII *Decretals Book Six* V tit.5 ch.1, “Abyss of usurers,” and for innumerable reasons. More usually, because of disobedience common to the people of a land, it is relaxed by him who imposed the interdict; sometimes it is relaxed in certain cases by law, as is plain in Boniface VIII *Decretals Book Six* V tit.11 ch.24, “Kindly Mother Church.”

f. About the Sixth Penalty or about Suspension

51. The sixth penalty is suspension, which is prohibition from an act otherwise suitable, and this for a time. And herein is this penalty specifically distinguished from the rest.

52. The penalty is also manifold: for one is suspension from office, one from a benefice, and one from entering a church; and the last is sometimes incurred by the law itself, Boniface VIII *Decretals Book Six* V tit.14 ch.1 and tit.11 ch.1.

53. And there is also suspension in receiving orders from a bishop who has renounced such place and dignity, for he who does not have the execution of orders does not confer the execution of orders; and so if he confer orders, and yet he who receives

them does not have execution of them, he is therefore suspended, Gratian, *Decretum*, p.2 cause 1 q.7 ch.24, Gloss on Gregory IX, *Decretals* I tit.13 ch.1, ‘About those ordained by a bishop who has renounced the episcopacy’ [“He is suspended who receives orders from him who is suspended”]. Similarly about someone who is knowingly ordained simoniacally, as was said above [nn.27-28].

54. But it is removed by relaxation of such suspension done by him who put it in place, or by his superior.

B. How Canonical Penalties Exclude from Conferring or Receiving Orders

55. About the second main article [n.9] it is certain that the penalties do not impede in fact from conferring or receiving orders, as is proved by Augustine [*Against the Letter of Parmenianus* II ch.13 n.28] in Gratian, *Decretum*, p.2 cause 1 q.1 ch.97. And the reason is that along with those penalties can stand the idea of minister and of receiver, and the intention, and the other necessary things on this side and on that. But the penalties prohibit it in law, so that the contrary is illicitly attempted; however, if it is attempted, what is intended is done. Now the reason for this is that on the Church has been conferred the power of ordaining ministers for herself, as can be gathered from the words of blessed Paul to Timothy, where he describes what sort of persons should be ordained deacons [*I Timothy* 3.8-10].

56. But about the first penalty, namely degradation (especially if it has concerned a bishop), it is doubtful whether it exclude him in fact from conferring orders; but the pro and con are contained in the preceding question, the second article [d.24 nn.23-35].

II. To the Initial Arguments

A. To the Arguments of the First Part

57. As to the first argument [n.3], it can be conceded as to the first five penalties; but if, as to the sixth penalty, it be held that a deposed bishop is simply not a bishop, then as to that case the likeness in consequence is simply to be denied, because the character of priest is not taken away, nor consequently priesthood as it is episcopacy.

58. As to the next [n.4], intention does not suffice if there is not a suitable minister, a minister of the sort who is not deposed according to this opinion [nn.14-15].

59. As to the third [n.5], the case is not similar, because penitence is a general sacrament and therefore no one is excluded from it, either in fact or in law. The other sacraments, which include something of excellence, can well be denied to someone because of a transgression exacting it. As to the point about heresy [n.5], the point is true; it does not exclude in fact, but it does exclude in law if also such a one has not been condemned. But if he has been cut off and condemned by the Church he does not confer orders, provided episcopacy is not an order and could simply be taken away – as they would have to reply who hold episcopacy not be an order but a certain dignity added to orders, which dignity has regard rather to jurisdiction [d.24 n.30].

B. To the Arguments for the Opposite

60. As to the first argument for the opposite [n.6], I concede that the ordination of a simoniac is invalid as to execution, but he does receive order, and therefore he only needs it that his suspension be relaxed.

61. As to the second [n.7], the consequence does not hold, because it is given to a minister of the Church to be minister in conferring, not in taking away.

62. As to the third [n.8], it will be touched on below what the way is that the Church can make persons illegitimate and can thus make them unfitted so that they not be suitable for contracting marriage [*Ord. IV d.37, q.1*]. But here, from the fact that a character is conferred, there is no like power in taking it away.

63. And when the argument is made that that [marriage] is more according to the law of nature than this [ordination through a bishop], it is true in that a contracted marriage is ratified, but not that every person, notwithstanding any impediment, can contract the marriage. For it is more of the law of nature that what God impresses on nature, which is not repugnant to sin (either formally or to it as demeritorious cause), perpetually remain in the soul than that any man or any woman be fit to contract marriage. And therefore any unfitness of persons for this act [of marriage] is not as contrary to the law of nature as is a character impressed on someone being destroyed.

Question Two

Whether Female Sex or Childhood Impede the Reception of Orders

64. Second I ask whether female sex or childhood impede the reception of orders.

65. That they do not:

Galatians 3.28: For in Christ Jesus “there is neither slave nor free, neither female nor male;” therefore, there is no difference between male and female in the Law of Christ, as neither between slave nor free; therefore, a sacrament of the evangelical Law that a male can receive the female can as well, just as it is what slave and free can receive.

66. Again in Gratian, *Decretum*, p.1 d.32 ch.18 “Priest,” mention is made of a priestess,⁷⁴ and *ibid.* p.2 cause 27 q.1 ch.23, “A deaconess should not be ordained before the age of forty.”

67. Also about childhood the argument that it does not impede [orders] is that it does not impede reception of other sacraments, as baptism and confirmation. And the point about confirmation seems most strongly to the purpose because that sacrament is given for the worthy confessing of the faith of Christ; this act cannot belong to anyone save to an adult, just as the act of orders cannot either; therefore etc.

68. To the opposite: *ibid.* p.1 d.23 ch.25, “That women or nuns sacred to God were handling the sacred vessels or sacred garments, carrying incense round the altar, was reported to the Apostolic See – and that all these things are full of reproof and censure is not doubted by anyone thinking rightly.” All ministry of a woman is full of censure.

69. Likewise, *1 Corinthians 11.6*, “It is shameful for a woman to be shaven;” therefore also to receive orders, because tonsure accompanies orders, as a signifying sign.

⁷⁴ “A certain priest was ruling the church committed to him with great fear of the Lord and, from the time of having accepted orders, was loving his priestess as a sister...”

70. Again, Gregory IX, *Decretals* III tit.1 chs.4-5, ‘About the life and honesty of clerics’, and Gratian, *Decretum*, p.1 d.23 ch.22; it is found there that clerics may not grow long hair but be tonsured.

71. Likewise about childhood there is found in Gratian, *Decretum*, p.1 d.77 ch.1, “Let not a subdeacon be ordained younger than 20 years old.”

I. To the Question

72. Here I say briefly that to be excluded from reception of orders, or not to be able to receive orders, can be understood in three ways: either not to be able duly and honorably, or not to be able licitly (because it is against a precept), or not to be able in any way, even in fact.

73. In the first way a child and he who does not have ‘years of discretion’ cannot receive orders, because he cannot receive with due reverence such rank as is conferred in ordination.

74. In the second way a child cannot receive Holy Orders, though he could in the second way receive lower Orders. The proof of the first is that to the reception of Holy Orders is annexed a vow of continence, as is contained in Gratian, *ibid.*, d.28 ch.5; but a child and one who does not have ‘years of discretion’ does not have ability for that vow, either tacitly or expressly. The proof of the second is that no prohibition is found holding children back from receiving non-sacred Orders.

75. About the third ‘not being able’ [n.72] I say that ‘not being able’ is not found in a child, and this with respect to any Holy Orders; because the power to carry out some act, or the rank⁷⁵ by which someone is able to carry out that act, can precede the act in duration or the power proximate to the act. Order is only a rank disposing one to being minister in a determinate ecclesiastical rank, as was said in the preceding distinction [d.24 n.19]. Therefore, it can belong to anyone before he is in proximate power (when the impediments are removed) for exercising the act; and consent is not there required for the impression of a character, as neither is consent required in minor orders.

76. However, this ‘not being able’ does exist in a woman. And this is not to be held as if it was something determined precisely by the Church, but it is obtained from Christ. For the Church would not have presumed, without her own fault, to have deprived the whole female sex of an act which could licitly belong to that sex, which would have been ordained to the salvation of the woman and of others in the Church through her – because this would seem to be a matter of very great injustice not only in a whole sex but in a few persons; and if now ecclesiastical order could by the divine law licitly belong to women, it could be for the salvation of them and of others through them.

And what the Apostle says to Timothy [*I Timothy* 2.12], “I do not permit a woman to teach in the Church,” meaning public teaching in the Church, is not a statement of the Apostle as laying down a statute. Rather I think that Christ did not permit it either. An evident argument for this is taken from the fact that neither did he put his Mother in any rank of order in the Church, with whom however no other woman was able or will be able to be equal in sanctity. Now there is a reason of some sort in agreement with this, and the

⁷⁵ Deleting the parentheses round ‘or the rank’ in the edited Latin text.

Apostle indicates it in *1 Corinthians* 14.34-35,⁷⁶ for nature does not permit the woman, at least after the Fall, to hold an eminent rank within the human species, which indeed was said to her as punishment for her sin, *Genesis* 3.16 [“You will be under the power of the man;” cf. *1 Timothy* 2.12-15].

77. Against this: where there is the same agent and a passive subject of the same species, the same effect is there; but a bishop is the same agent, and let it be posited that his intention is the same way here and there; man and woman, and the soul of man and woman, are passive subjects of the same species; therefore if, when the bishop does something, the soul of a man receive a character, it follows that when the bishop does the same thing concerning a woman, she will receive the same.

78. I reply:

The major is true of an agent inducing a form and is a natural agent; but if the agent act voluntarily and contingently, it is not true that it do the same thing, but it is able not to act. And if it not do the inducing but only does some act whereat another agent does the inducing and induces it voluntarily in the passive subject it proposes to induce in, the major is false. And so it is in the issue at hand. And this is a good argument that the minister does no necessary act on which the effect of the sacrament necessarily follows but only contingently, for the most part, by divine pact.

II. To the Initial Arguments

79. To the first argument [n.65] I say that, as concerns possessing grace and attaining glory, there is no distinction in the law of Christ between female and male, because she can have as much grace and attain as much glory as he can; but, as concerns possessing an excellent rank, it is well fitting that there is a distinction between man and woman in the law of Christ, because this is consonant with the law of nature.

80. To the second [n.66], perhaps in Greece, where priests licitly use a marriage contracted before [ordination], the wife of a priest can be called a priestess. But among us Latins, where there is not only conjugal chastity but chastity simply, priestess has been taken away. But some woman can be called a good matron, a widow, or perfect among other women, or perhaps in a college she who is superior over all the others, as an abbess among nuns. But by this she does not have a more excellent rank of order; nor indeed preeminence with respect to a man. The like can be said to the point about a deaconess, that she to whom, by ordination of abbess or the college, it belongs to read the homily at Matins can be said to be a deaconess; but that is not an act of any order.

81. To the next [n.67] it can be said as Gratian says in *Decretum*, p.1 d.4 ch.3: “In the case of the manners of those who use a contrary practice, several laws have been abrogated,” as he afterwards there proves through many examples, and especially when contrary manners rest on a new reason. So here. In the primitive Church children were not at once instructed in the things that pertain to divine cult and office; on the contrary, the fully adult were ignorant enough in such things. But now children are instructed and exercised at once in such things, and therefore someone of thirteen years is more

⁷⁶ “Let your women keep silent in the churches, for they are not permitted to speak; but they are to be submissive, as the law also says....”

sufficiently instructed now in such acts than perhaps was then a rustic of twenty-five years. And so it is not surprising that decrees about keeping to age limits have been abrogated.

82. And let it be that children should by right be assigned to due reception [of orders] in every way (which I do not believe), yet neither is it simply necessary to observe it by necessity of that precept, nor is it simply necessary by necessity of fact. Not but what if (setting this aside) order is conferred, it is truly received and a determinate rank of ministering in the Church is conferred – he being the author who, in this time, “from the mouth of babes and sucklings has perfected praise” [*Psalm 8.3, Matthew 21.16*]. To whom be honor and praise for ages of ages. Amen.

Twenty Sixth Distinction

Single Question

Whether Matrimony was Established Immediately by God

1. “Since the other sacraments etc.” [Lombard, *Sent.* IV d.26 ch.1 n.1].
2. About this twenty sixth distinction I ask whether matrimony was established immediately by God.
3. That it was not:

In *Genesis* 2.23-24 Adam says, “This now is bone of my bones,” and there follows, “For which cause a man will leave father and mother and will cleave to his wife,” where it is commonly held [Hugh of St. Victor, Lombard, Thomas Aquinas, Richard of Middleton] that matrimony was instituted. And this does the Gloss state there [Gloss on *I Corinthians* 7.1-7, Nicholas of Lyra], and the Savior alleges it in the Gospel [*Matthew* 19.4-6]. Therefore, it was not immediately instituted by God.

4. Again, no inferior can change anything about something immediately instituted by God; but the Church changes something about matrimony, because certain persons who would otherwise legitimately contract marriage the Church delegitimizes.

5. The opposite is said by Christ to the Pharisees, *Matthew* 19.4-6, “Have you not read that he who made man from the beginning made them male and female?” And he said, “For which cause a man will leave father and mother and will cleave to his wife;” and at once adds, “What God has joined together, let not man separate.”

I. To the Question

- A. Things Worthy of Note that Need to be Set Down First
 1. Five Main Conclusions

6. For the solution of the questions to be treated of concerning matrimony, there are here certain things deserving of note that need to be set down first.

7. And let this be the first main conclusion: it is an honorable thing that male and female are mutually conjoined or obligated to each other in an indissoluble bond, for procreating offspring to be duly educated.

8. Second conclusion: it is an honorable thing that male and female mutually hand over to each other in their perpetuity the power of their own bodies for procreating offspring to be duly educated.

9. Third conclusion: it is fitting that this mutual giving was instituted and approved by God, and so was it done.

10. Fourth conclusion: it is fitting that to this contract of mutual giving some sacrament was annexed, and so was it done.

11. The fifth conclusion is: in matrimony many distinct things (and which things) come together.

2. Proof of the Main Conclusions

a. Double Proof of the First Main Conclusion

α. First Proof

12. For proof of the first conclusion [n.7] let this be the first prior conclusion: that man want to procreate offspring in the human species is an act capable of being circumstanced with the right circumstances. And the proof is that the act is not *per se* evil such that it be incapable of being rightly circumstanced (such as is ‘to give what is another’s’).

13. This is plain:

First because it is not more contrary to right reason or inclination of nature that man preserves his species than that any other animals save their own; indeed, it is the more according to inclination the more this species is more perfect; but this species cannot as a rule be preserved save through offspring.

Next second because, although man was to be immortal yet it was to belong to him, according to the right inclination of nature, to communicate his species in the way in which it was to be possible for him, that is, by propagating.

Next third, from matters of belief, because a precept is not given about anything illicit, but in *Genesis* 1.28 before the Fall, and in *Genesis* 9.7 to Noah and his sons after the Fall, a precept is given about propagation: “Increase and multiply.”

Next fourth because, according to right reason resting on faith, it is not evil but honorable to act, according to divine predestination, for the repair of angelic ruin and of the heavenly city Jerusalem; but the elect, predestined for the repair of that ruin, are not commonly produced save by propagation; therefore etc.

14. So therefore does it appear that the act is not of itself evil; therefore, it is either of itself good or is capable of being well circumstanced.

15. But that it is not of itself sufficiently good with moral goodness the proof is that no ‘to will’ is of itself good from the fact that it focuses on an object morally good, unless it focus on an object that is in itself something to will, that is, that is simply the ultimate good. This ‘to will’ is to love God, where it cannot be against right reason, rather it is necessarily according to right reason, that such act tend to such object. But this is because this object is the ultimate end to be willed according to itself by anyone ordered to an end in the way of being able to love that end. For a man can rightly or not rightly make a distinction about everything that is for the end, because he can do so either by ordering it to God and thus use it, or by not ordering it and so enjoy it, which is a great sin.

16. But the good on which focuses this act (which is procreation or wanting to procreate offspring) is plainly not the ultimate end but only something ordered or orderable to the ultimate end; therefore such an act is not of itself sufficiently good morally; therefore it is capable of being well circumstanced [sc. so as to be morally good].

17. Again, both facts, namely that this act is not of itself good and not morally bad, can be proved by one argument: because only that act is of itself bad whose object it is repugnant to that the act is good, or whose object is repugnant to the goodness of the act, or which act is repugnant to the agent according to natural right reason; and, by arguing through the opposite, only that act is of itself good whose object necessarily agrees with the agent's act according to right reason; therefore, this act is neither of itself good nor of itself bad. For no act is good of its kind, or from its object alone, save loving God, which act has its goodness from the object alone; nor is any act bad of its kind, or from its object alone, save hating God. Hence neither of these acts is it necessary to specify or to circumstance; nor is either capable of being circumstanced. For God cannot be too much loved (understanding this of the love of friendship) nor can anyone hate God well.

18. This therefore is the first conclusion, that to will to procreate offspring is an act capable of being circumstanced with the right circumstances [= the first preceding conclusion, n.12].

β. Second Proof

19. The second conclusion [sc. the second prior conclusion, n.12] is that the first circumstance required for the moral goodness of this act is the circumstance of the end, as is universally the case in morals. And there is this circumstance in the proposition at issue: to will to procreate offspring to be religiously educated for the increasing of divine cult.

20. This is proved by reason, because perfect human operation is the end of man, *Ethics* 1.9-10.1099a7-9b28, 10.1.1174b18-5a1. Therefore, for this end should anyone want to have offspring.

21. This is also proved from matters of belief, because anyone should love his neighbor from charity as he loves himself, that is, for the same thing; but anyone should love himself for honest conversation and divine cult; therefore he should thus love his neighbor, and especially the offspring to whom he is especially bound.

22. This is confirmed by Augustine [in fact Lombard, *Sent.* IV d.31 ch.2 n.4, though they are quoted as Augustine's by Richard of Middleton], "Not everyone," he says, "who has offspring has the good of offspring, because the good of offspring is not said to be the offspring itself, but the hope or desire whereby offspring are sought for this, that they be religiously formed."

23. But this circumstance does not suffice, although it is first and leads to all the others. And therefore a second circumstance follows, namely that this act ought to be between determinate persons, male and female. That it should be between male and female, this is not a circumstance but is necessarily included in the act that is the procreating of offspring; but that it be between determinate persons, this is one of the circumstances on the part of the agent causes that are due and fitting for this end – and this not only as to procreation of offspring but also as to repeated procreation of offspring (and I say 'repeated', because it is fitting for one man to have determinately one wife not only for procreation but also for repeated procreation, for that anyone would come together with anyone, this nature does not suffer, and in the beasts too it is not found). But that one man should be determinately of one woman is plain, for indiscriminate conjunction would be against the good of offspring (which is the end here intended), and against the good of the family, and against the good of the city.

24. The proof of the first [n.23]: because offspring would be not religiously educated on the part of parents as parents would not have determinate knowledge of their offspring – at least the father, and so he would not be solicitous about bestowing due discipline on his offspring; nor conversely would offspring bestow on the father obedience or due reverence and filial fear, and it is because of this filial fear that a son obeys the father more, and can be more easily disciplined by him than by another.

25. The second [n.23] too is proved, because the good of the family consists in a firm adhesion of the chief persons of the family; otherwise the whole thing is indiscriminate (and for this reason the Philosopher says *Ethics* 8.14.1162a17-19 that man is naturally a conjugal animal because a domestic animal), and neither would some persons apply diligence to the things mutually necessary for themselves or their offspring.

26. The third point [23], that it is against the good of the city, is plain, because by matrimonial contracts of this sort is friendship preserved in cities; therefore it is necessary that contracts of this sort exist between certain persons, because the friendship of citizens arises, for the most part, from determinate closeness in a definite rank. But, given this [sc. indiscriminate conjunction], there would be no known certain closeness that would be the cause of friendship; rather all closeness would be confused.

27. And therefore rightly does Aristotle criticize Socrates' polity, *Politics* 2.1-2.1261a4-12, who wanted all wives to be common, because for the state of fallen nature much better is the polity he himself ordains, namely that determinate persons have determinate wives. And the indiscriminate union of male with female would be against reason for every state [of nature].

28. This circumstance too appears from things believed from Sacred Scripture, because in *Genesis* 2.24 it is said that "they will be two in one flesh," and Christ sets down the same in *Matthew* 19.5 and St. Paul in *I Corinthians* 7.2, "Let each have his own wife," supply, "on account of fornication." And let it be that this determination is not by natural reason proved to be simply necessary in such way that its opposite would be repugnant to natural and manifest reason – at least this affirmative is sufficiently plain, that it is honorable that the persons of the Church are, for this act, determinate to each other.

29. But another circumstance, that it is honorable for those persons to be obligated to each other with an indissoluble bond for this end, is proved from the preceding one, that just as determination of persons avails for the due education of offspring and for the good of the family and the city, so too does the perpetual adhesion of determinate persons to each other avail for this same thing. And they would, because of the many occasions and difficulties that arise, not perpetually adhere to each other unless they were obligated by such an indissoluble bond to such adherence to each other.

30. And let it be that this conclusion, which is the main one in this article, could not be proved by evidently natural reason to be simply necessary; it is proved the way it is proposed, that it is honorable and consonant with natural reason for male and female to be thus obligated together for such an end.

31. From this is plain the solution to a question, namely whether such obligation belongs to the law of nature; for it was said above, in distinction 17 n.19, that most properly belonging to the law of nature is a *per se* known practical principle and a conclusion demonstratively following from such a principle; but belonging secondarily to the law of nature is a truth evidently consonant with such principles and conclusions,

though not necessarily following from them. And in this way belongs to the law of nature that it is honorable for male and female to be obligated to the aforesaid end.

b. Proof of the Second Main Conclusion

32. For the proof of the second main conclusion [n.8], let this be the first prior conclusion: it is expedient that that indissoluble obligation arise from the act of will of the persons obligated.

33. The proof of this is that the obligation will arise either in this way or by imposition of a superior, namely the legislator. Not the second, because no law ordains or determines this woman to this man or conversely; therefore, the first. And a fitting reason is that the first is more useful and more agreeable to natural reason, because, from the fact that the obligation should be indissoluble, it is expedient that the manner in which it is done be agreeable to the indissolubility of it. But if they were compelled by a legislator to be joined together, they would be less mutually pleasing to each other, and so there would be greater occasion for future dissension; for as is said in Gratian, *Decretum*, p.2 cause 30 q.3 ch.4, “What someone does not choose, assuredly he does not love; but what he does not love, he easily despises.”

34. Let the second conclusion be this, that it is honorable that, in a contract of mutual giving, male and female transfer mutually to each other the power of their bodies for this end in their perpetuity.

35. This is plain from the preceding conclusion [n.32], once the reason for a contract of mutual donation is seen. For a ‘con-tract’ is said to be as it were a drawing together of two wills to each other or of two who are obligating each other; and consequently it necessarily requires acts of will that agree in a mutual transfer, as in the case of other exchanges or sellings (taking ‘selling’ commonly). Nor does this suffice, but it is necessary for these acts to be expressed by certain signs, otherwise there would be no certainty for either about the act of will of the other. Also, neither wants to make a transfer to the other save to the extent each conceives the other to want to make a transfer to them.

36. So if, from the preceding conclusion [n.32], it is expedient for them to be obligated through their own wills, and not without signs (expressing or expressed), then it is expedient that there be a contract there from which the obligation arises. But this contract can only be one of mutual giving or interchange (which is the same thing) of power over their bodies for this end in their perpetuity; because power over one’s body, which is one’s own power, is not transferred by anyone to another save by act of will, because by that act he was lord and ceases to be lord and makes another to be lord. And consequently, the right that the other acquires over this one’s body when it is transferred to him is by an act of will freely transferring it – and this along with an extrinsic evident sign from which is obtained the idea of the aforesaid contract. And this contract is called ‘I give if you give’ or ‘I give so that you may give’.

37. This mutual transfer of lordship of bodies is plain according to the rule of the Apostle in *I Corinthians* 7.4, “The woman does not have power of her own body but the man; and the man does not have power of his own body but the woman;” and thus does each have power over the body of the other and over their own by reason of the mutual giving and the mutual contract – and this as to the act of the body that regards procreation of offspring.

c. Proof of the Third Main Conclusion

38. Proof of the third main conclusion [n.9] as follows: no persons would obligate themselves, at least not commonly, to so difficult an obligation unless there were some stricture in place, either a law of nature or a divine or human positive law. Every other licit contract is instituted or at least approved by law, because the correctness of such a contract or obligation is not a practical principle. So there is requirement that the rightness of this sort of contract be approved as a right obligation, or that this sort of contract be instituted or perceived as right.

39. But the law of nature, although it does obligate to the indissolubility of the aforesaid bond on the premise of such contract, is however not a very evident law of nature but is said in a secondary way. And what belongs to the law of nature only in a secondary way is not manifest to everyone. Therefore, it is expedient for the necessity of the precept to be determined by positive law.

40. But no legislator is above the whole of the human species save God alone; therefore it is expedient that the precept be approved or instituted or prescribed by the legislator who is God. For those things that are remote from the practical principles of the law of nature are not apparent to everyone in the way the practical principles are that are known to everyone, because they are not explicated and because other legislators do not know how to explicate such things. Therefore, it is expedient to explicate them through him who is universal Legislator over human nature.

41. Let it be too that a precept of the law of nature said in the primary way (namely a manifest practical principle or conclusion) would have obligated for this purpose; still it would be expedient for a divine precept to be set down for it, because men obey less the law alone of nature than they do God giving a precept, because they fear and revere their own consciences less than they do divine authority.

42. Nor is it expedient that this determination be done in the first way by the human positive law, because human positive laws vary among diverse peoples, and this indissolubility should be uniform among all.

43. Now this was done in *Genesis* 2.24 and *Matthew* 19.4, where Christ relates that God said what Adam pronounced in *Genesis* 2.24 [“man and wife shall be one flesh”], because God spoke through the mouth of Adam as of a herald; and therefore Christ adds that God has united (supply: male and female) in a matrimonial union by the precept by which he pronounced it through the mouth of Adam, “a man shall cleave to his wife etc.”

44. But one needs to understand that to prescribe the contract is one thing, and to prescribe perpetual cleaving on the premise of the contract is another.

For it was expedient for the first to be prescribed for the time for which there was a necessity of propagation, and especially if men were troublesome with respect to it without a precept. But for another time, for which there is no necessity, it has no need to be prescribed. Therefore, after the Fall God gave the precept twice about making the contract, first in *Genesis* 2.24, and again, when men had been destroyed by the Flood, in *Genesis* 9.1, 7.

But it is expedient for the second precept to be given for all time, because it was shown, in the first conclusion [nn.7, 12-13] that the indissolubility is consonant with the law of nature, and it will be less preserved unless, over and above this, there is a precept.

45. For this conclusion there is set down the following sort of reason: no one can obligate some owner's property to owner lord save by the consent and approval of him whose it is; but the body of anyone belongs by right of creation to God; therefore no one can transfer it to the ownership of another save insofar as God approves. Therefore, if the transfer is honorable for this end (as is plain from the first and second main conclusions [nn.7-8]), it follows that it is fitting that God approves this transfer of bodies.

46. But it would be said here that although a man be bound to God by creation in everything he can do, yet God does not exact so much of man; rather he freely leaves him to himself, demanding of him only that he keep the precepts of the Decalogue. Hence one can indeed sell oneself into slavery (although there is no special approval of this found in Scripture), in which selling one transfers ownership and power of one's body to another as one does in the contracting of matrimony; the like is plain about the transfer of ownership of all one's property. And the whole reason is because that in which God does not obligate a man or what is his own he leaves to man's will.

d. Proof of the Fourth Main Conclusion

47. For the fourth conclusion [n.10] let this be the first special prior conclusion: it is fitting that to the aforesaid contract be annexed the conferring of grace, because the aforesaid contract is difficult, since from it arises a very difficult obligation. This is also apparent because of the many miseries and infirmities in which they are bound to serve each other until death. And therefore, as far as this is concerned, there is a greater difficulty here than in Religion. Now the difficulty of it is connected to the honor of it (which was proved earlier [nn.29-30]); and for doing what is honorable, as for doing what is difficult, it is fitting for grace to be conferred. This contract too needs grace because of the difficulty that is in this act, wherein the mind is much distracted from God.

48. The second conclusion: that it is fitting that this grace is regularly conferred under some special sensible sign, instituted for this purpose by God. For such a sensible sign is more keenly asked for by us and more recognized; and it is necessary for us first to know grace and afterwards to desire it. From which it follows that such a sensible sign can reasonably and fittingly be instituted for signifying the grace legitimately conferred on the contracting parties.

49. The third conclusion: it is expedient that some sacrament properly so called be conjoined with the aforesaid contract. It is plain from the two preceding conclusions [nn.47-48] that it be an efficacious sign of the grace then conferred. But one must understand that, by bracketing consideration of the idea of a sacrament, the truths about matrimony in the matter at hand can commonly be shown by reason of contract and obligation.

50. Now this annexed idea of a sacrament seems to introduce many new difficulties, as: by whom and when it was instituted; what form and how it is one; who is the minister and how he is one; and what the effect is of the sacrament.

51. About the first [sc. 'by whom']: it cannot be said that the sacrament of matrimony was established in the state of innocence, *Genesis* 2.7-8, 18-25, because all the sacraments have their efficacy from the passion of Christ displayed and foreseen; but if the state of innocence had endured, the passion of Christ would not have been displayed or foreseen. Nor does it appear that it is a sacrament of the Mosaic Law. Nor is there

found in the Evangelical Law where it was instituted. For Christ in *Matthew* 19.4-6 approves what was instituted in *Genesis* 2.24, and Paul *1 Corinthians* 7.2-4 taught that thus is the act or use that follows the contract of matrimony.

52. Someone therefore might say that what is said in *Ephesians* 5.32, “This is a great sacrament, I speak in Christ and in the Church,” is understood about a sacrament taken in an extended sense and for sign of a sacred thing, of which, however, it is not cause or efficacious sign. For matrimony is not an efficacious sign in respect of union with Christ, but it is an efficacious sign in a way; so can a vow of virginity be an efficacious sign of union with Christ.

53. Because, however, the Church commonly holds the sacrament of matrimony to be the seventh among the ecclesiastical sacraments, and “one is not to think otherwise of the sacraments than the Roman Church thinks,” Gregory IX, *Decretals* V tit.7 ch.9, ‘About heretics’, therefore can it be said that God has annexed to the contract of matrimony a sacrament properly speaking, at least for the Gospel Law; otherwise it would not be a sacrament of the New Law. And then it is necessary to say that it was instituted by Christ, as was universally said above about the ecclesiastical sacraments [*Ord. IV* d.2 nn.18-26].

54. But the ‘when’ is not found more plainly than in *Matthew* 19.4-6. And although there Christ only approved the contract instituted in *Genesis* 2.18-24, and consequently he did not institute that contract, yet he did institute the sacrament. This can be taken from the word that he added [*Matthew* ibid.], “What God has joined, let not man put asunder,” so that it not be understood precisely that God joined them by instituting the contract of matrimony, but that he joined them from then on with grace through the institution, conjoined with the contract, of a concomitant sacrament.

55. Now the form is some sensible sign, instituted by God for signifying efficaciously the grace then conferred.

56. But here there is a doubt: for either God instituted as indeterminate a sign to be a sacrament of grace as the sign is indeterminate that is required for the contract, or God has determined the sign that has to be the efficacious sign of grace more than is the sufficient sign for the contract determined by human imposition. And if the latter, either he has determined some words precisely, as “I accept you for my wife” or “for my husband,” or he has determined indifferently any words at all expressing the concept of consent.

57. And between these three members there is considerable difference; because if this one be held very strictly, namely that the form of this sacrament consist in these words precisely, it follows that on many occasions there is a contract of matrimony without a sacrament, even in the Evangelical Law, because on many occasions the contract is made through other words than these. If too he has determined the words but any words indifferently that are expressive of mutual consent, still, since sometimes there is a contract (as between mutes) without words, it follows that in some places there is a contract of matrimony without a sacrament. Nor is this absurd, because it is probable that up to the Evangelical Law matrimony was frequently contracted where however there never was a sacrament as we now speak of it, namely in the proper sense. Mutes according to this, therefore, are truly spouses, because there is a true contract between mutes. And grace is given there not by force of the sacrament, but just as grace is given to the truly penitent without expression of words, not by force of the sacrament but by force

of merit and contrition, so between the mute there is a true contract, and grace is given without a sacrament.

58. But if God has not determined the sign to be a sacrament of grace more than is determined by human imposition to be sufficient for a contract, then it can be said that in the case of any contract in the Evangelical Law a sacrament is concomitant, because the sign that is required for the contract is by divine institution a sacrament. The Church, however, has determined that the sacrament is done only through words.

Thus is the third point plain [sc. the form, n.50].

59. But how is the form one? Because it is one by unity of integrity, not by unity of indivisibility; for the words, expressive of consent on this side and that, are one integral sign both with respect to the contract and with respect to grace. Nor is it unacceptable that several partial forms are one sacrament, as was said above of the Eucharist about the words over the bread and wine [*Ord. IV d.8 nn.60-62*].

60. About the minister [n.50] there is another doubt because, for the most part, the contracting parties themselves minister this sacrament to themselves, either mutually or each to themselves. But neither is this necessarily required if with every contract of matrimony there is a sacrament, for sometimes the fathers contract on behalf of a son and daughter who are present without expressing their own signs; if there is a sacrament there, one must say that the minister of the sacrament can indifferently be whoever can be a minister in a contract of matrimony.

61. But then how is the minister one? It can be said as was said above about one form [n.59].

62. But what is the effect [n.50]? I reply: two graces in the souls of the contracting parties, and this unless there is an obstacle – supply, mortal sin here, there. For it is not sufficient to receive grace that the contracting party is not feigning with respect to the sacrament, but it is necessary that there be penitence first, because this sacrament does not give first grace. But there is one total and first effect, namely the graced union of hearts.

63. But if the form is to be restricted to a certain sign and to determinate ministers, one must consequently say that not all those who contract [matrimony] in the Christian Law receive grace; and yet it can be said that they do receive grace if there is not otherwise an obstacle, because God assists there on account of the difficulty of honorable contract – not however as much grace as they receive with the sacrament, especially had an impossibility not existed.

e. Proof of the Fifth Main Conclusion

64. About the fifth conclusion [n.11], which applies to the terms; I mean that matrimony is one thing, the contract of matrimony is another, and the sacrament of matrimony another.

65. For matrimony is the mutual obligation or the bond that was spoken about in the first main conclusion [n.7]. And the contract is the mutual act of wills, which was spoken about in the second main conclusion [n.8]. The sacrament is the efficacious sign of grace, accompanying the act, which sacrament was spoken about in the fourth main conclusion [n.10].

66. And the distinction between them is plain:

For the first is permanent in the souls of the spouses. And it is either a real relation coming from outside or, which seems truer, a relation of reason only, because there is nothing there save a new lordship and a new service through a new exchange; but such lordship or servitude posits nothing real in the lord or servant.

67. The second exists only in coming to be, and it is an interior or exterior act or undergoing of act, or rather something consisting in the interior and exterior acts of two persons. And this is related to matrimony in the first way stated [n.66] as the cause in its coming to be, the way generation is to paternity, or rather the way ‘to be baptized’ or ‘to be ordained’ is to character, as is plain above from d.8 [rather *Ord. IV* d.6 nn.277, 317].

68. And the third likewise consists in coming to be, and it simultaneously is and is not with the second; and so it does not remain always with the first.

69. Nor should one say that this name ‘matrimony’ is equivocal as to these three, but rather that it signifies only the first, and it is taken for the others only indirectly, signifying something else, so that for the second this is the contract of matrimony and for the third it is the sacrament of matrimony, where the construction is not intransitive but transitive.⁷⁷

70. But if you altogether contend that the name ‘matrimony’ signify these three things, there will be no contention about the name, which in this case will be equivocal.

71. Now these three can be described as follows:

Matrimony is the indissoluble bond between male and female, arising from the mutual transfer of the power of their bodies to each other, made for procreating offspring to be duly educated.

72. The second as follows:

The contract of matrimony is the male’s and female’s mutual transfer of their bodies, in their perpetuity, for procreating offspring to be duly educated.

73. The third as follows:

The sacrament of matrimony is the male’s and female’s expression of certain words to each other, words signifying the handing over of the mutual power of their bodies for duly procreating offspring, by divine institution efficaciously signifying the conferring of grace on the contracting parties, for the mutual graced union of hearts.

Or if certain words are not precisely the form of this sacrament, nor the contracting parties precisely the ministers, let there be put at the beginning, in place of the ‘expression of certain words’, the ‘exhibiting of certain signs of both male and female’ or something more general, as ‘the exhibiting of signs signifying the mutual handing over of the bodies of male and female for the due procreation of offspring etc.’

B. The Application of the Aforesaid to the Question

74. Hereby is the answer clear by application to the question –

The contract, indeed, of matrimony [n.72] was instituted by God, *Genesis* 2.24, “This now is bone of my bones,” 1.28, “Increase and multiply;” and after the Fall 3.16, “I will multiply your conceptions and your sorrows,” said God to Eve; and *Genesis* 9.1, “Increase and multiply,” he said to Noah and his family. And the institution is by way of

⁷⁷ Transitive in the sense that the contract and sacrament of matrimony are not what matrimony is but what ‘pass over’ [transit] to what matrimony is, by making it (the contract) or gracing it (the sacrament). Matrimony proper is the bond [nn.65, 71] so made and graced.

affirmative precept, so that it is always binding but not at all times but for time of necessity – not only at the beginning, but it seems to obligate still in the same way if a like paucity were for some reason to come about, as from war or plague or disaster and the like. And this proves how the contract was instituted by God through divine and positive law, and by his similarly impressing the law of nature on the hearts of men, to which law of nature does this contract belong, if not completely as known of necessity, yet as secondarily consonant with it.

75. The second part, namely indissoluble obligation [n.71], God instituted by his positive law, *Genesis* 2.24, “He will cleave to his wife” – ‘will cleave’, I say, not ‘momentarily accept’. God also instituted it by impress of the law of nature, not only as to things that are known evidently from the same law but as to those that are evidently consonant with that law. And that he did so institute it is proved at the beginning of the third man conclusion [nn.39-43]. Now this second precept has the force of a negative precept, because it obligates always and at all times, unless a special dispensation be made by the Legislator, as will be said below in d.33 nn.15-21.

76. He instituted also the third part, namely the sacrament of matrimony [n.73], as was said in the fourth main conclusion [nn.47-50].

77. But there is here a doubt when the reasonableness of the contract of matrimony, and of the obligation, and the divine institution of it are obtained from all these conclusions, and from the solution, only because of this end, namely to procreate offspring to be duly educated. And this institution is said to have been instituted as a duty. But, besides this, matrimony is also said to have been instituted as a remedy, namely for avoiding incontinence after the Fall. How, first, is the honorableness of the contract or of the obligation obtained in this way? Or how is there divine institution or approval of it for this end?

78. I reply: it does not appear an easy thing that anyone should, according to right reason, use this act precisely for pleasure; indeed, the opposite seems more consonant with reason. Therefore, this is more something to be tolerated; because nothing laudable seems to be found in the act save procreation of offspring. Natural reason too does not seem to establish any honorableness in the act, nor consequently in the obligation or in the mutual obligatory contract for the act, nor consequently to establish that the Legislator should rightly approve or institute such contract or obligation.

79. What then if it be said that someone who wants to use his body for this delight, so that he not use it unjustly with someone not his own, can make exchange of his body with the body of another which he may justly use as his own, and then this giving is honorable because of this justice? Also, on the presupposition that such an end is licit, it will not then be necessary that, in order to use it licitly, he use it for such act by the license of God, because (as was said when excluding the reason for the third main conclusion [n.46]), God committed to each one his own self and his own property, wherein he did not obligate him specifically to himself. If this answer not satisfy, nor is justice for this act more praiseworthy than a just exchange is for another act that would not be praiseworthy (as an exchange to use something else for a similar use elsewhere), at least can, conversely, recourse be had here to a divine institution that is not based on the praiseworthiness of an act for an end other than propagation, but based on infirmity after the Fall for avoiding a greater evil. And, having allowed this indulgence, he instituted a

contract ordained for it – if not by the impress of the law of nature, at least by positive law; and this both as to contract and as to obligation.

80. But it is difficult to find the ‘when’ in between as concerns the contract for the first end, because never in the Old Testament is there found a contract prescribed or praised save for procreation of offspring; for always the divine command is for this, “Increase,” which is only by propagating. At least in the New Testament we are informed that this contract is indulged for another end, namely avoidance of fornication, *I Corinthians 7.6*, “But this I say according to indulgence etc.,” and it is likely that such an obligation would not first have been made in the New Law, but from the beginning of human law.

81. So then, from the first conclusions is obtained the result about the institution of the contract of matrimony, and about obligation in order to procreate offspring, and also about the institution of the sacrament accompanying the contract. But the institution of this contract for avoiding fornication is not so obtained by natural reason, indeed scarcely as something permitted by divine institution. Justice there as to indissolubility, however, and the sacrament accompanying the contract, are made clear in the same way as previously about matrimony instituted for the first end [nn.7-30].

82. To the first argument [n.3] the answer is plain from the third conclusion [n.9], that Adam pronounced as herald the words “This is bone of my bones etc.,” as is manifestly expressed by Christ in *Matthew 19.4-6*, when speaking about God who made them male and female he said, “Wherefore a man will cleave etc.” For if Adam had instituted matrimony and had not just been the herald and minister of God who did the instituting, Adam could have revoked matrimony – which is not true.

83. As to the second [n.4], I believe that no one inferior to God can change anything in what is essential to the contract of matrimony (on the presupposition of suitable matter), or about matrimony when a firm and ratified contract has been made. But the Church does sometimes well make changes as to fitting and unfitting matter, by ordaining what matters should and what should not make a contract; for so does the Church do about the matter of penitence, subjecting this man to this priest as subject to him and not to another; but about the virtue or sacrament of penitence the Church cannot change anything.

Twenty Seventh Distinction

Question One

Whether Matrimony is Suitably Defined as ‘The Marital Union of Man and Woman Retaining, between Legitimate Persons, an Indissoluble Life’

1. “After this one must note” [Lombard, *Sent.* IV d.27 ch.2].
2. About this twenty seventh distinction I ask two questions: first about the definition of matrimony that the Master puts in the text [*ibid.* ch.1], whether it is fitting when he says that matrimony is the marital union of man and woman retaining, between legitimate persons, an indissoluble life.
3. It seems that it is not:
Because union there is taken either for passive union or for relation:

Not in the first way, because it passes when the act passes, and ceases when the act of the contracting parties ceases, and it does not remain, but matrimony remains. Likewise, every passion in the category of passion has some form or some term that is induced in the passive subject; but it is not possible to grant any term introduced by this union, because nothing is new save a respect of reason.

Not in the second way; first because a relation is not a term of motion or change, but this union is the term of a preceding motion or change because after the change it is present and before not; second because although ‘the road from Athens to Thebes is as the same as the reverse’, *Physics* 3.3.202b8-14, yet the relation is different and diverse from here to there and conversely [*Ord. IV* d.13 n.68]

4. Therefore in the same way there will be two relations here, one of man to woman and the other conversely; and then it would follow that there were two matrimonies, or that matrimony is not essentially one.

5. The opposite is plain from the Master in the text.

I. To the Question

6. The answer to this question is clear in accord with what was said in the fifth conclusion of the preceding question [d.26 nn.56-67], because this definition of matrimony must be understood according to what it is explained to be in the definition or description set down there. And if matrimony is taken properly for the union, then this sort of union must be understood to be the same as obligation. And if it is taken for the preceding contract, then the union can be taken for the act of joining or the passion that includes both acts, namely the interior and exterior act, of the persons joined by the act.

II. To the Initial Arguments

7. To the argument [n.3] I say that, when understanding matrimony properly, union is understood there as a relation. And when you say that it would be the term of a motion or change, this does not follow, because the change, which was there, was according to an act of will, not leaving behind any induced term, and according to an act of causing an exterior sign, from which again nothing is left behind.

When it is said that relation is not the term of motion, this is true perhaps of a relation coming from within. But if one wish to say that there are relations of wills there from the mutual obligation, then it would have to be said that the union would be a respect coming to the will from without and not from within, just as it is not by my will that the Religion of Blessed Francis is a Religion, but this is an extrinsic respect. Likewise, this obligation [sc. of matrimony], as it is a certain relation, does not come from within to the persons obligated, because such respect does not exist by the nature of the extremes or wills obligating themselves. And if the respect is not real but only a relation of reason, then it is only a certain ordination, namely one according to justice, which ordination is in him who has the power of law; for God himself, who as legislator ordained that contract and that obligation to come to be, retains it in his ordination such that there is only a change according to reason there, just as is plain in other obligations and lordships; for lordships are not real entities but real relations, and we only love lordships and such

powers of law or such jurisdictions because of that for which they are, as for pleasures or honors or the like.

When you say, secondly, about doubleness [n.3] that there will be a double relation and a double union, I concede it; and therefore is it called, not any union, but a mutual union, because the contract includes two parts, namely the consent of this person and of that, and in both persons also there are two acts, namely interior and exterior, or an intrinsic one and an extrinsic one signifying the intrinsic one.

Question Two

Whether Consent Expressed in Words is the Efficient Cause of Matrimony

8. Second I ask whether consent expressed in words is the efficient cause of matrimony.

9. It seems that it is not:

Because then no one could be certain of matrimony, just as neither of the consent of another, because not always is what the mind thinks expressed in the words. The consequent is unacceptable, because then no one could, in certitude, use the act of matrimony without danger.

10. From Gratian, *Decretum*, p.2 cause 32, q.2 ch.13, and Gloss, is it obtained that silent consent suffices for matrimony, along with expression by the parents on behalf of the children.

11. To the opposite is the Master in the text [Lombard, *Sent.* IV d.27 ch.3 n.1], and Gregory IX, *Decretals* IV tit.1 ch.26: consent is that ‘without which the other things are unable to complete a conjugal agreement’; also, tacit consent does not suffice for a sacrament, because it is not there a sensible sign.

2. Again, right over someone is not obtained by touch of the senses; but a right is acquired by matrimony, as is contained in *I Corinthians* 7.1-8; therefore etc.

I. To the Question

13. The solution of this question is plain from the second conclusion of the first question [d.26 nn.32-37], because it is contained there how the contract of mutual donation of power over bodies is honorable, and how it is disposed to the bond left remaining between the spouses.

14. And then to the form of the question, one must not say that it is the efficient cause of this bond but that it is a prior disposition, as ‘to be baptized’ or ‘to be ordained’ is a prior disposition for the character [d.26 n.67]. For the consent expressed in adequate words, including these two [sc. ‘I give,’ *ibid.* n.36], is nothing other than the contract of matrimony, and therefore is it disposed to matrimony as that contract is.

15. Speaking of matrimony as it is a certain contract, it can be done and is done by mutual consent, expressed not only in certain words but in other definite signs; for if the signs there required are the words alone, than that alone is said to be a matrimony where there is a sacrament; but if there are signs other than words, as was perhaps so in the case of Abraham and the other ancient patriarchs, then it is said to be a true matrimony but not a sacrament according to the Church, though it could be called a sacrament of the Old Law.

II. To the Initial Arguments

16. To the first argument [n.9] I say that about the consent of another there can be the sort of certitude that is required in human acts. For in other contracts, as the selling and exchange of things, demonstrative certitude is not required, but probable certitude is enough, for the most part. And such is what there is in the issue at hand, on the supposition of the proposition ‘everyone about whom there is no sign of the opposite is truthful’. And this following one belongs to the law of nature (that is, consonant with the law of nature), that ‘truthful and faithful must each be held to be, until, through himself or through testimony of others, the opposite is with certitude or conjecture reckoned to be’. But if one say that he cheated the person contracting with him – about this below, d.30 nn.14-21.

17. To the other argument [n.10], when it is said that in the gloss one has it that there are spouses by tacit consent, I concede that they are true spouses because it suffices for a contract that the parents contract for the children, and a contract by letter without words would be sufficient, since indeed in other contracts (of buying and selling) a contract in writing is held to be firmer than one in bare words. But whether the idea of the sacrament would be preserved in signs other than words, or signs displayed by others than the contracting parties, was spoken about in the fourth conclusion of the first question about matrimony [d.26 nn.55-58].

Twenty Eighth Distinction

Single Question

Whether Consent Alone, Expressed in Words about the Present, is Cause of Matrimony

1. “Here it is wont to be asked etc.” [Lombard, *Sent.* IV d.28 ch.1 n.1].
2. About this twenty eighth distinction I ask whether consent alone expressed in words about the present is cause of matrimony.

3. It seems that it is not:

Because every bond or contract on which carnal union can licitly follow is matrimony, or a contract of matrimony; but after consent expressed in words about the future, carnal union licitly follows, for such persons are not said to be fornicators or adulterers; because when carnal union follows a contract in words about the future, the Church says simply that matrimony is there, and the parties cannot be separated; therefore etc. There is confirmation too in Gregory IX, *Decretals* IV tit.1 ch.30, ‘About espousals’

4. Again, every indissoluble bond, if on it carnal union licitly follow, is matrimony; but of this sort is the bond that comes from a contract through words about the future; therefore etc. Proof of the minor, because the fulfilment of a promise, as also fidelity, belongs to the law of nature; but what belongs to the law of nature cannot be dissolved; and [the bond] is not by the act following, because that act is neither a form of contracting nor a form of sacrament; therefore the promise is the indissoluble bond, and especially if it be confirmed by an oath, because to keep an oath belongs to the law of nature. Therefore it was indissoluble before; therefore after it there was matrimony.

5. Again, there is no middle (as concerns this contract) between espousals and matrimony; but when an oath is added to espousals, the contract goes beyond the firmness of espousals, because espousals have their firmness without oath; therefore, when an oath is added there is a contract of matrimony; from the promise, then, along with the oath, there arises an indissoluble bond; therefore matrimony.

6. To the opposite is the Master in the text [Lombard, *Sent.* IV d.28 ch.2 n.1].

I. To the Question

7. I reply: From the second conclusion of the first solution [d.26 nn.34-37], it is plain that the contract of matrimony, which of course introduces the obligation or bond (which is called the marital bond), is a giving; and if it is not free, still, because ‘giving on behalf of another’ is what substituting is, it at least is a mutual handing over of the power of bodies. But no one in promising hands over what he promises; indeed, this would be a contradiction, because a promise is about a handing over in the future. Now consent about the future expressed in signs suitable to that consent is only a promise; therefore, it is impossible for such consent to be a handing over, nor consequently a matrimony.

8. But if someone in this case wanted to apply force concerning the sacrament accompanying the contract, one could say that the proper form of this sacrament, whether it consist in words only or in other signs, consists in a representative sign only and not in a prognostic one. Nor is it the minister’s intention, which is sufficient for ministering this sacrament, to intend for the future, but he must intend it for the present, as the sign signifies; because in sacraments of truth the minister does not suitably minister if he is lying. There is, then, no sacrament there if the consent is only about the future, because of the defect in the intention of the minister; and it is a lie if he use a representative sign. But if he use a prognostic sign, although he not be lying, yet the requisite intention is lacking, and the requisite due sign.

9. To the first argument [n.3] I say that the major is not true, unless it be understood of an indissoluble bond before the act of carnal union, but not if it be made indissoluble through the carnal union, because matrimony is of its nature an indissoluble bond; but if the bond be made indissoluble through this act, yet it is not indissoluble beforehand.

10. And if you ask, on the supposition that, according to the Church’s presumption, this sort of thing is matrimony, what must be said according to the truth, whether the following act cause the bond to be indissoluble – I reply: truth prevails over presumption, both simply and in any court, if the truth can be known as equally as that whence the presumption arises. In truth, therefore, if he in the act following espousals not change consent of espousals into matrimonial consent, a matrimony is not effected by the act, because that act neither by the nature of the thing nor by the divine law is the proper form of the sacrament; nor is it matrimony in the issue at hand. The Church, however, to which the mind of the one performing the act cannot be known, presumes it, supposing that he does not want to sin mortally and therefore that he is departing from the consent of espousals and knows her with a new matrimonial consent or affection.

11. And by this is plain the answer to what is added in confirmation from Gregory IX, *Decretals*: I concede that, if the prior consent is not changed into a matrimonial

consent, it is not in truth a matrimony, though the Church presumes it. For I do not see that presumptions of the Church could make a true matrimony.

12. To the second argument [n.4] I say that the promise, although by the law of nature it should be kept, does not yet reach to a contract of giving; and therefore, however much he may be bound to pay the promise, the thing remains his own. And therefore, if he give it to another, it is given, nor can he afterwards take it away from the one to whom he gave it so as to return what was promised; but he should be penitent about the impossibility of returning it. So it is here. If anyone, after he has contracted with another, through the words about the future, by contracting only espousals with her – if he later contracts with someone else by words about the present, it is impossible that he fulfill the promise that he had made to the first one. And because of this he should be penitent about the breaking of the promise and the impossibility of paying it; but he is not bound to make restitution to her, because the promise took nothing from her. Therefore, by words about the future there is no giving, but a promise about future giving. The major proposition, therefore, that ‘an indissoluble bond...is matrimony’ is true of the indissoluble bond both in law and in fact. However, in law it is indissoluble, in fact it is sometimes soluble. And so this promise, which in law is indissoluble, is in fact dissolved by a subsequent giving.

13. To the third [n.5], I say that in espousals there are degrees of firmness, and though the firmness of an oath, applied to espousals by consent about the future, make them more certain, yet it does not go beyond the certitude and firmness of espousals.

Twenty Ninth Distinction

Single Question

Whether Coerced Consent in One or Both of the Contracting Parties Suffice for Contracting True Matrimony

1. “Now it is necessary that conjugal consent etc.” [Lombard, *Sent.* IV d.29 ch.1 n.1].

2. About this twenty ninth distinction I ask whether coerced consent in one or both of the contracting parties suffice for contracting true matrimony.

3. It seems that it does:

Someone baptized through fear of penalties, being coerced to this, does consent sufficiently to receive baptism truly; hence too he who is coerced to observance of the faith already received, Gregory IX, *Decretals* III tit.42 ch.3, ‘Of baptism and its effect’ [*Ord.* IV d.4 nn.61, 74]; therefore, by similarity in the issue at hand, he who is coerced into making a contract [of matrimony] does truly make it, since there is spiritual matrimony there just as carnal matrimony here. Indeed, the consequence seems to hold [from the argumentative place] *a minori*, because less liberty seems required in carnal matrimony than in spiritual.

4. Again, no one can be coerced to make a contract save through fear; but no fear impedes save one that can happen to a man of constancy; but such fear is no fear, because a man of constancy is brave, and a brave man is fearless, from *Ethics* 3.9.1115a32-b11.^a

a. [Interpolated text] Besides, Gregory IX, *Decretals* 1 tit.40 ch.3, ‘Of things done by force or by reason of fear’ “The renunciation of a choice done through fear, if confirmed by an oath, is obligatory,” therefore by similarity in the issue at hand.

5. Again, coercion done through fear is only a certain efficacious inducement to something, and it is not simply coercion, for the will cannot be coerced; but blandishments can induce just as terrors and threats can; therefore, he who consents because of blandishments or enticing pleasures would not truly contract matrimony. The consequent is false; therefore [the antecedent too].

6. Gregory IX, *Decretals* IV tit.2 ch.1, ‘On the espousal of those below the age of puberty’: “A son not yet adult, whose will cannot be discerned, can by the father be handed over in matrimony to whom the father wills; and after the son has reached the perfect act, he must altogether fulfill it.” And in Justinian’s *Digest*, XXIII tit.1 n.12, ‘On espousals’, it is said of a daughter that “only then is the license to dissent from the father permitted to her if the father choose for her a spouse unworthy or base in morals.” There is a confirmation of this, because the Pope can compel spiritual sons to contract spiritual matrimony, as by receiving episcopacy; therefore, a carnal father can compel his son, though unwilling, to contract carnal matrimony.

7. To the contrary is the Master in the text [Lombard, *Sent.* IV d.29 ch.1 n.1].

8. Similarly, spiritual matrimony is more favorable than carnal; but coerced consent impedes profession of Religion, as is contained in Gregory IX, *Decretals* I tit.40 ch.3.

9. Again, that no son can be compelled by a father to contract matrimony is contained in Gregory IX, *Decretals* IV tit.2 ch.1, ‘On the espousal of those below the age of puberty’; and it seems an authority contradictory to the ones that were stated for the opposite side [n.6].

10. Again, Gregory IX, *Decretals* I tit.40 chs.2-3, ‘Of things done by force or by reason of fear’, and Gloss *ad loc.*, “Matrimony contracted through fear is not binding, nor is he who does this obligated, even if he swear an oath.”

I. To the Question

A. Opinion of Others

1. Exposition of the Opinion

11. One way of speaking here [Richard of Middleton, *Sent.* IV d.29 princ.1 q.1] is that no one can be so coerced to consent that his will consents, because the will is not compelled nor can be compelled. But only in a certain respect is anyone coerced by a fear of penalties he wants to avoid. Herefrom the argument is: anyone does sufficiently avoid the penalties he fears by consenting with words exteriorly; and therefore if, over and above the consent that appears in the speaking of the words, he consent interiorly in his mind, he consents with that consent, not from fear. And consequently, the interior consent is free, not coerced, and so it obligates and the matrimony is ratified in the judgment both of God and the Church. But he who consents in his mind but with the words only, since the consent in his mind is not free, such as he does not contract matrimony either in the forum of conscience or in the forum of the Church, because the Church presumes that such as he did not consent.

2. Rejection of the Opinion

12. But, first, this seems unreasonable, because, according to everyone, the fear cannot be simply fear within or without, or simply coercion, because he who speaks is voluntarily moving his tongue. For however much his mouth were with fingers violently opened or his tongue moved, he could not speak or express words unless he were moved voluntarily by himself; therefore, coercion is only the inducement to do something to avoid a threatening evil.

Likewise, fear that leads to mortal sin cannot happen to a man of constancy, because then a man could be coerced into mortally sinning.

13. From these points I argue as follows: whoever is coerced to something, which cannot, in the absence of something else, be without mortal sin, is coerced to that something else, and this when taking 'coercion' in the same way on this side and that. But this person, for you, is coerced by fear into speaking external words expressing consent, and these words cannot, in the absence of interior consent, be without mortal sin, because he who speaks them without interior consent is perniciously lying. So, just as he can, for you, be coerced to speak the words, so can he be coerced to interior consent.

14. Proof of the major in multiple ways:

First, because the fear that excuses is only that which can happen to a man of constancy according to law; but a man of constancy seems to be one whom a fear of greater disadvantage than fear of mortal sin cannot happen to.

15. A proof also of this is that no fear can, according to right reason, happen to anyone save to undergo a lesser evil in order not to do, or in order to avoid, a greater evil; but suffering some pain is a lesser evil than sinning mortally; but it is a mortal sin to express outwardly that one consents and yet not to consent interiorly.

16. This could also be proved about what is licit and illicit, because fear cannot bring anyone to anything save to what is licit; for it is more necessary to avoid what is illicit than to flee pain, since indeed anyone is directed by a higher cause to flee what is illicit than to avoid pain, because God draws a man back from what is illicit through affection for justice, but love of advantage inclines toward avoidance of pain.

17. This reason [n.13] is confirmed by a double example:

First because if it were not licit for someone to consent interiorly, no fear ought to bring him to speak the words exteriorly – just as would be the case with a Religious, who ought in no way to be brought to speak these words, for either he is consenting and sins mortally against his vow, or he is not consenting and sins mortally with a pernicious lie. Therefore, fear is not sufficient to bring anyone else to speak those words save as he is distinguished from a Religious, for whom it is not licit to consent interiorly.

Another example is if someone, while inflicting violence on this person to accept this woman through the violence, were also to exact from him this sort of oath, 'I swear on the holy Gospels of God that without fear I consent to her' – in no way should he be brought by any fear to this oath, because, by swearing deceitfully, it is mortal sin. Therefore, similarly, by no fear can this man be brought to accept this woman by words exteriorly, save as it is licit so to accept her; but it is not licit save as conjoined with interior consent.

18. If you say that it is proved by these reasons that he should not speak words for any fear whatever unless he consent with his mind, yet, if he does consent, he is bound,

because fear is not sufficient to bring him to that consent – on the contrary: neither is he coerced so to the exterior words simply that another be the mover of his tongue, but because something more to be avoided threatens him, namely death; for this reason is he said to be coerced by fear into so speaking; therefore, by similarity, when an evil threatens him greater than giving consent to this woman (as death or mortal sin), he is coerced by fear into giving consent to her.

19. This is confirmed, because the opposite would give many people the occasion to lie perniciously. It is also confirmed by an example, because if someone in great peril cast merchandise into the sea lest he drown, he casts it from fear; and if there were some other act in the absence of which there could be no casting into the sea, either absolutely or not without mortal sin, he would be coerced in like manner into that.

20. Second, the opinion is at fault in its saying that the Church presumes there is no interior consent there, because the Church presumes he only consented exteriorly out of fear, not interiorly in his mind. For this is false, because the Church always makes assumption for the better side, as is contained in Gregory IX, *Decretals* V tit.41 ch.2, ‘Be merciful’, and I tit.12 ch.1, ‘About scrutiny in conferring Orders’, “Him whom one does not know to be unworthy, one should reckon to be worthy.” It is manifestly plain that the Church assumes that carnal union, following espousals, comes from marital affection, because the Church assumes that spouse and spouse are not sinning mortally in the act; therefore here similarly.

B. Scotus' own Response

21. To the question, therefore, I speak differently. And there are here two things that need looking at: first, how consent can be coerced; second, whether it be sufficient for contract of matrimony.

1. How Consent Could be Coerced

22. About the first I say that coercion does not properly happen to a man in any human act; for it is a contradiction that the will is simply coerced to an act of willing; because, since from *Ethics* 3.1.1110b15-17 “the violent is that whose principle is outside, the passive thing contributing no force to it,” understand this to be ‘contributing no force’, that is, ‘contributing no violence’ – not by way of negation but by way of contrariety, that is, ‘not contributing violence to the contrary’. This is to say, ‘the violent is what is totally from a principle outside and is against the inclination of the passive thing’; and an act of will cannot in this way be in the will, because then he who does not will would will, which manifestly includes a contradiction.

23. However, what has a will can be coerced to some passive suffering (as that it remain here bound), or to some instrumental action, which however is not its own action (for example if he strike someone with my hand, because he could do that with a bronze hand).

24. But to an elicited or commanded action of the will, which alone is properly a human action, a man cannot be compelled save in a certain respect, namely by fear of a greater evil than that act is. And this coercion can exist in a virtuous man, namely when he knows – not by a slight guess or suspicion but with certitude (at least a certitude sufficient

in the case of human acts) – that an evil is to be inflicted on him that is more unacceptable to him and more to be avoided than eliciting the act that displeases him. And it can well be that it is more unacceptable to him according to right reason, as death or undergoing imprisonment or captivity, and as major mutilation or disgrace or the like evils.

25. Since, therefore, he is lord of his will, he can also will something that he would otherwise not will, and command an act otherwise refused, before he incur those evils – and this according to right reason; hence such fear is said to happen to a man of constancy. But no fear can, according to right reason, bring anyone to mortal sin, because there cannot be a greater evil that threatens than mortal sin, because no penalty, mere penalty, is worse than mortal sin.

26. Now as to venial sin let it here be a matter of doubt. But about it elsewhere.⁷⁸

2. Whether Coerced Consent Suffice for Contract of Matrimony

27. On the second main point [n.21], I say that this consent, coerced thus through fear as was said [nn.17-19], does not suffice for contract of matrimony, as is obtained expressly from Gregory IX, *Decretals* IV tit.1 ch.14, ‘On espousals’, and ch.28, ‘By your consultation’. Therefore, we have it that so it is.

28. But what is the reason for this?

I say that a cause and reason can be given, both from the formal cause of this contract, and from the efficient cause by which the contract has such form, and from the final cause because of which the efficient cause has given this contract such form.

29. The first point is clear, because this contract is a giving, and though it is not a generously free⁷⁹ giving (supply: because given so that equal to oneself be given), yet it is a free giving simply, because it is against the idea of giving that it not be free. This then is the formal cause of matrimony (and a form cannot be proved of itself);⁸⁰ and thus is it plain, on the part of the form or the formal cause of matrimony, that coerced consent is not sufficient, because it impedes liberty, which is the form of it.

30. This is plain second from the efficient cause, because God has instituted this transfer to be such, namely purely free. Hence this is not determined by the Church but only expressed. For it is plain that even in the law of nature this was required in the contract of matrimony, *Genesis* 2.24, “He will cleave to his wife.” One does not cleave to that which one holds unwillingly. And *Genesis* 24.8, 57-58, where it is said of Abraham that he said to his servant, “If the woman not wish to come with you, you will be free of your oath;” and when he sought for Rebecca, they said, “We will call the girl, and we will ask her will;” and at once her parents asked her, “Do you wish to go with this man?” She replied, “I will go.” But where is it seen to have been instituted by God? I say that in *Genesis* 2.24, through the mouth of Adam, “Wherefore,” he says, “a man will leave his

⁷⁸ Vatican editors: The doubt is briefly introduced by Scotus in *Rep.* IV/A d.29 q.1 n.9, “Now about venial sin...whether it should, according to right reason, be committed by anyone rather than that any pain be allowed, is doubtful.” However, he gives no solution to it.

⁷⁹ ‘Generously free’ because the Latin word ‘liberalis’ is used here to qualify the giving; in the next line the word ‘libera’ is used to qualify the giving. So, to bring out the difference, ‘generously free’ is translated here and merely ‘free’ there.

⁸⁰ The form of a thing is also its definition, and a definition cannot be proved; rather is it the first principle of proof (as the definition of triangle is the principle to prove it has internal angles equal to two right angles). A definition is reached rather by process of description and division.

father and will cleave to his wife.” Now this ‘leave his father’ is not to throw away or despise his father; nor does he say ‘he will be left or thrown away by his father’, but ‘he will cleave (he says) to his wife’, namely ‘his own wife’, and ‘to cleave’ is done by love. And so is it plain that this condition (namely of mutual will and mutual love and consent) God bestowed on matrimony, and instituted it.

31. Third, this is plain on the part of the end, which is the offspring to be procreated, to be religiously educated, and for the divine cult – or the indissolubility of the bond for that act; because the act looks for this giving to be simply free, for love does much for this, that such bond be preserved through mutual affection; for as was said earlier [d.26 n.33; Gratian, *Decretum*, p.2 cause 30 q.3 ch.4], “What someone does not love, he easily despises.” Similarly, marriages that are not free or not loved are, for the most part, destined to a bad end.

32. Also a certain person says [Richard of Middleton, *Sent.* IV d.29 princ. 1 q.1] that it could be said the Church makes a person, even a suitable person, illegitimate for the time for which there is coercion, because just as the Church can make illegitimate simply, so also in a particular case and for a time.

33. But this I do not believe; rather the statute of the Church requires this [sc. free gift] for the nature of this contract, from the efficient cause that determines it, and on account of the end for which it is.

3. Some Doubts against the Aforesaid

34. But against the aforesaid are some doubts.

Because he who is coerced by fear does simply give consent in his mind to this woman (as was said before [n.12]); otherwise he would be lying in saying that he consents – but this is not true, because from the fact that he is virtuous he does, in order to avoid mortal sin, give consent interiorly, in agreement with the words said exteriorly. Therefore he has an act of will of voluntarily transferring both his body and the right over his body, just as another does who is in no way coerced. Therefore when, by act of will he transfers dominion, he transfers the power of his body to her, and consequently, when the power over his body has, by act of his will, been thus transferred to one woman, power for another woman does not remain with him.

35. Again, if someone contracts matrimony from fear of mortal sin, he would simply contract it, as being by divine precept or by precept of a man who was superior (if he could prescribe it); and yet fear of mortal sin is thus fear and does happen thus to a man of constancy, just as does fear of any pain, indeed much more so. Or like this in logical form: if coercion from fear command matrimony, then a greater fear would command more; but he who makes a contract from fear of mortal sin contracts it on account of a greater fear, because from fear of a greater evil than if he were to make a contract because of any fear of pain; therefore such a one would make a contract – which is false.

36. Again, one can and should fear evil not for oneself but also for one’s neighbor; therefore if evil either of sin or pain threatens this woman (evil of sin, as when she says, asserting firmly, that she would at once prostitute herself unless she be conducted into matrimony; evil of pain, as if she for certain say that she will kill herself, or another says he will kill her, unless she be conducted into matrimony), then the man, so as to avoid all

these evils, accepts her. It seems that this is a contract of matrimony, and yet here there is fear; therefore etc.

4. Solution of the Doubts

37. For the solution of this question [sc. from the preceding doubts, nn.34-36], an argument could be taken from the sacrament, because free intention is required in ministering this sacrament; but this fact is not as known as the fact about the freedom required for a contract.

38. [Solution of the first doubt] – As to the first [n.34] I concede that he who is threatened by this fear of sin, or of death, or of prison, should, according to reason, say the matrimonial words that are exacted of him, and so, consequently, he should consent interiorly in agreement with the words. Indeed, he is also bound, by necessity of safety for the moment, to have such a ‘to will’ and such an interior consent, just as he gives expression exteriorly in words, if such words he should give expression to. Nor yet does he by this consent transfer power over his body to another, because no consent makes a transfer in this way save a purely free one.

39. And if you say ‘this man at least freely has an act of will, therefore as far as in himself he does make the transfer’ – I reply: he does not freely have the act, because he has it only from fear, though the fear not be the sufficient efficient cause, but a cause strongly inducing him, just as he does not freely speak the exterior words, because he speaks from fear. Or it could be said that although by such ‘to will’ he does, as far as his own part is concerned, make a gift to the other, yet God, who is the superior lord in this transfer, does not ratify it unless it is purely free.

40. But from this it could be argued, against the aforesaid that, from the fact he knows he is not transferring his body (because he is not freely consenting), and he shows by an exterior sign that he is transferring, then he lies.

41. I reply: he shows he is transferring as far as it is in himself, though he knows he is not transferring, because he knows it is not ratified by the superior.

42. If therefore you say that then he should say, so as not to be lying, ‘I accept you for mine if the Lord permit it’ – I reply: this condition is always understood however absolute the speech, and his absolute word must in this way be understood, ‘I accept you for mine (supply: ‘as far as is in me, on presupposition of this violence’), and if God were – through such consent as I now have – to ratify that a handing over is taking place, I would hand over my body to you, and I do hand it over, as much as I can hand it over through such consent’.

43. [Solution of the second doubt] – As to the second, about obedience [n.35], some say that, just as one can be coerced into accepting some prelacy, and in every spiritual contract one is bound to obey – as a bishop, coerced by obedience, is bound to accept the church of which he is the spouse (whether it be so about a Religious, let me not here say) – so can someone be coerced in a matrimonial contract to give consent to such and such woman.

44. However I reply otherwise, that someone coerced by obedience to make a contract, and who does thus make it through fear of mortal sin, contracts it so he may keep justice, and therefore, he does so from the fact that no one is compelling him exteriorly, but he himself, by his own inclination and affirmation of justice, is interiorly inclined, by

pure choice, to this sort of contract.⁸¹ And therefore I say that there is there a matrimony by choice, and he does truly make a contract. But not so if he were coerced into it by fear of pains or threats.

45. [Solution of the third doubt] – To the next [n.36], about the fear of pain or a neighbor's sin, if only pain in the neighbor were feared it can be said that the consent, coerced by such fear, is not sufficient for matrimony, as was said before about fear of pain in oneself [n.44], because such consent would not be by a choice made in charity. But if sin against his neighbor were feared, and this fear be very certain, the perfect work would be if he were to accept her lest she would sin; and if he accept her, he would hold to the matrimony, because it would be a free consent by charity.

46. But whether he is bound to this by necessity of salvation, look elsewhere [*Rep* IVA d.29 q.1 n.15].

47. To the first main argument [n.3] I say that the case of someone baptized through fear of pain and the case of someone contracting [matrimony] through fear of pains are not alike, for three reasons:

First, because the condition of the baptized is made better, but the condition of one who contracts matrimony is made worse; and therefore it is [not]⁸² enough that someone coerced through fear into receiving baptism intend to receive baptism; but in matrimony this does not suffice, but freedom is required; hence too those who cause there to be violence in it are excommunicated.

Second because the will of the superior ratifies someone's becoming, by such coerced consent, a child of the Church, but does not so ratify it in the matter at hand.

Third, because in the case of baptism there is not as properly a marriage as an adoption. And it can well be that less of the voluntary suffices in someone who is adopted than in someone who contracts matrimony; hence someone who does not have the use of reason can be adopted but cannot be betrothed.

48. To the second [n.4] I say that a brave man is not altogether fearless, because this degree of audacity means to be afraid in nothing; but the brave man is fearless where one should not fear or be afraid. Hence Aristotle too adds in the same place [*Ethics* 3.9.1115b10-15], "But he is afraid where he should be afraid, that is, he is afraid where right reason bids he should be afraid." And right reason dictates being afraid and fearing where a greater evil threatens, and consequently fearing death or prison more than this unpleasant act [sc. coerced matrimony].

49. To the third [n.5], in the case of inducement through fear there is much of the involuntary and little of the voluntary; and it is the reverse in the case of inducement through blandishments and pleasures, because there is much of the voluntary there and a moderate amount of the involuntary;^a for in the first case, if the will were left to itself, it would at once spring back; but in the second case, if an enticed will were now left to itself, it would perhaps go on pursuing. Therefore, the case of the involuntary when enticed by blandishments is not like how it is with coercion through threats and terrors. And the reason is that the will frequently agrees with the sense appetite, and the sense appetite,

⁸¹ The Vatican Editors note the following addition from some of the mss.: "But then it seems that the argument against the first opinion fails [n.43], because one would thus say that, having been coerced into the words by pure choice, one does consent to the words, because one has the consent by title of justice, lest one sin."

⁸² The 'not' is printed in the Vatican edition, but it seems to be a mistake.

being affected by some agreeable object, is inclined more and more, but when affected by a disagreeable object it flees more and more.

a. [Note by Scotus] An example: if a stone were to choose to be above, there would, so that it not grow weary, be much of the involuntary there and little of the voluntary, because being above is simply unnatural to it.

50. As to the last one [n.6], that chapter [from *Decretals*] can be expounded as ‘must by congruity’ and not as ‘must by necessity of precept’. And as to what is added from the *Digest*, the civil law is speaking there; but canon law is the contrary. Hence the remark of Paul’s, *Ephesians* 6.1, “Children obey your parents,” is not understood as applying to this [sc. matrimony], because a child is not obliged to obey a father in this. As to what is added about spiritual matrimony, I say the case of a carnal father and the case of a spiritual father are not alike, because a carnal father does not have as much obedience over a son for carnal matrimony as a spiritual father has over a son as to spiritual matrimony. And the fitting reason is that in the latter case, the one who contracts it is made to be of a better condition, but not so in the former.

Thirtieth Distinction

Question One

Whether for Contract of Matrimony a Consent is Required that Follows a Non-erroneous Apprehension

1. “And not only coercion” [Lombard, *Sent.* IV d.30 ch.1 n.1].
2. About this thirtieth distinction I ask two questions: first whether for contract of matrimony a consent is required that follows a non-erroneous apprehension.

3. That it is not:

In *Genesis* 29.18-35 is the story of Jacob and Leah, to whom he did not consent save by error, believing her to be Rachel; and yet it seems that there was a matrimony there, otherwise the carnal union between them would have been fornication. And if you excuse him through ignorance, though perhaps not sufficient because not invincible – on the contrary: then on the morrow at least he could have repudiated her as not his own.

4. Again, in *Genesis* 27.27-29, 33, Isaac by error blessed Jacob, believing him to be Esau, and yet Jacob was blessed because afterwards Isaac said, “I have blessed him and he will be blessed;” therefore similarly here.

5. Again, if a priest, believing he is baptizing one person, baptize another, whether free or slave, the person is baptized; therefore, error is not an impediment there, and by parity of reason neither will it be an impediment here.

6. Again, more of an obstacle to a spouse is moral malice in the other spouse against the divine law than is the condition of servitude; but erroneous apprehension as to that malice, if consent to this person follow it, does not impede contract of matrimony; therefore, neither does error in condition of servitude.

7. To the opposite is Gratian, *Decretum*, p.2 cause 29 q.1, and the Master in the text [Lombard, *Sent.* IV d.30 ch.1 n.2], who sets down an example about gold and brass.

I. To the Question
A. Solution of the Question

8. To this question I reply that it is clear from the second conclusion of the first question of d.26 above [nn.32-36] that this contract is a contract of free and voluntary giving (and as was also said in the preceding distinction [d.29 nn.29-31]). But ignorance, and especially of the condition that is required for an act of will, causes the involuntary, *Ethics* 3.2.1111a2, and according to Augustine *On the Trinity* 10 ch1 n.1 [also 15 chs.27, 50], “nothing is loved or willed unless it is known” [cf. *Ord.* I d.3 n.589].

B. Corollary

9. From this follows a short corollary, that error or erroneous apprehension as to any condition per se required for a contract makes the contract null. And there are in general three conditions, two on the part of the persons: one, namely, when this person is thought to be that person, the other when an enslaved person is thought to be free. The third condition is the corresponding error on the part of the contract, as when one person were to believe that the other person was contracting with him in a like contract although, however, in the truth of the matter the other person is not contracting, because he does not intend to give as that person intends to receive.

10. As to the first error, it is plain that it impedes all buying and selling of things, as that if gold is bought and the seller is selling brass. So here, if someone intend to give to *b* power over his body and he give it to *a*, nothing from such *a* comes to be.

11. The second condition is a special one here, because here there is a substitution of power over a body for power over a body; but a slave cannot give power over his body to a free woman, as she conversely can; and she, not knowing his servitude and consequently not consenting knowingly to a slave, does not want to exchange power over her body for a power over a body that the slave does not have. And from this follows something else, that error of a better condition is not an impediment – and servitude likewise is not an impediment, if it is not unknown.

12. The third condition is general to every contract, because if one of the two is contracting with a straight mind and the other is only using signs of a contract without a mind to contract, there is no contract; because the more principal cause is lacking, namely the mutual act of will, and the less principal one that is in place, namely the extrinsic sign, does not suffice.

13. This contract [of matrimony] therefore, when it limps on one side, is dissolved; for a contract of matrimony cannot limp since there is a transfer of equivalence there – just as there is a likeness between things that are alike, for one thing cannot be like another thing if the other is not like it.

C. Doubts

14. But here there are some doubts.

First: let it be that someone, in order forcibly to sate his⁸³ lust, say the words but not be intending in his mind to make a contract – is the other person, who contracts with single mind, obligated? It seems so, because on her part there is both consent and words; therefore, the total cause for obligation remains in such a person consenting.

15. Again, let it be that he who contracts deceitfully make express to the other his deceit; that other person, who contracts with single mind, cannot withdraw from the contract because she would expose herself to peril of fornication. Nor yet can she abide on her own side, because she cannot with certitude demand the [marriage] debt, nor yet can she return it on the other side, because in abiding by it she would expose herself to peril of fornication. Therefore, it seems that in such a case the single-minded person is in perplexity.

16. To the first [n.14] I reply: a contract of matrimony does not limp, and therefore if the second person does not give, the contract does nothing. For (as said in the first question, the second conclusion [d.26 n.36]) “I give so that you may give” or “I give if you give;” although on the part of the one who contracts with single mind there is no impediment of fact, save as a consequence.

17. But about the second doubt [n.15] there is considerable dispute, with some saying [Richard of Middleton, *Sent. IV princ.1 q.4*] that this person cannot render the debt while her conscience about the other’s deceit remains, nor can she withdraw, because she would expose herself to fornication, as was said [n.15].

18. In brief I say there is no perplexity in the Divine Law, even with any act at all of one’s own in place – provided however that there not remain some mortal sin by which that perplexity come about. But she who, in single mind, contracts with another does not then have, and much more not afterwards either, any act because of which she may be perplexed; therefore the way of salvation lies simply open to her.

19. I say, therefore, that the safer way is that she settle in her conscience that the other is not deceitfully consenting, indeed that he then truly gave consent, but is now lying; and in this case let her do as a true wife does.

20. But if she cannot get rid of the conscience she has about the other spouse’s privative word [sc. the word that deprives the contract of validity], then, while that conscience remains, she mortally sins in rendering the [marital] debt, because it is fornication.

In not rendering it, too, and much more in withdrawing, she is exposing herself to the peril of mortal sin – that he is lying [sc. now]. And this is more probable than that he lied in the main contract; and then she is denying him what is his own, or if she withdraw, she commits adultery, according to the Gospel [*Matthew 5.32*]. Into a considerable penalty, then, is she dismissed who treats with one who makes a contract deceitfully.

22. But surely the deceiver will not be immune?

I say that, while the deceit remains in the forum of his conscience, he must be told that in no way should he render or ask for the [marital] debt, because it would be

⁸³ Latin words, while rife with grammatical gender, can often be left ambiguous as to biological gender, and Scotus’ Latin here is ambiguous as to whether the lustful person in this doubt, or the deceiving person in the next doubt [n.15], is the male or female partner. It could in principle be either, of course, but the Latin becomes clear enough later, especially in nn.19ff., to show that Scotus is thinking primarily of the male party as the deceiving party, and therefore also, one presumes, as the lustful party. The English translation accordingly follows this presumption from the beginning, even where the Latin remains ambiguous.

fornication; and, along with this, he must be told that he is bound by necessity of salvation to make satisfaction to the person harmed; but he cannot make satisfaction unless he render to her as much of his own as, without doubt, he took from her; for it seems that his body is not [sc. not yet] the body of the wounded woman, that he exchanged his body for her body, and therefore that he is necessarily bound to change the deceit into a true contract.

23. But let it be that in the meantime he contract with another woman, what then is to be done?

I reply: that contract is to be kept and, as to the impossibility of rendering to the former woman what is due her, he must be penitent, along with the exterior satisfaction possible, as by procuring a suitable matrimony, as is found in *Exodus* 22.16-17 about him who sleeps with a virgin, that he is bound to a definite restitution for her, according to the custom of the dowry that virgins are wont to receive in that country.

24. If against this solution an argument be made about the error, which solution consists in this, that exchange is only according to the apprehension of the value of the thing exchanged relative to what it is exchanged for – against this solution, that someone can give something or exchange something expecting something greater to be returned to him, for which however nothing will be given in return, nor yet is the first giving null for this reason.

I reply: some giving, expecting a future return, is not a generous one; and some giving demands a preceding or concomitant giving, which is exchange properly. The first does well hold, although afterwards the expected return not follow, because the transfer is made there only under hope of future return. The second never exists save where there is at once a concomitant return, because the contract is conditioned (even if not with an expressed condition, yet one universally understood implicitly by the nature of a contract), and a conditioned contract does not stand save when the condition stands.

II. To the Initial Arguments

25. To the first argument [n.3], whether Jacob could be excused of sin if he knew Lean on the first night or not, is no great concern, for he was not confirmed [sc. about her identity]; but I say that after he apprehended she was Leah he consented to her with a new consent, perhaps because of the words of Laban [*Genesis* 29.26], “It is not the custom in this place that the younger are handed over to marriage first;” and from then was she his wife; otherwise I concede that he could well have repudiated her as not his own.

26. To the second [n.4] I say that after the departure of Jacob and the entry of Esau, it is added there [*Genesis* 27.33] that Isaac trembled violently and wondering beyond what can be believed he says, “Who was it etc.;” and about the blessing of Jacob he added, “And I have blessed him, and he will be blessed,” where, consequentially and in accordance with the text, Isaac is understood to have been rapt in that ecstasy wherein he saw that Jacob justly and according to the will of God had to be blessed, and therefore the first blessing – although extorted by man and human precaution, yet afterwards, because in that ecstasy and wonder Isaac saw it approved – he pronounced as firm, adding “and he will be blessed.”

27. As to the third [n.5], there is no similarity with a baptism unknowingly conferred, because there is no mutual contract there.

28. If however, for the solution of this question, someone were to take an argument from the idea of a sacrament, that it could not be conferred by someone in error, it seems probable that he who errs about the person would not, in baptizing, baptize him, just as neither in the case of matrimony.

29. But this argument is not set down for solution of the question, nor does such error about the person (that it is *a* or *b*, provided however he intend to confer this sacrament on this person who is present) seem to prevent conferring of baptism, or of the other sacraments. But here such error is an impediment, not because it impedes first the sacrament, but because it impedes the contract of making gift to him to whom one does not want to give that which is here given.

30. I say that there can be error in baptism about the person, but not in joint giving, because servitude does nothing there [sc. nothing for contracting matrimony, n.11]; for if he were to intend to baptize some determinate person and he does not baptize that person, then it is nothing.

31. To the last argument, about moral malice [n.6], I say that moral goodness is not something *per se* required for a contract of matrimony, and this neither when preceding nor concomitant nor following; nor similarly the opposed malice. And so error in this condition does not prevent the contract. But it is otherwise about the condition of servitude, on account of the reason stated in the solution of the question [n.11].

Question Two

Whether between Mary and Joseph there was True Matrimony

32. Second [n.2] I ask whether between Mary and Joseph there was true matrimony.

33. That there was not:

Gratian, *Decretum*, p.2 cause 17 q.1 ch.2, “For those who vow chastity not only marrying but wanting to marry is damnable;” but the Blessed Virgin had vowed chastity; therefore, she did not contract matrimony with Joseph; otherwise she would have mortally sinned.

34. Again, in *Numbers* 36.7-8 is contained that according to the Law women ought to marry men of their tribe; therefore, Mary was only able to marry a man of her tribe; but Joseph was of the tribe of Judah, *Luke* 2.4, because he was “of the house of David,” but Mary was of the tribe of Levi, *Luke* 1.36, because “her kinswoman, Elizabeth.”

35. Again, one who contracts matrimony consents to something; not only to cohabitation, because brother and sister can consent thus; therefore, to carnal union, because matrimony seems to add nothing else over and above cohabitation; but the Blessed Virgin could not have consented to that union, because she had vowed virginity.

36. To the opposite is the Master in the text [Lombard, *Sent.* IV d.30 ch.2 n.1], and it is taken from *Matthew* 1.18, “Since she was betrothed etc.”

I. To the Question

37. Here two things need looking at: first, that it was so; second, how it could have been so.

A. Between Mary and Joseph there was True Matrimony

38. The first point is plain from the authorities that the Master puts in the text [Lombard, *Sent.* IV d.30 ch.2 nn.2-5, from Ambrose and Augustine].

39. And there is a fitting reason for this, because either there was a divine precept universal for everyone in the Law about contracting matrimony, not yet revoked at the time when the Blessed Virgin contracted matrimony, since indeed fecundity was held a blessing in the Law and sterility a curse (as is plain in many places of Scripture [*Genesis*, *Deuteronomy*, *I Kings*, *Psalms*, *Proverbs*]) – or if there was not a general precept, which is seen from the fact that Jeremiah and John the Baptist remained virgins, and Elijah and perhaps many others (for whom however we do not read that a special dispensation about this was made), then a special command was given to the Blessed Virgin about making a contract with Joseph.

40. There can for this be the fitting reasons assigned by Ambrose [*Exposition of Luke* II nn.1-13], namely so that her husband would be witness to Mary's virginity, who would also have been able, were he not to recognize the oath [*sacramentum*: ?of virginity], to lament injury and avenge scandal. Thus too is greater faith ascribed to the words of Mary, and cause for lying removed. For a pregnant unmarried woman would seem to have wanted to hide her fault with a lie; and a non-betrothed woman had a reason for lying, a betrothed woman did not, since the reward of marriage and the grace of nuptials is women's offspring. And thus, both from testimony and from presumption, she would be more believed about her virginity and the matrimonial conception of her Son.

41. It was also congruous for her to be believed about her virginity lest she be marked for ill repute, because Christ did not think faith about his own origin needed to be built on injuries to his Mother; for he knew the Virgin's sense of shame was tender and reputation for modesty fleeting.

42. Another reason too is so that her husband would be of service also to the boy, whether going into Egypt or returning thence; which reason Origen touches on [as quoted by Deacon Winfred homily 17 *On the Vigils of the Nativity*] in his commentary on *Matthew* 1.18, "Since she was betrothed."

43. Another reason is assigned by Ambrose [*ibid.* n.40], namely so that the devil be deceived. – But this reason seems of little moment; for how could the devil not see the virginity of Mary if she had Joseph as husband than if she did not have him? But it needs to be understood that he could not see this because he was not allowed to, though by the natural power of his intellect he could have seen integrity in her, both of mind and body. But, being prohibited, he was unable to approach her in place or in intellect. This also does Bernard say [*On the Praises of the Virgin Mother* hom.2 n.13], that he could not approach her; but neither did he care to, because he saw her betrothed to a husband. This reason, therefore, does not seem to be of great moment, because he could have been as equally prohibited if she had not had a husband.

44. But the other reasons do seem well fitting to the issue at hand: that Christ would [otherwise] take his beginning from injury to the Law, that he not give occasion to Jews and to Herod to persecute Christ, since the offspring of an unmarried woman is condemned by the Law; so that too he not leave to virgins living under sinister opinion a veil of excuse, because the Mother of the Lord would also be seen to be defamed.

B. How there Could have been a True Matrimony between Mary and Joseph

1. Opinion of Others

45. On the second main point [n.37], some say [Thomas Aquinas, *Sent.* IV d.30 q.2 a.1; Richard of Middleton, *Sent.* IV d.30 princ. 2 q.1] that the Blessed Virgin vowed virginity under a condition, namely unless God were to dispose differently; and therefore it was licit for her to contract matrimony.

46. On the contrary: in every vow, however absolute, this condition ‘if it please God’ is understood, because no one should offer anything to God regardless of whether God wants it or not; nor would he who intends so intend in ordered manner. Therefore, an absolute vow stands along with this condition, so understood; and if the condition be added, it counts as not added, because in no respect does it diminish the idea of a vow.

2. Scotus’ own Opinion

47. I say, therefore, along with the saints, that she absolutely and simply vowed virginity, which the saints [Augustine, Bede, Bernard] also put together from the words of her question or query to Gabriel [*Luke* 1.34], “How will this be since I know not man?” For if she had not known man only in act without a firm resolve never to know man, there would have been no question, because she could, being known later, have conceived, since she was not sterile. But for this reason was the question reasonable, and about something beyond marvelous for her, because she had most firmly pledged or vowed that she was never to be known by man. And to this understanding did the angel reply: “The Holy Spirit will come upon you etc.” [*Luke* 1.35]

48. How then was she able to contract matrimony?

I reply: in a matrimonial contract there is a mutual giving of bodies for carnal union only under a condition, namely if it is asked for. Hence those who contract with the resolve at once to vow chastity do truly contract. Now this condition is not prejudicial to a vow of chastity, even when a contract of matrimony is in place, unless the condition were put into effect; therefore, when there is certitude simply that it would never be put into effect, a contract of matrimony does not at all prejudice a vow of chastity. But here there was such assurance, at least by inspiration or perhaps by revelation; for from the fact we have it in *Matthew* 1.20 that the Angel instructed Joseph saying, “Do not be afraid to take Mary your wife,” much more indubitably must we believe that she, by an angel or immediately by God (before she was espoused to Joseph), was taught with certitude as follows, ‘Do not be afraid to take Joseph for your spouse; for behold the Holy Spirit will give him as both guardian and witness of your virginity, who is to be continent along with you by equal vow, and who is to serve you in many things that are becoming to the guardianship of your virginity’. Nor is there wonder about this probability, since whatever was done in Joseph by the angelic vision was all done by reason of Mary, who was immediate in that ineffable and admirable conception of the only begotten Son of God. And many things are read in her life about how Mary and Joseph came together with each other [Jacob de Varagine, *Golden Legends*, ch.6, Jerome, Bernard]

49. An example of this can be taken from Boniface VIII *Decretals Book Six* V tit.12 ch.3, ‘On the signification of words’, where is read compendiously that ‘to concede to others the use, while retaining the lordship, is not useless; indeed such concession is

fruitful to the owner, since it is meritorious for things eternal and opportune for the profession of the poor'. So in the issue at hand, to give to another power over one's body for such act, if it be asked for, having retained however the use for oneself, because it will not be asked for by the other, is not useless.

50. However this example is subject to evasion, because it does not seem that use could be kept back while ownership is handed over as ownership could be kept while use is handed over, because the latter can more be handed over without the former than conversely. But as far as this is concerned, it seems that one without the other can belong to anyone. However, in the issue at hand neither did she retain the use by her own authority, but she was certain that the Holy Spirit would retain the use, because never would the other, to whom that use was due, demand the use.

51. Another example is: if someone had contracted espousals with an oath and had afterwards vowed virginity, it would seem that she should be advised that she should complete the espousals by contracting matrimony in fact and yet should keep her vow, because immediately before consummation of matrimony she should fly off to Religion; therefore it is licit for her to give power over her body to her spouse, by contracting matrimony truly ratified, and yet the intention of never giving the use, and this on her own part, without knowing that the other person would never ask for the use; therefore much more would it be licit to contract matrimony thus, if she knew with certitude that her spouse would never ask for the aforesaid use.

52. Again, an adulteress has power over her husband's body, because through matrimony was it given to her indissolubly; and yet she does not have, nor can have, as concerns her own part, the use of his body, because of her sin. Therefore, sin can perpetually prohibit use, while the power given in matrimony stands. Therefore, much more does the Holy Spirit have power for this on account of some honorable cause.

II. To the Initial Arguments

53. To the first argument [n.33] I say that the authority must be understood of those who want to marry according to the common law, for whom, of course, it is not settled with certitude that the use consequent to such act would never be asked for.

54. As to the second [n.34] it can be said that that law was given because of the daughters of Salphaad, and this, it is plain from *Numbers* 36.6-10, so that property not be transferred from tribe to tribe. Therefore, it only obligates those women on whom the inheritance devolved (as the paternal inheritance had devolved on those women, because their father was dead). But Mary was not an heiress, therefore it was licit for her to marry someone of another tribe.

55. It can also be said in another way that Mary was of both tribes, both Judah and Levi: of the tribe of Judah on the part of her father, of the tribe of Levi on the part of her mother. For indeed Joachim was descended from Nathan, the son of David, as is plain from Damascene *Orthodox Faith* ch.90, where he sets down the generation of the holy Mother of God. But Anna, the mother of Mary, is presumed to have been of the tribe of Levi, so that Elizabeth through her would be Mary's kinswoman. The first point, too, that Mary was of the tribe and kinship of Judah, can be proved by the fact that the Gospel deduces that Christ was of the tribe of Judah by deducing that Joseph was of that tribe, which would only be the case if Mary were of that tribe, because Christ was not of the

tribe of Judah on account of Joseph but on account of Mary. And this reason Jerome touches on at the beginning of *Matthew* [Commentary on Matthew 1.1.18]

56. To the final argument [n.35] the answer is plain in the solution of the question, the second article [n.48], that this consent lies in the handing over of the mutual power of bodies for procreating offspring, and consequently for use if it be asked for; but there was certitude here that this use would never be asked for by her spouse, namely Joseph.

Thirty First Distinction

Single Question

Whether the Goods of Matrimony are the Three that the Master Sets Down in the Text, namely Faith, Offspring, and Sacrament

1. “After these things, about the goods of matrimony” [Lombard, *Sent.* IV d.31 ch.1].
2. About this thirty first distinction I ask whether the goods of matrimony are the three that the Master sets down in the text, namely faith, offspring, and sacrament.
3. It seems that they are not:
Because a sacrament is formally good in itself; therefore it is not good by other goods, that is, good through other goods.
4. Again, faith does not seem to be a good of matrimony, because between adulterer and adulteress or another woman there can be a true matrimony, where however there is not faith or the good of faith.
5. Again, there can be matrimony with someone who is sterile, where there is not the good of offspring.
6. Again, since matrimony is a sacrament, the sacrament cannot be a partial good of matrimony, because the same thing is not a part of itself.
7. To the opposite is the Master in the text [n.1].

- I. To the Question
 - A. Opinion of Others
 1. Exposition of the Opinion

8. Here it is said [Richard of Middleton, *Sent.* IV d.31 princ. 1 q.1] that he who contracts matrimony obligates himself to carnal union, at least under the condition if it be asked for; and certitude about not asking for it is found in very few. But in that act a man is deprived of the greatest good, namely the use of reason, according to the Philosopher *Ethics* 7.7 15-18, “such an act robs the wisest man of intellect.” Hence Augustine, *City of God* 14.16 [Lombard, *Sent.* IV d.31 ch.5 n.1]: “Pleasure, than which there is none greater among bodily pleasures – in the moment of time when its extreme is reached, almost all the keenness and as it were vigilance of thinking is overthrown” But no one, according to right reason, should obligate himself to anything by which he suffer so great an evil unless there be there some compensating good; therefore no one ought to contract matrimony unless there are goods compensating this throwing away of the use of reason; and those are said by the saints to be goods excusing the carnal act [Lombard, *ibid.*, ch.5 n.7]. Now

these goods are the good of faith, of offspring, and the sacrament [Lombard, *ibid.*, ch.5 n.1].

2. Rejection of the Opinion

9. Against this: that in the state of innocence there would have been a matrimony having these goods, and yet they would not then have been goods excusing the carnal act or the contract of matrimony, because neither the act nor the contract would then have needed excuse.

10. Again, in the matrimony of Mary and Joseph there was no need to set down these excusing goods, nor universally in the case of spiritual matrimony with an equal vow by the spouses of chastity.

11. Again, much more is a man deprived of use of reason by sleep than by that act, and this both according to intensity (hence *Ethics* 1.13.1102b6-7, “The happy man only differs from the miserable man as to half his life, namely when awake”) as according to extension, because sleep deprives [use of reason] for a long time, but this act deprives it as it were momentarily. Therefore no one, according to right reason, should expose himself to sleep, unless there were goods excusing it and goods better at that time than the use of reason, which however is not admitted.

12. It is said here [Richard of Middleton, *ibid.*] that there are recompensing and excusing goods in sleep, namely necessity of nature, invigoration of bodily members, strengthening of the organs – because without sleep there would be too much weakness and dullness of sense powers, and consequently impediment of intellect, because the intellect is impeded when imagination is impeded. In another way is it said that one does not in sleep suffer loss, the way one does in that act; because after sleep the intellect is strengthened; after this act it is dulled, so that not only is one deprived of this good through that act, but one is rendered less apt for this good after that act; it is the opposite in the case of sleep.

B. Scotus' own Response

13. To the question, therefore, I say, according to the Philosopher, *Metaphysics* 5.16.1021b12-30, chapter ‘On Good’, that good and perfect are the same thing. But there is a double perfection: intrinsic form, extrinsic end, or first the form, second the end. Now there can be a double end of something: remoter end and nearer end. The remoter is regularly the more principal end, because the nearer end is ordered to it.

14. These three exist proportionally in matrimony, and they are called the three goods of matrimony [n.2].

For, taking matrimony for the bond left behind from the contract of matrimony, this is the indissoluble form, as was touched on in the first question [d.26 n.29], and the indissolubility is called the sacrament by reason of the fact that it signifies the indissolubility of Christ and the Church; therefore ‘sacrament’ as it is here taken is the intrinsic good of matrimony, because it is its first and formal perfection.

15. But this obligation is, by way of end, for this, that such persons procreate offspring to be religiously educated. Offspring to be religiously educated, therefore, is the extrinsic good of matrimony, as the principal end.

16. But this end only follows from a certain other principle, namely from carnal union. Therefore, the bond or obligation, which is the first and formal perfection of matrimony, is immediately ordered to mutual rendering of the carnal act, if it be asked for, and this rendering is just because of the mutual preceding obligation. And this near and immediate end of matrimony is called the good of faith, and is fidelity or justice in rendering to the other spouse what is that spouse's own, and in not giving it to another; and this fidelity, or justice, to the act to which it obligates is an extrinsic good as proximate end, as was said.

17. There is, then, a single form of matrimony, and two subordinated ends, which are also called the three goods of matrimony.

18. In this way is it plain, therefore, how the sacrament, as it is here taken, is the first and intrinsic good of marriage and the form of it. Faith, that is, fidelity, in justly rendering the act due is the good as proximate and less principal end. And the good of offspring is the extrinsic good and the more principal end.

19. And only the first good is essential to matrimony, because the second good, namely to render the debt or the good of faith, is not simply and absolutely necessary for true matrimony, but only under a condition, if it be asked for. Nor either is the third good [simply and absolutely necessary], namely offspring, because that good does not follow save with preceding carnal union. And consequently it is not simply necessary for matrimony, but only under condition, as is also the good that, according to the common law, is necessarily presupposed to it.

20. But whence arises the first good, namely indissolubility?

I say that it formally arises from the mutual giving but effectively its perpetuity comes from God as Legislator, who also does not permit that anyone could give his body to another for that act unless he have power and concession from his superior lord, namely from the Legislator, which indeed God did not regularly concede, but sometimes did well dispense from, as in the Old Law, when he permitted a bill of divorcement to be given [*Deuteronomy 24.1-3, Matthew 19.7-8, Mark 10.3-9*].

21. The obligation, therefore, and its indissolubility or perpetuity, formally arises from mutual consent and effectively from the Legislator.

22. But, on account of some arguments, it is necessary to see how these three goods exist in every matrimony. For it does not seem that the good of the sacrament exists in a ratified non-consummated matrimony, because this is dissoluble through entry into Religion, as is plain in Gregory IX, *Decretals* III tit.31 ch.16 [or better tit.32 ch.2]. Nor does the good of offspring exist where there is an impossibility to get offspring. Nor the good of faith where faith is not kept, as in adulteries.

23. I reply: as was said [n.14], the sacrament, according as it is set down as a good of matrimony, is not taken for a sacrament of the New Law, because that is only a sensible sign. But this indissolubility is something spiritual in the minds of the contracting parties. The sacrament of matrimony also passes by at once, because it consists in coming to be; but this indissolubility remains and exists in being at rest not in coming to be. A sacrament also is a disposition for grace in those who worthily receive it; not so this indissolubility. It is however an intrinsic good of every matrimony of the New Law, such that it is impossible for there to be a matrimony formally without it, because it is the form of matrimony, that is, of the bond.

24. But the other two goods are not intrinsic goods of matrimony, nor necessary there formally; but they are necessarily there in obligation and virtually. The good indeed of keeping faith in actually rendering to the spouse what is the spouse's, and not giving to another what is foreign to that other, is necessarily there in the obligation. As concerns the negative obligation at least, the obligation is there always and at all times (as for the affirmative, it will be spoken of in the next question [d.32 nn.10-28]). And therefore, one who does not keep faith sins mortally. The other good, namely of offspring, is there in the obligation under a condition, if it come about, in order for offspring to be taken up gratefully and religiously educated. And therefore always and at all times is not being studious to impede that good under obligation there.

25. From these points to objections:

It is in one way said as to the first good [Richard of Middleton] that this indissolubility remains until death. But if, as the Apostle says *I Corinthians* 8.39, the man is dead, the woman is loosed from the law of her husband. But they say that this holds not only of carnal death but also of civil death, because this act [of matrimony] only belongs to someone living in civil life; but when he professes Religious life he dies to civilian life.

26. Against this: if the matrimony were consummated, it would be altogether indissoluble until natural death, such that, if the spouses were to be continent with parity of vow, the bond between them would not be dissolved, even by entry into Religion. So, according to the above way [n.25], indissolubility between them would belong to matrimony, not by the matrimonial contract simply, which is the mutual giving, but by the superadded carnal act; this does not seem probable, because the act is not any part of a new contract, nor consequently does it introduce any new indissolubility of obligation.

27. It is said in another way [Henry of Ghent] that by profession of Religion the conjugal bond is not dissolved. And if it be argued that the bride, remaining in the world, can marry another and be his wife and thus be at the same time wife of two men, they reply that this is not unacceptable – so, however, that she be wife of one spiritually and by spiritual bond only, of the other spiritually and carnally; but it would be unacceptable that she were wife of two men carnally.

28. And according to this, they would consequently have to concede that one woman could by this spiritual bond be at the same time wife of a hundred men, and then matrimony, whence it is matrimony, would not determine that one woman be wife of one man, nor would the commutative justice that is there required do so; nor does it seem that the following carnal union bestow any new justice.

29. It can in a third way be said that in a ratified matrimony, even if the one contracting intend not to consent but at once to fly off to Religion before consummation, there is not only a joint borrowing or bartering of power over bodies for a time but in their perpetuity; otherwise it would not be a true matrimony of the New Law. And from this giving there arises an indissoluble bond, unless it be dissolved by the natural death of one of the spouses, or by the revocation or relaxation of him who constituted it thus to be indissoluble. But Christ, who brought back this indissolubility, *Matthew* 19.4-12, rejecting for his Law the Mosaic repudiation, himself relaxes this indissolubility when one of the spouses is converted to Religion.

30. Hence, the Church would never have attempted to give license for Religion to one spouse, after unconsummated ratified matrimony, while the other remains in the world, unless Christ had instituted this. But it is obtained from the fact of Christ calling

the Apostle and Evangelist John from marriage to the apostolate, *John* 2.11 [Rupert of Troyes, *Commentary on John* II]; and John's example was imitated by the holy fathers Alexius, Theonas, and others [Jacob de Voragine *Golden Legends* ch.90, John Cassian *Collations of the Fathers* ch.8-9, Gratian, *Decretum* p.2 cause 27 q.2 ch.26, Lombard, Sent. IV d.27 ch.6 n.2]. Nor, according to this, would she, by then marrying another, be wife at the same time of two men, but only of the second; because her bond to the first has been dissolved by the revocation or relaxation of Christ, not dissolved precisely by such or such death of hers; for the dissolution that is through death is by the failing of one of the two extremes, and it does not require a special relaxation by the legislator.

31. Now this relaxation of Christ's was reasonable, because it is reasonable that an obligation to a lesser good be exchanged for an obligation to a greater good by him who has the authority to make the exchange; profession in Religion, which is an obligation to a spiritual good, is an obligation to a greater good. Hence also Christ preferred the state of virginity (understand: not only by lack of the act but with resolve for perpetual continence) to the conjugal state, *Matthew* 19.12, "There are eunuchs who have made themselves eunuchs for the kingdom of heaven etc." Hence this chastity, as it is distinct from conjugal chastity, is said to have fruit a hundredfold and that one thirtyfold (Jerome, *Against Jovinian* I ch.3).

32. If you ask whether this indissolubility belong to Gospel matrimony because of the idea of the sacrament, I say no; rather it would have been indissoluble also in the law of nature, and yet it would not then have been a sacrament properly speaking annexed to the Gospel contract. And Christ could have prescribed this indissolubility in the matrimony of his own Law, even if he had adjoined no sacrament to the contract. He could also have adjoined a sacrament to the contract from which contract he would not want an indissoluble bond to arise, as if he had wanted to approve the Mosaic repudiation. This indissolubility then is precisely from the superior Lord determining that the contract had to be done for always and the obligation to follow for always, unless he himself would anywhere dispense it. With this is natural reason in agreement.

33. From this solution follows a notable corollary, that those who contract under some condition repugnant to any of these three goods, accomplish nothing – as against the first, 'I accept you for my wife until another more pleasing come along'; against the second, 'I accept you for my wife, so that I not be bound to keep faith with you, either affirmatively by rendering it to you save when I want to, or negatively but that I be able to marry another at my pleasure'; against the third, 'I accept you for my wife provided however you will to procure poison for sterility or consent with me in procuring such poisons'.

34. And the reason why these contracts are not matrimonial contracts is that they only hold under that condition, since they are conditional contracts. But it is impossible for them to be matrimonial under that condition, because the condition is repugnant to the matrimonial contract; indeed, they are contracts of no one, because he cannot give himself to her against the prohibition of his Superior, and the prohibition of the Superior concerns contracting under these conditions; for he has prescribed a transfer that must be done under the opposite conditions.

35. Hence, all those who have attempted so to make the contract are not only sinning mortally, but they are, by such contract, in no way obligated mutually to each

other for withdrawing mutually, by virtue of such contract, from any use [sc. of each other].

II. To the Initial Arguments

36. As to the first argument [n.3], it is plain that these are not three goods of the sacrament of matrimony (for that is a certain sign accompanying the contract), but they are three goods of matrimony properly taken (namely the indissoluble bond that remains after the contract), and it is not unacceptable that it is good with other goods. But it is good with one of these goods as with intrinsic goodness, with the others as with ends that are nearer or more remote or more principal.

37. To the second [n.4] the answer is plain from the solution to the question; for the good of faith is always in the obligation though not always in the execution [n.24].

38. To the third [n.5] the answer is plain through the same thing, that the obligation is not absolutely for the good of offspring, but under the condition, if it happen, for receiving offspring gladly and for educating them religiously, and for not studying to procure the opposite, so that offspring not happen. However, in truth, where there is a certain impossibility for the good of offspring, the conjugal act does not seem much excused by this, unless you say that perhaps God would miraculously give fecundity to the sterile. But if that not be probable, nor intended by those using such act, the other two goods excuse it, and the matrimony is there only as a remedy, but not as an office, which was spoken about above, in distinction 26 in the solution to the question [nn.77-81].

39. As to the final one [n.6], it is plain how ‘sacrament’ is equivocal; for as it is taken as one good of matrimony, and in the way it is taken in this question principally [nn.14, 23], it is only the indissolubility formally of the bond or obligation. But as the sacrament of matrimony is taken properly, it is a sensible sign of the grace conferred on those worthily contracting matrimony, for the graced union of minds.

Thirty Second Distinction

Single Question

Whether in Matrimony it is Simply Necessary to Render the Conjugal Debt to the Other when Asked

1. “But what without consent etc.” [Lombard, *Sent.* IV d.32 ch.2 n.1].
2. About the thirty second distinction I ask whether in matrimony it is simply necessary to render the conjugal debt to the other when asked.

3. That it is not:

No one is obligated simply to mortal sin; but to render that debt is mortal sin.

Proof:

First because to deprive oneself of virtue is a mortal sin; therefore, to deprive oneself of a greater good than is the good of virtue is a greater sin; but the use of reason is a greater good than the good of virtue, and one is deprived of the use in an act of rendering the debt; therefore to render the debt is illicit.

The confirmation of this is that, if there were no contract of matrimony, such an act would be a mortal sin; but no one can license himself to such act, nor consequently will something be licit for him by his own proper act that was not licit before; but a contract of matrimony is an act of those who contract matrimony; therefore etc.

4. Again, one who contracts matrimony and before he consummate it enters Religion is not bound to render the debt, and yet he is then a spouse. And if you say that he is then dead in civilian life, on the contrary: he is not thus dead before profession, and yet in the time from entry up to profession he is not bound to render it.

5 Again, in the sacred time of prayer and fasting one is not bound to render the debt, because then he would be indisposed to eating the flesh of the Lamb, as is contained in the text [Lombard, *Sent.* IV d.32 ch.3 n.2, quoting Jerome, *On Exodus, in the Vigils of Easter*]; but no one is made unfitted for the Eucharist on account of an act to which he is necessarily obligated.

6. Again, one is not obligated to render the debt in a sacred place, because a greater evil would happen than would be avoided; for an interdict of the place would occur, which is an evil common to a multitude, and an evil in some way against God, whose worship in that place is impeded.

7. To the opposite:

I Corinthians 7.3-5, “Do not cheat each other, save by consent for a time so as to be free for prayer; and let the man render the debt to his wife, and the wife to the man,” and he proves it there, because “a man does not have power of his body but the wife,” likewise conversely too.

I. To the Question

8. To the question I say that ‘to render the conjugal debt’ can be understood in a double way, or it can be for a double end, just as matrimony too was instituted by a double cause, as was said above in question 1 about matrimony [d.26 n.77]: namely as an office, for procuring offspring to be religiously educated, and as a remedy, for avoiding fornication, lest there be union with another than one’s own (and all other women, besides one’s wife, are not one’s own). Therefore, because all men after the Fall were prone to carnal concupiscence (by reason of which concupiscence was the flood also brought upon the earth), it was expedient for matrimony to be instituted as a remedy for mortal sin or carnal concupiscence, and thus each would have his own, and not sin with one not his own.

9. I say therefore that to render the debt because of the first end, namely because of the good of offspring, is doubly laudable: in one way, because it is for a praiseworthy end, because for the good of offspring; in another way, because in itself it is an act of justice, rendering to another what is their own, which is said to be for the end. In the second way it is not doubly laudable, but only from the second one, if however the thing justly rendered ought only to be hers and rendered to her because God had made dispensation on account of man’s proneness after the Fall.

10. Setting aside, then, the first good of praiseworthiness, namely the good of offspring, if the question be asked about rendering the debt universally. from the obligation of the spouses, I say that ‘to render the debt’ is an act of an affirmative precept,

explaining commutative justice. Now an affirmative precept obligates always, but not at all times or for all times, but when the act can be circumscribed as it ought.

11. Now a defect of due circumstances in the issue at hand (when one is justly able not to render the debt to the spouse) is double in kind. In one way, if the spouse does not have the right to ask for it now; in another way, when there is an obligation with a stronger bond not to render it. And both can happen in many ways.

A. About the First Circumstance Excusing the Conjugal Debt Universally Taken

12. As to the first case, if one of the two has been suspended from or deprived of his right – and this can be because one⁸⁴ does not have the right to ask immediately after a ratified matrimony (although one has still not lost their right, because still not sinned), then, because it is licit, after a ratified matrimony, to enter Religion, this does not have to be immediate, but it is possible for a time to remain in the world and deliberate. And if one were bound immediately to render the debt, one is bound to make oneself unsuitable for Religion.

13. And the reason why a spouse⁸⁵ does not then have the right to ask, is because the use has still not been handed over, though the ownership has been. Hence before the handing over of use, one does not have the right to ask. For although one not sin if one hand oneself over for use, and if one does use it, one uses it well, however when the other wants it one is positively compelled. Nor do I believe that the Church suspends this use from them, but they are suspended from this right by Christ, or by Christ's institution, otherwise anyone would have the use and the right of using immediately from when they have right and ownership.

14. Another case is when one is deprived of one's right because of one's own fault, as happens in fornication by the spouse, especially if only one of the two fornicated; for then the innocent party can repel him who fell,⁸⁶ whose sin stands publicly on his side. And he who fell loses the right to ask, because of the fact he did not keep faith, and therefore faith is not necessarily to be kept with him, at least affirmatively. Also, if both have fallen, then each is bound equally to render to the other, because equal crimes are destroyed by equal vengeance.

15. Another case in which one is deprived of one's right without fault is when, if he is not unwilling but consenting, the other wants to be continent or enter Religion; for this is licit when one of the spouses renounces the right; for from the fact he has vowed chastity with the other's permission and assent, the other does not have the right to ask of him the debt.

16. But let it be that, after the man's entry into Religion,⁸⁷ the woman, remaining in the world, is not continent, or fears that she does not want to be continent, is the man who has made profession to be withdrawn from Religion and returned to her? In Gratian,

⁸⁴ The Latin is ambiguous and allows the pronoun, 'he' or 'she' (or 'it'), to go unexpressed. Scotus presumably means 'he' or 'she' indifferently, and so the neutral word 'one' is here used instead. In what follows Scotus does sometimes make the genders of his pronouns explicit.

⁸⁵ Latin word for 'spouse' here is coniunx, which can refer to wife or husband, but is more often used to refer to the wife, and Scotus so takes it in what follows.

⁸⁶ Scotus here, and following, uses a word in the male gender.

⁸⁷ Here Scotus does make the gender of the parties clear with words explicitly for man (or husband) and wife.

Decretum, p.2 cause 33 q.5 ch.10 is expressly said, “he who has permitted his wife to take the veil, may not accept another, but let him be similarly converted.”

17. But the contrary seems to be expressly said in the first chapter of Gregory IX, *Decretals* III tit.22 ch.1, ‘On the Conversion of the Married’: “A married layman who, with the license and permission of his wife, has entered Religion and made profession, while his wife remains in secular habit and does not pass over into Religion or vow perpetual continence – we say that unless his wife pass over into Religion or promise to keep chastity perpetually, the man can and must be called back from the monastery.”

18. If it be said that this passage from the *Decretals* must be taken to mean ‘when the woman does not renounce her husband, or her right over her husband, save only for a time, so that her husband may be free for prayer’ – against this is the plainness of the letter, because there is contained: “he who, having entered Religion by the license and permission of his wife, has made profession.” But what by strict rigor should be done in this case – whether she should be compelled to continence or he withdrawn [from Religion] – the case, namely, when it was done without the knowledge of the bishop though in the presence of the monks and priests – is doubtful; because she seems to have renounced her right as to requesting the debt in perpetuity, by licensing him publicly to profession in Religion. For such renunciation does not necessarily require that it be done with the knowledge of the bishop; and if she made a sufficient renunciation, she has no right to ask for him back.

19. Likewise, the coercing of a woman to continence is something licit and, though penal, yet it is due from the license she gave to her husband; and coercing a husband, who has thus made profession, to stand with his wife seems to be inducing him to something illicit, because to mortal sin, by the fact he has vowed chastity; and he was able to make the vow, because he had been given license. At least this is touched on in the Rule of the Friars Minor [Rule ch.2], where, about those who wish to receive this life, it is said, “if they do not have wives, or if they do and their wives have already entered the monastery or have given license to them by the authority of the diocesan bishop, and a vow of continence has already been made, and their wives are of an age that no suspicion could arise about them, let them say to them the words of the Gospel etc.”

20. Hence, having set aside these conditions, namely about a vow of chastity made by the wife, or at least license given by authority of the diocesan bishop, it seems that today if would happen according to the above chapter [of the *Decretals*, n.17], namely that the man be withdrawn [from Religion] and returned to his wife.

21. And then, as to the fact that she is said to have renounced her right [n.18], I reply that she did not do so sufficiently and perfectly as to the forum of the Church, which has determined the due manner of this renunciation, by the making of a vow of continence and the giving of license by authority of the diocesan bishop.

22. And as to what is touched on about the mortal sin of the one withdrawn [from Religion, nn.14, 19], it could be said that she⁸⁸ is bound not to ask, because she was not able to renounce another’s right, and he thought he was absolved from that right, and therefore he did not at that time sin. However, when it is clear to him through the Church that he was not absolved from the right of his wife, he is bound to render to her what he

⁸⁸ Here Scotus’ pronouns become ambiguous, and they are made explicit in the English according to the way Scotus was using unambiguous pronouns in the immediately preceding paragraphs.

was not able to renounce. I believe, however, that if she do give license, she sins mortally in calling him back, because she has obligated herself to a like continence.

B. About the Second Circumstance Excusing the Conjugal Debt Universally Taken

23. About the second main circumstance [n.11], which is, as I said, that one ceases to be obligated [to render the debt] by a stronger bond not to render it. I say that this has many cases:

First, if it tend toward the loss of one's own well-being; for one is more properly bound to love one's own well-being than to render the debt to the other spouse; for no one should make themselves useless as to human acts common to everyone; and always too should one ask for the debt in the way that one ought to want it to be rendered to oneself, and one would not want it to be rendered by oneself to one's own harm and against the well-being of one's own body.

24. Similarly, one is bound by a stronger bond not to kill a fetus in the womb of a pregnant woman, or not to be cause of an abortion, than to render this debt; therefore, where the danger of extinguishing a fetus or causing abortion is probable, one is not bound to render the debt.

25. Similarly, one is bound by a greater precept not to act in a way that offspring, which could otherwise be procreated healthy, would be born leprous than to satisfy in the now the will of a woman; and for the most part a child born at the time of menstruation is born a leper. Hence not without cause in the Mosaic Law ought he to die who goes to a menstruating woman, nor was death there inflicted save for a mortal and grave sin. It is not therefore probable that in the Gospel Law, which is the law of chastity, going to a menstruating woman would be less prohibited.

26. If you object, 'therefore a healthy person should not render the debt to someone leprous, because this would be both against the good of the offspring, which would be born leprous, and against one's own well-being, which could incur leprosy from such an act, the opposite of which is contained in Gregory IX, *Decretals* IV tit.8 ch.1, where is written: "We thus far command that wives follow their husbands, and husbands their wives, who incur the disease of leprosy, and minister to them with conjugal affection, and that you [sc. canon lawyer etc.] do not put off inducing them [to do this] with solicitous exhortation; but if they cannot be induced to it, you are more strictly to impose on them that they each observe continence while the other lives. But if they despise keeping the command, you are to constrain them with the bonds of excommunication;" and in the following chapter, "If a husband or a wife happen to become leprous, and the sick one demand the carnal debt from the healthy one,⁸⁹ then, by the general precept of the Apostle [*Romans* 7.2-3, *I Corinthians* 7.27-28, 39-40], 'what is demanded must be paid', to which precept no exception in this case is found" –

27. I reply that although a healthy or leprous spouse should render the debt to a leprous spouse according to these chapters [of the *Decretals*], yet it does not follow that the debt is bound to be paid to a woman at the time of menstruation, because there it is not only against the good of offspring, which would be procreated leprous, but it would be more against the good of offspring that they were never procreated; but from this mother it will never be procreated if she is avoided because of leprosy; and although this

⁸⁹ Scotus here, interestingly, puts both Latin adjectives for 'healthy' and 'sick' into the same masculine gender.

offspring not be procreated at the time of menstruation, it can be procreated afterwards at a fitting time, and then healthy; at the present time procreated leprous.

28. If you also object about the risk of leprosy in the case of a healthy spouse rendering the debt, it could be said that from that brief union it is not probable for leprosy to be incurred; but a long cohabitation is not prescribed, because a healthy spouse can from that be infected by a sick one. Let it also be that from such union infection of leprosy would be an object of fear in the healthy spouse, at least when rendering the debt frequently as often as the leprous one asked – I say that to such penalty has one obligated oneself in a contract of matrimony; hence too priests express the fact somewhere expressly on the door of the church.

II. To the Initial Arguments

29. As to the first argument [n.3] I deny the minor.

To the first proof [n.3] I say that perpetual use of reason is a greater good than an act of virtue; and therefore he who has by some act deprived himself of the perpetual use of reason would sin mortally, indeed most mortally. But the lack of the use of reason for a moment is not as great an evil as an act opposed to an act of virtue; nor is anything that takes away the use of reason for a time a sin, for extreme torments, even minimal ones, impede thus the use of reason just as pleasures do, and yet the martyrs, when knowingly exposing themselves to such torments, did not sin but merited.

30. To the confirmation [n.3] I concede that such an act would not be licit for them before the contract, but it is licit after the contract, not because they can license themselves, but because they do a certain act upon which God licenses them for a certain subsequent act that would otherwise not be licit for them. Hence this proof seems to give conviction that not from the justice alone by which they mutually give themselves is this use licit on their own authority, but on the added approbation of the superior.

31. As to the next [n.4] the answer is plain from the solution of the question [n.13], because a spouse does not at that time have the right to ask.

32. As to the next [n.5], the Apostle does not say absolutely that one should abstain at a sacred time, but he counsels it for a time, so that they may be free for prayer, and so that they may again go back to it lest Satan tempt them. And as to what is added about Jerome, and it is in Gratian, *Decretum*, p.2 cause 33 q.4 ch.1, “Whoever renders the debt to his wife cannot eat the flesh of the Lamb” – I reply: he cannot at all do it with due reverence. And when you say he is not excluded from receiving communion because of an act of a precept, I deny it, for an act is prescribed on account of which he is less disposed to receive reverently. If however you speak of being excluded by necessity of the precept I concede the fact, because I do not see how he would, for this alone, sin mortally if he received the body of Christ.

33. To the last one [n.6] I say that one should regularly abstain in a sacred place, because the danger of fornication does not threaten with such immediacy that it would not be possible for the debt to be rendered in advance in a non-sacred place. If however it were necessary for them to remain together for a long time in a sacred place, one might deny he sins if he render the debt when asked. And what is added about the interdict of a place, perhaps he would say that a place is not, because of a hidden act, so under interdict, at least publicly, that divine worship should be publicly foregone in the same place.

Thirty Third Distinction

Overview of Questions

1. “A question is raised about the ancients” [Lombard, *Sent.* IV d.33 ch.1 n.1].
2. About this thirty third distinction I ask first about bigamy, second about repudiation of a wife.
3. About the first I ask two questions: first whether, as concerns the Mosaic Law or the law of nature, bigamy was at some time licit, or whether it was licit for the ancient fathers to have at the same time several wives joined to them in matrimony; second whether, as to the Gospel Law, a bigamist before baptism could be promoted to Holy Orders after baptism, or is irregular.

Question One *Whether Bigamy was at Some Time Licit*

4. To the first question [n.2] argument is made that it was not:
Because bigamy is against the law of nature and against the first institution of matrimony. The proof is:
- First from the statement in *Genesis* 2.24, “They were⁹⁰ two in one flesh,” where it expresses the law of nature about matrimony; therefore, it is not licit and was not licit to have several wives.

Second from a certain interlinear gloss on *Genesis* 4.19 [Nicolas of Lyra] about Lamech, who “took two wives,” where it is written that he “first introduced bigamy and against the law of nature.”

5. Again, ‘bivir’⁹¹, if I may so speak, was never licit, namely that a woman would have two husbands; so not conversely either. The proof of the consequence is that, for conjugal acts, they are judged equal, *I Corinthians* 7.3-5.

6. To the opposite:

Genesis 16.1-5, 25.1-2, Abraham had Sara and Hagar and Katura, and about Jacob *Genesis* 29.18-30.24, who had two wives, and about David *II Kings* (=*II Samuel*) 5.13 who had many wives and concubines; but it is not probable that these holy fathers did anything illicit in such union; therefore etc.

7. Again, in favor of this is Augustine, *On the Conjugal Good*, ch.25 n.33, “For the just among the ancient it was not a sin that they had use of several women, nor did they do this against nature, since they did it for the sake of begetting; nor was it against the law or against morals, because at that time it was prohibited by no law.”

I. To the Question

⁹⁰ Possibly a misprint for ‘will be’ (‘erant’ for ‘erunt’)

⁹¹ A word modeled on ‘bigamy’ using the Latin word ‘vir’, man or husband, and the Latin prefix ‘bi’, two. The word ‘bigamy’ is actually a hybrid of the Latin ‘bi’ and the Greek ‘gamy’, marriage (‘digamy’ is the more proper Greek derivation). ‘Bivir’ is not such a hybrid.

8. Here one must see first what is required for strict commutative justice in the contract of matrimony (and this on the part of the contracting parties), and what is added, beyond this, for complete justice in such a contract (and this on the part of the superior). Second, one must see what, in the event, suffices for justice as to the matter that is being asked about, and how it may become sufficient and completely just.

A. What is Required on the Side of the Contracting Parties for Strict Commutative Justice in the Matrimonial Contract

9. About the first I say that in every exchange justice requires, as concerns the exchangers and the things exchanged, equality of value in the things exchanged, as far as possible, for the end for which the exchange is done.

10. Now this exchange in the contract of matrimony is done for two reasons: one the procreation of offspring, the other as a remedy for avoiding fornication.

11. As to the first, the body of a man is of greater value than that of a woman, because the same man can at the same time fertilize more women than the same woman could conceive from men. As concerns this end, therefore, bigamy seems, by strict justice, to be licit, so that a man may exchange his body with the bodies of as many women as he can fertilize, in the way it is possible for a man to fertilize them. Hence it is not against nature in other animals that one male have several females. And yet in the state of innocence, when matrimony was and would have been precisely for this office, bigamy did not exist and would not have existed. For there would have been no necessity for a man to have exchanged his body with several women for procreating several offspring, because there would have been sufficient procreation through the simple exchange of one man with one woman, since neither the man nor the woman would then have been sterile.

12. As concerns the second end [n.10], which is only for the state of fallen nature, namely for avoiding fornication, the body of the man and the woman are of equal value.

13. And so, by strict justice in the state of fallen nature, when considering this contract as it is for both ends, the exchange of one body with one body is required.

14. I add that the completion of justice in this exchange comes only from the authority of the superior who institutes or approves such or such exchange; because although there are things that belong to the inferiors as to owners, yet such or such exchange of them is determined to be just by the legislator, and much more so in the issue at hand, about the mutual exchange of bodies, in relation to the legislator who is God. But he has by rule established, both for the state of innocence and the state of fallen nature, that this exchange of bodies must be done by one with one. In this, therefore, is justice complete.

B. What, in the Event, Suffices for this Justice and How it May Become Sufficient and Completely Just

15. About the second article [n.8] I say that ‘dispensation’ is a declaration of right or a revocation of right; for God was able either to declare his law about this exchange or in some case to revoke it – and reasonably in this case when a greater good came from its revocation than from its observation.

16. But now, when there was necessity for multiplying the human race either simply or for the divine cult, because, to be sure, there were few worshippers of God, it was necessary that the worshippers of God procreate as much as they could, because in the succession of them alone did faith and the divine cult abide. So for that time did God reasonably make dispensation so that one man might exchange his body with several bodies of women, for the greater multiplication of worshippers of God, which multiplication without this would not happen. And thus did he in fact make dispensation, as is presumed about Abraham and certain others of the fathers.

17. But as to how justice will be preserved here, considering the contract on the side of the contracting parties, is made clear as follows: because when something is ordered to two ends, a principal one and a less principal one, it is reasonable to use it in the way in which it has more value for the more principal end, although something thereby be taken away from the less principal end. An example: food is of value for pleasure, which is less principal, and for nutrition, which is more principal; food, according to right reason, is to be used in the way in which it is of value for nutrition, although in this it be of less value for pleasure.

18. But this matrimonial contract is for rendering the carnal debt (so that fornication may be avoided) as for the less principal end, and for the good of offspring as for the more principal end. Therefore, according to right reason, the contracting parties should so exchange that the exchange is of more value for procreation, though it be of less value for rendering the debt. But in this way is exchange made of the body of one man for several bodies of women – and just as this is absolutely to be done, so in case of necessity should it necessarily be done, namely when the principal end is most necessary; and then the less principal end is to be neglected as it were.

19. And from this is plain how there is justice on the side of the parties, because each party should, according to right reason, want to dismiss something of its right in exchanging and receiving relative to the less principal end so as to receive the equivalent relative to the more principal end, which each should more desire, although from someone would something need to be exchanged that it would be a detriment for them to remit. And at times is it in some case necessary, when to be sure one is bound to such remission; and it is licit and necessary to carry it out, when this is ordained by a superior; the fact is plain because Sara in *Genesis* 16.1-4 as it were compelled Abraham to go in to Hagar her handmaid, so that at least thus would he have from the handmaid the son he could not have from her.

20. If you object that this would in modern times be bigamy and illicit, I reply that although it be illicit by reason of the fact it is not now dispensed by the legislator (indeed that part of the law of nature, “they were two in one flesh” was brought back by Christ, *Matthew* 19.5-6 [d.31 n.29]), however, speaking of justice on the side of the contracting parties and of the contract, it is not licit now, because the principal end is not necessary now, for the reason that many of the faithful devote themselves to generation, whose children are ordained to the cult of God and are religiously educated; and so without such contract is the faith multiplied. Therefore, when the necessity to take something away from the second end by necessity of the first end ceases, the contract must be kept, so that justice there in relation to both ends may be kept; but this is above all that one man have one wife.

21. But if in some event, by war or disaster or disease, a multitude of men were to fall and a multitude of women were to remain, bigamy could now be licit, considering precisely the justice on the part of the exchangers and the exchangings; and also ought women, on their own part, to want to make exchange thus with men, more with fewer, as to the second end, but equal with equal as to the first end, and then ought a woman to want this according to right reason, so that the good of offspring may come about by the commingling of her man with another woman; nor would there be a lack there save only of the completion of justice, which is by divine approval, and approval would perhaps then be given and be specially revealed to the Church.

II. To the Initial Arguments for the First Side

22. To the arguments.

To the first [n.4] I say, as was said above in d.17 [n.19], that something is said to belong to the law of nature in two ways:

In the first way, certainly, that what is a practical truth simply is known simply by the light of nature; and there the highest rank is held by a practical principle known from the terms; the second rank is held by a conclusion demonstratively proven by such principles.

But belonging secondarily to the law of nature is what is regularly consonant with the law of nature stated in the first way.

23. No dispensation happens against the first, and therefore the opposite of it seems to be always a mortal sin.

Dispensation from the second happens in a case where the opposite would seem to be commonly consonant with the law of nature, and precisely in this second way is monogamy of the law of nature and bigamy against it. And in this way do I concede the assertions in *Genesis* 2 and the gloss on *Genesis* 4 [n.4].

24. Nor yet does it follow from this that in some case the opposite could not be licit; indeed, it is necessary even as to the exchanging of justice on the side of the parties exchanging and of the things exchanged – when by reason of necessity right reason dictates the exchange must in some way be done, and when there is a divine precept there.

25. I say that the authority “they will be two in one flesh” [n.4] must be taken to mean that they will be ‘one flesh’ by reason of the offspring that is generated from both parents; and so it is not repugnant to the first institution of matrimony to have several wives. Or it can be said etc. [as in n.24].

26. About Lamech however [n.4], it can absolutely be conceded that he sinned mortally, because against a law of nature even if taken in the second way; he sinned, I say, by making a contract with several women not in a case where right reason would dictate that the law was to be revoked, nor where the superior gave dispensation; rather the contract was opposed to both.

27. To the second argument [n.5] I say that, on the part of the contract, justice between the exchanging parties was never to exchange in a way that the more principal end happen less and the less principal end happen more, because the more principal end is more to be willed; but biviry would be more for the less principal end and much less for the more principal end; because the same woman cannot within the same time be impregnated by several men.

III. To the Argument for the Opposite

28. As to the argument for the opposite [n.6], although about some holy fathers it may be assumed that in contracting bigamy they did not sin, because both reasons for contracting bigamy there came together (namely both the necessity because of which contracting matrimony in this way was justly done, and also divine authority giving approval and prescription), yet if some did contract without these reasons or one of them, that they sinned mortally is not unacceptable to me, because I do not reckon that they were confirmed.

Question Two

Whether a Bigamist before Baptism Could after Baptism be Promoted to Holy Orders

29. Proceeding thus to the second [n.3] – argument is made that a bigamist before baptism could after baptism be promoted to Holy Orders.

First, according to Jerome (and it is in Gratian, *Decretum*, p.1 d.26 ch.1, and is taken from the epistle to Oceanus [*Epistle 69* n.3]), “If someone before baptism had a wife who has died, it is not held against him, against whom, as he is straightforwardly new, neither defilement nor anything that was before now stands in the way.”

30. Again, Gratian, *Decretum*, with Glosses, p.1 d.50 ch.8, and it is contained in the gloss, “if before baptism he killed someone, he can after baptism be promoted;” therefore by similarity about bigamy before baptism.

31. To the opposite:

Gratian, *Decretum*, p.1 d.26 ch.2, and Augustine is quoted on *Titus* 1.6 [*On Conjugal Good* ch.18 n.21], “They have a more acute understanding who judged that neither was he to be ordained who had one wife as a catechumen or pagan, and a second after baptism.”

32. Again, Gratian, *Decretum*, p.1 d.26 ch.4, and Ambrose is quoted [*On Offices* I ch.50 n.247], “Repeated marriages before baptism generate impediments to the prerogative of ordination.”

I. To the Question

33. Here two things need to be looked at: first, what is to be maintained; second, for what reason.

A. What is to be Maintained

34. On the first point all agree that a bigamist, whether before baptism or after, is irregular, as is expressly contained in the chapters cited for the opposite [nn.31-32]. And yet a murderer before baptism is not irregular after baptism, as is expressly contained in Gratian, *Decretum* with Glosses, p.1 d.50 ch.8, where at the words “after baptism” the gloss argues from the opposite sense; therefore, if before baptism someone is conscious in himself of homicide, it is not an obstacle.

35. But as to what is said by some [cf. n.29], that no one contracts irregularity before baptism, because one is then first able to have a privation when one is of a nature to have the possession (as a puppy before the ninth day is not able to be blind); but before baptism one is not capable of Orders. The proof is Gregory IX, *Decretals* III tit.43 ch.3, ‘About a non-baptized Priest’, that, if he was not baptized, he should be baptized and afterwards ordained. From this it is plain that he received nothing before when he seemed to be ordained a priest, for if he had received Orders he would not have to be re-ordained afterwards, as is contained in Gregory IX, *Decretals* V tit.29 ch.1, ‘About a Priest Promoted by Leaps’, where he, who without prior Orders receives a later Order, receives the Order afterwards that was passed over, and yet what was received before is not repeated.

36. This reasoning [n.36] is not valid, because although a privation cannot be in something save when the thing is of a nature to have the possession of it, yet an impediment to having the possession at the time when the possession should be present, can precede the time for having the possession, as is plain in the example adduced; because a puppy can have, before the ninth day, some impediment so that it not ever have sight even when sight would belong to it.

37. This indeed is plain about the fetus in the body, which can be prevented from living before it is apt to have life; and yet there will not there be a privation of life, because a privation is only present when the possession is of a nature to be present. And much more can there be impediments in the case of a legislator than in nature, because a legislator’s impediments are voluntary.

38. Now irregularity is not properly a privation of what should be possessed, but is rather a lack of ordering toward it, so that it be understood negatively (but understood privatively this is: irregularity is an impediment preventing one from being capable of Orders at the time at which one would be capable of them). Therefore, irregularity can exist before baptism. Also, let it be that the privation would be unable to be present; still the cause of privation can be present, when possession is not of a nature to be present.

39. And so it is here about irregularity, which is cause for depriving or lacking Orders at the time fitting.

B. For What Cause it Must be Maintained

1. About the Cause of Congruity

40. On the second point [n.33], it is one thing to speak of a cause of congruity and another of a cause of necessity:

One cause of congruity – why, to be sure, course it is fitting for a bigamist to be kept away from Holy Orders – is commonly set down by everyone, namely defect of sacrament. This is touched on by Augustine [n.31] and Ambrose [n.32]. And it is understood as follows: a priest, as vicar of Christ in the Church, or a person representing the person of Christ, ought not to have something that is repugnant to Christ in relation to the Church; but now Christ is the unique spouse of one Church, and the Church is the unique spouse of one spouse Christ; therefore he who has the opposite of this does not rightly signify or represent Christ in the Church. But a bigamist, who had two spouses, or one spouse who was spouse of two men, has something repugnant to the union of Christ and the Church.

2. About the Cause of Necessity

a. Opinion of Others

α. First and Second Opinion and the Weighing of Them

41. But when asking about the cause of necessity, why this man is necessarily excluded from Orders, there is a threefold opinion:

One that by baptism sin is destroyed and its consequences, and this properly [Gratian, *Decretum with Glosses*, p.1 d.26 ch.3]; but bigamy is not a sin nor a consequence of sin properly.

42. And hereby is response made to the case of homicide committed before baptism [n.30], that the case is not similar; for homicide is a consequence of sin or a sin, especially if he commit sin in killing. But what if he kill justly, as a judge does? This homicide, therefore, is not destroyed as concerns the irregularity. One glossator concedes this [Gratian, *Decretum with Glosses*, p.1 d.50 ch.8], but irrationally, because then the condition of the sinner would be better in a like act than the condition of the non-sinner.

43. Therefore others say [Gratian, *Decretum with Glosses*, p.1 d.26 ch.3; *supra* n.30] that this homicide is a sin in this way, that it would be a sin unless it were excused by other circumstances, and so it does not of itself depart from the genus of an act of sin.

44. But why then does baptism not take away the penalties of this mortality [sc. judicial killing], penalties that follow original sin?

I reply because they are not consequences of sin properly.

45. The whole argument stands, therefore, on this, that baptism destroys every sin and what would be a sin by the nature of the act (unless circumstances were to prevent it), and the consequences of it; but it does not taken away that which is in neither way a sin proper,^a or a consequence. And of such sort is bigamy.

a. [Note by Scotus] By ‘sin proper’ I mean what is either a sin in its kind or is a proper act [sc. of sin] formally.

46. On the contrary: let it be that the bigamist sin in bigamy, as by contracting illicitly (for example with his sister), it follows that this contract, since it is a sin or a consequence of sin or annexed to a sin, will be destroyed.

47. Again, in that chapter [n.31], Augustine says that “if a woman catechumen is corrupted, she cannot after baptism be consecrated among the virgins of God;” and yet it is possible that the corruption was a sin before baptism; therefore the sin is destroyed as to the proper penalties corresponding to it.

48. Again, if irregularity were necessarily in bigamy for this reason (that it is not a sin nor a consequence of sin), the Church could not take this irregularity away, because it cannot bestow on bigamy what is of itself a sin or a consequence of sin.

β. Third Opinion

49. There is a third opinion, that just as some ill repute is consequent to an act from the nature of the act, and another precisely consequent to an act by statute of the Church, and just as the Church cannot take the first away, nor can a sacrament of the Church (as baptism), but can take away the second, so also in the case of irregularity.

Bigamy, not by statute of the Church but by defect of signification, introduces irregularity, because a bigamist does not represent the Christ as he is spouse of the Church in the way a priest should represent Christ or, at any rate, should not have anything repugnant to that representation. But homicide does not introduce irregularity save by statute of the Church; therefore, it is taken away by the first sacrament of the Church, and the other is not.

50. And that the ill repute follows bigamy by the genus of the act they prove [Glossator on Gregory IX, *Decretals with Glosses* I tit.21 ch.3] by the fact that someone ordained in the Church is constituted in a preeminence and in a rank preeminent over others, and this sacrament of matrimony, as they say and say well [n.49], signifies Christ the spouse of the Church, and Christ is one spouse of one spouse only. Therefore he who has what is contrary to this signification is unsuited in the Church for having any preeminent rank, because he ought to signify the union of Christ and the Church, which union is one of one only.

51. Hence that is the reason why the canonists [Raymond of Peñafort, Henry of Segusia] make the denial, that a bigamist cannot be ordained nor moved into Holy Orders because, on account of defect of sacrament, he is, by nature of the act of bigamy, unsuited.

52. But this does not seem to be sufficient, because if by the nature of the act the bigamist suffers ill repute, and therefore the Church cannot make dispensation for him as to the irregularity, then, by similarity, since no Church can ordain a murderer when he is notorious without him being of ill report, the Church would not be able to make dispensation as to the irregularity perpetrated by or consequent to homicide – just as neither can it, for that reason, make dispensation as to bigamy.

53. On the contrary: if the irregularity were from something prior to a statute of the Church, the Church could not then make dispensation – the opposite of which is stated in Gratian, *Decretum*, p.1 d.34 ch.18, where Martin concedes that a Lector, who had married a widow, can be ordained a sub-deacon but no higher. And the gloss says there [Gratian, *Decretum with Glosses*, p.1 d.34 ch.18 ch.1] that “the Pope makes dispensation against the Apostle (namely Paul in *I Timothy* 3.2, ‘a husband of one wife etc.’),” and Innocent is said to hold the opposite, that “it is not licit to make dispensation for a bigamist” [Gregory IX, *Decretals* I tit.21 ch.4], and Martin says the same [Decretum, p.1 d.50 ch.8]; yet Pope Lucius made dispensation for Archbishop Panormitanus, who was a bigamist [Gratian, *Decretum with Glosses*, p.1 d.24 ch.18; reported by several doctors, Albert, Thomas Aquinas, Roger Marston].

54. But a certain gloss [Gratian, *Decretum with Glosses*, p.1 d.34 ch.17] agrees in this way, namely that in the primitive Church the Order of sub-deacon was not a sacred Order; and therefore did Martin concede that a bigamist can be made a sub-deacon but did not make dispensation higher up.

55. This gloss of someone called Nicholas Furiosus is opposed in some books [Gratian, *Decretum with Glosses*, p.1 d.50 ch.16].

56. At any rate the Church finally holds this, that dispensation should not be made for a bigamist for either the diaconate or the priesthood.

57. Nor is the deed of Lucius concerning Archbishop Panormitanus disapproved of on this account, as if he did what he could not do, but that he did what was not fitting save for great cause.

b. Scotus' own Response

58. I say therefore that the cause is only the institution of the Church. Nor is there here any other foundation than Paul; and the Church has it here only from Paul, who was one prelate only in the Church. Hence I say that the cause for irregularity in homicide and bigamy comes from a merely positive statute of the Church, and I take 'Church' here for the statutes of the Apostles and letters. For no man is so unsuited by any act of his own that he not be able to be restored to a worthy rank through penance, because any man is capable of this rank and of preeminence in the Church, and capable of the character, even a child, as was said above [*Ord. IV d.6 n.200, d.7 n.68*].

59. But why is the penalty for perpetrating a homicide regularly remitted in baptism, but the penalty that by statute of the Church follows bigamy not remitted? The cause is only the statute of the Church wanting this penalty to be so remitted and that one not. But this ordination by the Church is reasonable by the fact that a murderer is unsuitable for Orders only because of the horror of shed blood, because of which horror David was forbidden to build a temple for the Lord, *II Kings [II Samuel] 7.2-13*. But this horror is taken away by baptism, because the supposition is that from a wolf is made a lamb, just as also Paul was a persecutor before baptism, afterwards was made sheep and pastor.

Therefore the cause of the unsuitability ceases in baptism; therefore ought the effect to cease.

60. And that this is the cause is plain, for homicide too (done deliberately or in self-defense, with the moderation of guiltless defense [Gregory IX, *Decretals* V tit.12 ch.18]) does not, after baptism, make anyone unworthy to receive Orders, because there is no presumption of cruelty.

61. But unsuitability for Orders in a bigamist does not cease in baptism, because always there remains the defect of sacrament, that is, of signification, that is required in a priest representing the person of Christ in the Church; therefore, the effect there is not taken away, save later by special dispensation.

II. To the Initial Arguments

62. To the first argument [n.29]: either Jerome is denied, as the canonists [e.g. Raymond of Peñafort] do commonly deny him, holding to Augustine [n.31], or that 'crimes do not stand in the way' can be expounded as to the receiving of grace, but they do stand in the way as to holding a rank of dignity in the Church; and this distinction is taken from the chapter from Ambrose [n.32].^a

a. [Note by Scotus] I say that one must deny Jerome if he spoke contrary to Augustine, because although Jerome may be compared to an ox, because he is senior or older, and Augustine to a calf, because junior, yet Augustine more set his foot where the other did not stay; and therefore where he contradicts Augustine, by the Church is Augustine held to. Or Jerome can be glossed: 'is not held against him etc.' is true as to the crime, but it does not follow that it not be held against him as to the penalty of irregularity, however much he has been regenerated through baptism; or it will not be held against him if there is necessity in the Church.

63. To the second [n.30] I say that this irregularity and that are not alike, and the cause is stated in the main solution [nn.52-58-59].

Question Three

Whether in the Mosaic Law it was Licit to Repudiate a Wife

64. About repudiation I ask whether in the Mosaic Law it was licit for a man to repudiate his wife.

65. That it was: *Deuteronomy* 24.1, “When a man has taken a wife, and married her, and it come to pass that she find no favor in his eyes, because he has found some uncleanness in her, then let him write her a bill of divorce, and give it in her hand, and send her out of his house.”

66. Again, *Malachi* 2.16, “When you hate her [your wife], put her away, says the Lord the God of Israel.”

67. Again, Gregory IX, *Decretals* V tit.41 ch.1, ‘On the rules of right’, “Everything is dissolved by the same causes by which it is born;” but matrimony is born through mutual consent; therefore can it be dissolved by mutual dissent.

68. Again, Gratian, *Decretum*, p.1 d.34 ch.1, ‘If anyone his wife’, “If a wife has committed adultery against a husband established in clerical office, he must, after giving her a repudiation, dismiss her.” Therefore, the repudiation of a wife is licit also in the Gospel Law.

69. The opposite: it seems to be against the law of nature which Adam promulgated, *Genesis* 2.24, “A man will cleave to his wife;” from which Christ concludes, *Matthew* 19.6, “What then God has joined, let not man put asunder.”^a

a. [Note by Scotus] It is against the law of nature that man separate what has been joined by God, as Christ supposes in the Gospel when he says, “What God has joined...”

70. Again, a contract of matrimony is essentially the giving of power over one’s body irrevocably to another in exchange for power over their body; therefore, no leasing or giving for a time can be matrimony. But if it were licit for a repudiation to be made, there is in the contract a giving only for a time; because if it had been for perpetuity, then the repudiated woman would have remained as wife, and in that case she would be dismissed illicitly. It follows, therefore, that if repudiation was licit in the Mosaic Law, that there was no matrimony there.

71. Again, it was never licit for a woman to repudiate a man; therefore not conversely either, since they are judged as equal in respect of things that belong to the marriage.

I. To the Question

A. First Opinion

72. Here is it said that in the Mosaic Law it was licit to repudiate a wife, and that he who marries a repudiated wife sinned mortally, because he went to someone impure, for she was only repudiated, as it seems, because she was impure. This sin, however, was not punished in the Law but was permitted because of homicide, lest men would kill their wives. And therefore, to avoid a greater evil, this lesser evil was permitted in the Law.^a

a. [Note by Scotus] I reply: when it is said that it is probable a woman is repudiated because she is unclean, this is true if she was repudiated by two men, but not if by one only. And so then he sinned mortally by marrying her.

73. The proof of this is:

First by the authority of Christ condemning repudiation, *Matthew* 19.9, “I say to you that whoever shall put away his wife, except it be for fornication, and shall marry another, commits adultery: and he that shall marry her that is put away, commits adultery.”

74. This is also proved by the reason that Christ brought forward for himself, which is that from the beginning God joined male and female in matrimony, as he proves from the word of Adam, and he adds, “What God has joined, let not man put asunder” [*Matthew* 19.4-6].

75. It is proved also, third, from his response to the question of the Pharisees [*Matthew* 19.7-8], “They say to him, ‘Why then did Moses command to give her a bill of divorce, and to put her away?’ He says to them: ‘Because Moses by reason of the hardness of your heart permitted you to put away your wives: but from the beginning it was not so.’” The interlinear gloss on “Moses...permitted” says “not God.” And the gloss says that “it was the council of man, not the command of God” [Nicolas of Lyra]. And the Master in this distinction [Lombard, *Sent.* IV d.33 ch.3] says that this was permitted by Moses “not to concede separation but to remove murder.”

76. And Augustine *On the Lord’s Sermon on the Mount* I ch.14 n.39, “He who commanded to give a bill of repudiation did not command the wife to be dismissed; but let him who has dismissed her, he says, give her a bill of repudiation, so that the thinking about the bill would temper his rash anger in dismissing his wife.” This can be understood from something that Ambrose prescribed to the Emperor Theodosius for a certain cruelty impetuously effected by Theodosius’ command: Ambrose wanted him to pass a law that no minister should carry out his cruel commands for thirty days, if perchance within that time his anger would quieten and temper his judgment. Hence too Plato said to a certain person [Archytas of Tarentum], as Jerome reports [*On Joel* 1.5; *Epistle 79 to Salvina*, n.9; also in Valerius Maximus, *Memorable Deeds and Words* IV ch.1 ex.1]: “I would punish if I was not angry.” And Augustine adds, *ibid.*, “He who sought a delay in the dismissal did signify, as far as he could to harsh men, that he did not wish separation.”

77. Also Gregory IX, *Decretals* V tit.19 ch.8], ‘On Divorce’, “Repudiation of a wife is condemned by Truth in the Gospel.”

B. Second Opinion

1. Exposition of the Opinion

78. Another opinion says that the giving of a bill [of divorce] and repudiation of a wife was licit for the time of the Mosaic Law; because Moses announced the Law of God, and therefore those whom he as legislator joined together and announced it, God too joined together; and those whom he separated God too separated; and God can separate those who are matrimonially joined together.

79. Again, according to Augustine, *Letter 40 to Jerome* ch.3 n.3 (and it is in Gratian, *Decretum*, p.1 d.9 ch.7), “If useful lies were admitted into the Sacred Scriptures, what would remain of authority in them?” As if he were to say, “Nothing.” And the reason is that whatever authority be brought forward to repulse a heretic, the heretic will

reply that it was spoken as a lie, a jocose or officious lie, just like that one too somewhere else [cf. *Ord. IV d.3 n.178*]. Therefore, by similarity, if a heretic not have anything in Scripture, he will not have authority by any prescriptive authority in Scripture.

80. Likewise about advice; if any advice given in Scripture were not healthy or useful to keep, there would be no authority of observance in Scripture; therefore, by similarity, if there were any concession in Scripture about anything illicit, as this one [about repudiation], it follows that no concession of Scripture will have authority to show that the thing conceded is licit. For as concession is related to what is licit, so precept is related to what must necessarily be done, or warning or advice to what is useful. For just as a precept is not about anything that is not necessarily to be done, so neither is a concession about anything save what can licitly be done.

81. Again, a just law should not directly give occasion to sin mortally; but this concession seemed to be an occasion directly for the Jews to dismiss their wives; for if it had not been written down, they would no more have dismissed them than the fathers before the Law of Moses did; therefore, either that dismissal was not mortal sin, or the Law was not just.

2. Weighing of the Opinion

82. The way in which this opinion can be held acceptable is this: complete justice does not exist in this exchange or contract of matrimony save by divine ratification, though there is found before it what suffices for justice on the side of the exchange and the exchanging parties; and whenever such justice can be found in the exchange, it is reasonable that it ought to be ratified. But just as the exchange of the body of one man in return for exchange with the bodies of several women is something just when such exchange is necessary for procreation of offspring – and so then God justly made dispensation for bigamy, indeed approved it, on account of a greater good resulting than would, on the other side, result by exchange of one woman with one man; and the exchanging parties should, according to right reason, want so to exchange – thus in the issue at hand can God, for avoiding a greater evil than is the good of indissolubility of marriage, make dispensation that a contract may be made for a time, until the woman displease the man.

83. And in this is justice in some way preserved, because the parties should want thus to exchange, not only for attaining a greater good but also for avoiding a greater evil; and uxoricide is a greater evil than is the good of indissolubility; because the former is the evil of penalty for a killed wife and the grave evil of guilt for the killer. It would also be an evil for the whole republic, because an occasion for continuous discord and fighting, on account of the anger of the wife's parents against the killer; and in this there would be a continuing dissipation of the family, because, with the man being killed by his adversaries or by the law, the family and the education of the offspring would be destroyed.

84. So it could, therefore, be said that, just as God made dispensation for bigamy on account of a greater good, so could he make dispensation in the repudiation of wives for the [Hebrew] nation on account of avoiding a greater evil.

85. And according to this can it be said that, since the good wine of matrimony is indissolubility and perpetual obligation, no matrimony of the Jews was perfect, because

the contracts were always under a condition on account of the bill of repudiation. But in the matrimony of the New Law this good does exist, namely indissoluble union; and, in addition to this, something else, namely the signification of the union of Christ and the Church, which is the union of one with one. Now in the matrimony of the law of nature, as with Abraham, the first perfection or the first good existed, namely indissolubility, but not the second, which is to have one wife only. But in the Mosaic Law, when there was repudiation and one man had several wives, neither perfection of matrimony existed, because neither was there union of one with one nor was the union simply indissoluble; but this was done by divine dispensation.

C. To the Arguments for the First Opinion

86. And then as to what was adduced for the first opinion [nn.73-77], it can be replied that Christ promulgated that for the time of his own Law, namely the Gospel Law, so that, just as he brought back matrimony in the way it was instituted in the law of nature (namely, so it be of one man with one woman, although, however, bigamy was licit in the Mosaic Law), so he brought back a matrimony simply perfect, that is, indissoluble, for his Law, the way it was instituted in the law of nature. And thus does he make invalid for his Law the contract that was licit for the Mosaic Law, which was the leasing of bodies for the procreation of offspring for a time – namely until the woman would be lacking favor in the eyes of the man. It is just as Christ also emptied out many other imperfections licit under Moses, by bringing back the things that were, for perfection, going to be permanent in his Law. And therefore it was, from when the Gospel was promulgated, damnable to have several wives or to dismiss one and marry another; but it was not damnable before. Thus would they say about this opinion.

87. And so from then on, according to this opinion, the Jews were bound not to have two wives but one only, and in no way to be separated from her.

88. As to Christ's proof [n.75], it is plain he is speaking for the law of nature; and in this did he sufficiently refute the Pharisees, because they were not sufficiently observing matrimony as it was in the law of nature, and he showed that he himself was rationally establishing inseparability for his own Law, because this is consonant with first institution in the law of nature.

89. As to what is added about the response of Christ to the Pharisees, “for the hardness of your heart God permitted you to put away your wives” (which many [Lombard, William of Auxerre, Bonaventure, Thomas Aquinas, Peter of Tarentaise] consider was only permission, not concession [n.75]), I say that Christ “permitted” it, by which he means that Moses did not prescribe this, nor even advise or approve it but, as if it was licit by a certain necessity, did not prohibit it. Nor is this permission deceptive as to something illicit; for that would be to say nothing other than that Moses would permit them to go to damnation, not by showing them that this would be a way of damnation, but rather by insinuating the opposite; and this no legislator can justly do, even in human laws, which leave many evils unavenged, according to Augustine *On Free Choice* I ch.6 n.42. And if the legislator not punish every evil, and thus permit it because he does not punish it, yet in no way does he in his law concede it. Hence unjust would be the human law that would write down something that was against that law [of nature].

90. And as to what is added there, that “for the hardness of your heart etc.” [n.75], it does not prove that it was illicit; for frequently the hardness of subordinates is a reason that something be relaxed for them that otherwise would not be relaxed, and that would be useful for them not to be relaxed – provided however they were tractable. It is like a prelate, when seeing a college prone to something whose opposite would be more honorably something to observe, although he could usefully establish the opposite if the subordinates were easy to sway, yet he can very well not establish it; or if it is established, he can well relax it, and honorably, lest, with it standing in place, they multiply their sins more.

91. As to the glosses:

The first [n.75] seems it should be denied, because Moses, as legislator, was only the herald of God. But he who wants to give exposition of them can say: Moses permitted it, not God immediately prescribing it to Moses among the other precepts. Hence never in the first four books of the Law is it found that God prescribed this to Moses or to anyone. Therefore, this is more precisely of Moses (as also are all the things that are in *Deuteronomy* and are not elsewhere) than are the things that elsewhere God spoke to Moses. And this is the fitting reason, that the relaxations, as pertaining to human working out, God did not want to place in Scripture as if they were put forward by himself the way they were put forward by his servants. Hence too the alleviation of the labor of Moses, who sat all day judging the people, was not expressed by God immediately per se, but Jethro [*Exodus* 18.13-27], the kinsman of Moses, expressed it, as pertaining to human working out.

92. As to the other gloss [n.75], it is easy to see that it says nothing against this opinion. For it is true it was not the precept of God, namely ‘to dismiss her’, but that if he dismiss her he give her a bill of divorce; but it was ‘the counsel of man’, not as of a man, but as of a herald of the divine Law.

93. As to the remark of Augustine [n.76], I concede that, by the delay which [Moses] imposed in the writing of a bill, he did insinuate that the dismissal was absolutely displeasing to him; not only therefore was he who did not dismiss her doing better than than he who did dismiss her, but he who dismissed her was doing badly, though not so badly that he sinned mortally against matrimony, as he would have done if he had not had license from the Law.

94. To the point about divorce [n.77], the answer is plain in [the solution of] the first [argument; n.86]; for it is true that Christ condemned divorce for the time of his own Law.

II. To the Initial Arguments that are for the First Opinion

95. To the initial arguments [nn.69-71] for the first side [n.72].

To the first argument [n.69], the answer is plain from the solution [nn.86-88]. And when it is said that it is against the law of nature that “what God has joined etc.,” I say that it is not against the law of nature, because not against the principles of the law of nature, nor against the conclusions deduced immediately from the principles, that such a contract, according to this opinion, be made for a time; nor is it simply against the education of offspring. For God could have ordained otherwise as to the education of offspring, but not as acceptably as now. However, it then was against a certain good that

is consonant with the law of nature, namely against indissolubility; and against such a good can God give dispensation, to avoid a greater evil.

96. To the second [n.70] I concede that matrimony simply is a perpetual obligation. But matrimony in a certain respect can be an obligation firm for a time, though not perpetual; and thus do I concede that in the Mosaic Law there was not any 'matrimony simply', unless perhaps some wanted, beyond the perfection of the Law, to obligate themselves perpetually, which was not necessary insofar as they had contracted a marriage under that Law.

97. Or it could be said that, if there was matrimony perfect or simply, and so an indissoluble obligation, it is a true matrimony, unless the Legislator were to revoke or dispense from it – and he did dispense from it when the woman was too displeasing to her man, inasmuch as uxoricide was feared – as was said above about a non-consummated ratified matrimony, that it is dissolved through entry into Religion [*supra* d.31 n.22]. And yet it was a matrimony simply, and not just a leasing for a time. But the Legislator in such a case makes dispensation for pursuit of a greater good; but here [sc. in the Mosaic Law] for avoiding a greater evil.

98. To the third [n.71] the case is not alike, because the reason for dispensing is not alike; for it is not as great an evil if a woman hate a man as the converse is, because sex itself holds back a woman from exterior revenge more than it holds back a man, just as was it also conceded to one man, for the good of offspring, to have several wives. But this was not conceded to the woman, because it would be against the good of offspring if one woman had several men. And so, in neither of these cases, is it alike for a man and a woman.

III. To the Initial Arguments that are for the Second Opinion

99. He who wants to hold the first opinion can easily reply to the arguments to the contrary:

To the authorities of *Deuteronomy* and *Malachi* [nn.65-66], that they are permissions of a lesser evil, but yet of mortal sin, lest a graver mortal sin come about.

100. As to the second [n.67], that rule is true precisely of dissoluble obligations, of which sort this obligation is not. It could also be said to the minor that this obligation is born from the wills of the contracting parties as from the instrumental cause but principally from divine approval; and the rule ought not to be understood of instrumental causes. Hence does God prove inseparability from the principal cause, *Matthew* 19.6, "What therefore God has joined etc."⁹²

⁹² Scotus apparently gave no separate response to the third argument [n.68]. Perhaps the reply could be that the matrimony in this case is not so much dissolved as its effect permanently suspended, because the wife's offense compromises the proper exercise of clerical office in the husband. She must live in secluded penance, and he in celibate ministry. In other words, the 'repudiation' and 'dismiss' talked of in the *Decretum* are not the sort talked of in the Mosaic Law, but mean repudiating and dismissing, not the matrimony, but, by way of due penalty, the exercising of it. Christ seems indeed to have such cases in mind in *Matthew* 5.32 when he speaks of putting away a wife "except for the cause of fornication."

Thirty Fourth Distinction

Single Question

Whether Impotency for the Carnal Act Impede Matrimony Simply

1. “Now it remains to consider etc.” [Lombard, *Sent.* IV d.34 ch.1].
2. About this thirty fourth distinction I ask whether impotence for the carnal act impedes matrimony simply.
3. That it does not:
Because this would only be because, by contracting [matrimony] one obligates oneself to the act, for impotence only impedes as to the rendering of the debt and exercising the act; but this is false, because one can contract with a will at once to enter Religion.
4. Again, it would then follow that an old man would be impeded from contracting matrimony, the opposite of which is held by the Church, which allows such marriages.
5. Again, sorcery is not a perpetual impediment, for the one ensorcelled can, it is plain, be cured by destruction of the sorcery; and, as it is now, temporary impotence is not an impediment; therefore at least impotence through sorcery does not impede matrimony.
6. The opposite:
Gratian, *Decretum*, p.2 cause 33 q.1 ch.4., “If by fortune tellers”
7. Again, Gregory IX, *Decretals* IV tit.15 chs.7, 2, “Those who are impotent are reckoned not to be suited to contracting matrimony.”

I. To the Question

8. First one must look at the conclusion in general; second at double impotence in particular

A. About the Conclusion in General

9. In general, all impotence simply and permanent, namely that cannot be aided by nature or art, impedes contracting matrimony simply, if it precede it, and dissolves one already contracted.

10. And for this there is, from the nature of this contract, a threefold reason:

First because this contract is a giving of the power of the body for such act, if it be asked for; but this⁹³ [impotent person] has no such power; therefore he can give nothing such; therefore neither can he so contract.

11. Again, in this contract one obligates oneself to such act, if it be asked for; but such an act is impossible for him, even if it be asked for; therefore he obligates himself to what is impossible. But an obligation for what is impossible is null, by divine Law; therefore, divine Law does not approve such an obligation; therefore it is null.

⁹³ Scotus' pronouns are, again, ambiguous (implicit in the verb or noun and not separately expressed), but where they are made express they are mainly in the masculine gender. In English one just has to translate making adjustments case by case.

12. Again, some other person intends to exchange the power of body with the power of body of a second person; therefore, the belief is that the other person is able, conversely, to make the exchange; but the other person cannot; therefore there is error here pertaining to something that is *per se* required for the contract; such an error makes the contract null, as was said above, d.30 q.1 nn.9-13.

This then is said about impotence in general.

13. But if such impotence follow a consummated matrimony, it does not dissolve it, because the power was handed over, and the one to whom it was handed over has been put in possession of it; therefore it cannot be revoked on account of any supervening impediment.

14. But if such impediment intervenes between a ratified and a consummated matrimony, it is doubtful whether it dissolve it; Gratian, *Decretum*, p.2 cause 33 chapter 1, seems to state the negative side, other chapters the affirmative side, “marriage is confirmed by carrying out the office [of matrimony],” and afterwards follows, “before it be confirmed, the impossibility to perform the office dissolves the bond.”

15. The contrary seems to be the case, for the power has already been given; therefore, if an impediment to the use of it happen afterwards, not for this reason can the prior giving be rescinded. Whether it did not precede a ratified matrimony, if yet it did precede a consummated one, would be difficult to judge, unless perhaps there was, intervening at that time, a removal of some part necessary for the act.

B. About Double Impotence in Particular

16. About the second article [n.8]:

There is a double impotence in genus: natural and by occasion. Natural in a man is frigidity, in a woman constriction; by occasion is through sorcery.

17. The first impossibility is plain.

18. The second impossibility is this: evil spirits, who have compacts with certain men, keep their promises with them through certain chants or herbs or this sort of thing, not because they are honest but in order that others adhere to them (because if they kept no compacts no one would serve them), and in order that those for whom they keep the promises worship them, because, from pride, their chief desire is for divine honors.

19. God also permits them to exercise power over others (because of these others' sins or some other hidden cause) to impede these others from certain acts that they would have power for if they were not impeded. For because the devil has power, unless he be impeded by God, over the whole of corporeal nature, therefore can he prevent such and such bodily members from having such and such effects, and this by incantations or other things of the sort; and thus can he prevent this act [of carnal union] in this person in relation to such and such person.

20. And in this way does a sorceress, who has a pact with a demon, procure from the demon his impeding this person from this act with this woman, as long as such sorcery lasts, as a bent pin⁹⁴ or something of the sort. And this frequently happens through the sorcery of such a woman, who procures and invokes the devil under a certain pact for the impeding of such act between such persons.

⁹⁴ The Latin word is ‘acus’, which means ‘needle’ or ‘pin’. Compare our, more vulgar, word ‘prick’.

21. And this impediment by occasion is called [malicious]⁹⁵ sorcery, because the devil, for malicious procuring of someone, impedes the act, or something else of the sort.

22. What then is the remedy against this impediment by demons?

I reply: if the power of the demon is impeded by the prayers of the saints, it is well done. If God not answer the prayers, if the sorcery be known and destroyed, the demon would not vex further, because, from the pact, he only assists while the sign lasts.

23. And from this is plain that deceitful is the question whether it is licit to take away the sorcery with the intention of curing the one has been ensorcelled. For it is licit, indeed meritorious, to destroy the works of the devil. Nor is there any infidelity in this, because he who destroys the sorcery is not acquiescing in evil works, but he believes the demon can and wants to vex as long as such sign lasts, and the destruction of this sign puts an end to the vexing.

24. About these two impediments I say, as to the issue in hand, that they are in some way similar and in some way dissimilar.

Similar because they prevent contracting matrimony and break off the contract already made with respect to the person with respect to whom these impediments exist. Which I say and add to this extent, that not only an occasional but also a natural impediment can exist with respect to one person, not with respect to the other, especially a natural one in a woman.

25. But after divorce there is a double difference.

One, that someone who has an occasional impediment may licitly contract a matrimony, and if after the contract there is carnal union, it ought not to be rendered to the prior spouse, because someone ensorcelled with respect to one person is not, for this reason, ensorcelled with respect to all; for he is ensorcelled as the ministers of the devil get hold of him, through the sorcery of the devil, for being impeded. But it can be that some sorceress want him to be perpetually impeded with respect to this person, not with respect to another, as if she not wish him to marry this woman but herself or someone else.

26. But the other, namely the one who has a perpetual natural impediment, and this with respect to anyone, must remain without hope of marriage, and it would be safe for him to enter Religion. But if he contract matrimony in fact afterwards and have carnal union, he is compelled to return to the prior spouse, because it appears that the sentence of divorce proceeded from an error, and that it was no error before God and that the matrimony was true, because there was not the impediment supposed.

27. But how does the perpetuity of this impediment become known?

It is contained in Gregory IX, *Decretals* IV tit.15 ch.5, “Praiseworthy”: they should delay for three years and make efforts for the act; and if afterwards they protest [sc. failure], they must swear with a seventh hand [sc. seven witnesses], that is, man and wife by knowledge and seven neighbors by fidelity; and if the man protest the accusation of the wife, the man is believed, because “he is the head of the woman” [*Ephesians* 5.23, *Decretals* ch.1]; and if the man accuse, the proof rests on him in the aforesaid way.

28. But how will the difference between this and that impediment be known?

I reply; it is difficult save by inspection of the body, whether some necessary disposition is stopped in the part required for this act; or by the judgment of doctors as to

⁹⁵ The Latin for sorcery is ‘maleficium’, which literally means wickedness or crime, and shares the same root with the (English and Latin) word ‘malicious’, namely ‘mal-’ or ‘evil’.

frigidity, if any signs display him to be of such complexion. But if neither this way nor that, and yet he is simply impeded, one must presume that it is sorcery.

II. To the Initial Arguments

29. To the first argument [n.3] I agree that one obligates oneself to the act if it be asked for, at least for some determinate time; but within that time it is not necessary to render the act if one wants to enter Religion. But one cannot obligate oneself to the act for any time at all if there is a perpetual impediment, because, as said at the beginning of the solution [n.9], only perpetual impediments impede, and it is contained in Gregory IX, *Decretals* IV tit.15 ch.6, "Fraternity."

30. To the second [n.4], if the old man be altogether impotent, I would say that he would not contract matrimony, although she⁹⁶ could perhaps licitly allow certain things to him for living together as brother and sister; and thus perhaps do many women espouse to themselves wealth rather than persons.

31. To the third [n.5] the answer is plain from what was said [nn.17-23]: if the sorcery is temporary, it only impedes temporarily; but it is presumed to be perpetual if it persists for three years.

Thirty Fifth Distinction

Single Question

Whether Adultery with Someone while the First Husband is Living Impedes Matrimony with the Same Person after the Death of the Husband

1. "Here too one must note" [Lombard, *Sent.* IV d.35 ch.1 n.1].

2. About this thirty fifth distinction I ask whether adultery with someone while the first husband is living impedes matrimony with the same woman after the death of the husband.

3. That it does not:

II Kings 11 [*II Samuel*] David commits adultery with Bathsheba and yet, after Uriah was killed, he contracted matrimony with her.

4. Again, Augustine *On Nuptials and Concupiscence* I ch.10 n.11 (and it is put in Lombard's text, *ibid.* ch.4 n.2), "It is possible for a marriage to be made where there was previous adultery."

5. The opposite:

Gratian, *Decretum*, p.2 cause 31 q.1 ch.3, "But that"

I. To the Question

6. I reply: there are three crimes, together or separately, that seem to cause difficulty for a contracting of matrimony. And the crimes are: 1) adultery with a married person, 2) machination in the death of a legitimate spouse, 3a) pledging one's faith to an

⁹⁶ No express male or female pronoun is given here, and the 'many women' in the next line could also be the neutral 'many persons', but the word translated 'to him' is definitely masculine.

adulteress herself 3b) or a contract with her in fact 3c) or a promise with an oath about making a contract with her (which last three are reckoned as the same for the issue in hand).

7. About the two first the answer is plain in Gregory IX, *Decretals* IV tit.7 ch.8, ‘About him who has taken in matrimony a woman whom he has first polluted through adultery’, last chapter.

8. About the third, namely promise with an oath, that it is valid is contained in Gregory IX, *Decretals* I tit.40 ch.3, ‘About things that are done through fear or force’.

9. About these three I say that the last one does not per se impede contracting matrimony after the death of the husband, as is contained in *Decretals* [supra n.7], “If anyone, while his wife is alive, promise, after pledge of faith, to marry another, or did in fact contract with her, if he knew the same woman neither before nor after, his legitimate wife still living, then, although on both of them (for the fact that in this they are greatly delinquent) a grave penalty must be enjoined, yet the matrimony that he contracted with her after the death of his wife is not to be destroyed,” and this if both are not aware [of the other’s previous marriage]. So, therefore, matrimony is not impeded by the pledging of faith alone. But this is, as I said, when neither knows about the other that they are in a matrimony; but if they do know as much, then I say it does impede the matrimony, and the contract is null.

10. But the third along with the first does simply impede and destroy a matrimony, for it follows there *ibid.* [n.7], “[Matrimony] should not be tolerated, if before or after, while his wife lived, he had polluted her in adultery;” the ‘before’ and ‘after’ are referred to the pledge of faith.

11. And this is to be understood when both are conscious that the act is adultery; for if the man alone is conscious, and the wife or woman not conscious, namely because she does not know he has another wife, then if the man afterwards contract with her, on the petition of the man the divorce is not to be made public, as is contained *ibid.* [n.7], ch.1.

12. But what if the person, being before unaware, ask, after learning of this impediment, for a divorce?

It seems it should be made public, from that chapter [n.11], by this argument in its contrary sense; and in the text is found there that “if the woman not seek divorce, they are not to be separated;” from which is insinuated that if she do ask for it, they are to be separated.

13. But this is doubtful, because such a contract with an unknowing woman is either a matrimony or not. If it is, then there should be no divorce given on the petition of the woman; if it is not, then there should be a divorce given on the petition of the man, because they cannot abide together, since they are not man and wife.

14. I reply: it is not a matrimony because the woman consented to him as to someone able to contract; but he, on his part, is not such as she believed him to be. And when it is said that ‘they cannot abide together’, I concede that he cannot deal with her matrimonially, because on his part it would be fornication; but she can be joined matrimonially with him, because invincible ignorance excuses her.

15. But let it be that the woman, when understanding the impediment, does not seek a divorce, then according to that chapter no divorce is to be made public; therefore, they should abide together – and yet not in marriage, because for you [sc. Scotus himself,

n.14] that contract was not a contract of matrimony or marriage; therefore, some should abide together in fornication according to this judgment.

16. I reply: if the woman, knowing the impediment, consent to matrimony, the man is compelled to consent to it, as penalty for his sin, because he knowingly deceived someone who was ignorant; and then there is a new matrimony from a new consent. And this judgment is most just, so that he who deceives someone who was ignorant in the matter of giving power over the body (because he does not intend to give that power or cannot give it) – that he be compelled to fulfill truly afterwards what before he did deceitfully.

17. But you will say: surely they were not able to abide together by virtue of the first contract? Let it be that she, not knowing what act she is conjugally consenting to, and he, knowing that she wants to be his wife, consents with her anew, not making the impediment explicit to her, because perhaps from this would hatred be generated – can they really abide together?

18. I reply: the first consent was not matrimonial, and therefore no act can be licit in virtue of that consent; and so, in order for them to be spouses, a new consent is required.

19. And then to this second consent I say that, if the impediment is not made explicit to the unknowing woman, she does not, in the following carnal union, consent with a new consent, but only renders it in virtue of the first consent, which was null; and therefore, though the person who knows consent again, yet it does not suffice. This is expressly said by a gloss on that chapter [Gloss on the *Decretals* IV tit.7 ch.1], “She is understood to be continuing in the first consent, which was null,” as is proved about a slave “who is believed to be a free man with whom a contract is made; if he is manumitted afterwards, the wife being ignorant of the fact, the matrimony is not contracted; because after the manumission was carried out, she is, in remaining with him, understood to be giving approval throughout to the first consent, which was erroneous and not a matrimony.”

20. In another way can it be said: if she was married without knowing, while the legitimate wife of the one who marries her still lives, this judgment is true [sc. that there was no contract of matrimony]; and in this case does the gloss speak, because this is the case in the text [n.11], that “a certain man, having a wife, joined another to himself, she unaware of the fact;” therefore he took the second wife while the first was living. And then indeed is it true that there was no contract, because he was then bound to another, though she believed him free from matrimony.

21. But if only two things, namely adultery and pledging of faith, are performed with a married woman who does not know, and if after the death of her husband, and also of the wife of the adulterer himself, he marry her, what is the case with the law?

22. It seems from this chapter that there is simply a matrimony, even if the defect is never made express to the unknowing person, nor does she, after the defect is made express to her, consent anew. And the reason is that from that chapter [n.11] is collected that the Church does not, because of the two concurrent factors, simply make those persons illegitimate, but does so in a certain respect, namely if a deceived person protest.

23. But the first judgment seems more certain, because if after she knows of the impediment and protests, a divorce will be made (from that chapter); therefore, there was not a matrimony before.

24. Third I say that whether the first crime go along with the second, or the third does [n.6], it impedes and destroys a matrimony, as is plain in Gregory IX, *Decretals* III tit.33 ch.1, 'On the conversion of infidels'. Indeed, the second alone seems to impede it, from that chapter; for it speaks there of "Saracens who while they were in captivity killed the husbands of certain Christian women by the traps and machinations of those women;" and the judgment is that "if they have come, through the women, to the Christian faith and have adhered to them (supply: in matrimony), they are not to be tolerated, since the Church does not wish to compensate such a loss with such a gain."

25. Here there is no touching on adultery of a Saracen with a Christian woman, nor about pledging of faith, but only of machination in the death of a legitimate husband, and this with the knowledge of the wife; nor does the gloss [Gloss on *Decretals* ad loc., n.24] add there to the case this pledging of faith or adultery; but the machination must be understood along with the effect [sc. the actual killing], as 'if there be both affection and effecting' (as the gloss says on the word 'they have procured').

26. But what if, the wife unknowing, this man alone kills the husband, can he really marry her afterwards?

Response under that title, second section [of the *Decretals*, n.24]: if it be done without intention of marrying her, as that he kills him in a just war, not so that he may marry, it does not impede matrimony; but if he kill so that he may marry, it is not found expressly that he could not afterwards marry her, provided however the woman not know, because, in the case of a just war, the chapter says there that "since (supply: the women) did not procure the death of their deceased husbands, matrimony between these sort of persons (namely the killer and the wife of the one killed) can licitly be contracted."

27. And the proof is through the argument place of the similar and the lesser; because if a man does not consent to the death of the legitimate husband, but the wife kills him, she can afterwards be married by another who is ignorant of this crime, Gratian, *Decretum*, p.2 d.33 ch.5, "Killers".

28. This is also confirmed by Gregory IX, *Decretals* IV tit.1 ch.23: "When there is a prohibitory edict about contracting matrimony, whoever is not prohibited is by consequence admitted."

29. But let it be that the woman is first ignorant, then later, after hearing of the killing of her husband, approves it, is this really an impediment?

30. It seems that it is, because [Gloss on the *Decretals* III tit.35 ch.1] "in sorceries the approval is pulled back and compared to a command [sc. approval of the killing after the fact is compared to a command to do it before the fact]."

31. The gloss however holds the opposite in the aforesaid chapter, at the end, because of the chapter now added to it. And from the same chapter can be concluded that a simple promise is not equivalent to any of the three things enumerated in the third member [n.6]; therefore not bare espousals either.

32. It is thus plain, therefore, that of these three [n.6], the third alone never so impedes matrimony that it destroys it. The first too alone never impedes, as is plain from the authority of Augustine adduced in the arguments [n.4]. The second alone sometimes impedes and sometimes does not; but always, when it is with the third, it does impede.

33. And does it really always when it is with the first?

I reply as follows: above, in this chapter, Gregory IX, *Decretals* IV tit.7 ch.6, the third with the first always impedes. The whole reason is the ordination of the Church,

because this is the first case where a contract is impeded precisely by statute of the Church, making the persons illegitimate for contracting matrimony. But the reason inducing the Church so to ordain is the repression of homicide and of adultery, which would frequently happen if such persons could legitimately contract.

II. To the Initial Arguments

34. To the first argument [n.3]: this law [sc. the canon law of the Church] was not established for that time; however, David would have acted more justly if he had stoned her. Nor did he have to dismiss the thing because of his own guilt without exacting justice on the other.

35. And if you say ‘no, because then he would have stoned himself, because he was partner in the crime’ – to the contrary:

Either you do not excuse him by this, or you must say that a partner in crime is not bound to inflict the same public penalty that he would be bound to inflict if he were not a partner.

But if you excuse him from not punishing her by the fact he remitted for her the penalty of the Law, we do not have this from Scripture, but that it was a private sin and therefore he did not have to punish it with a public penalty. This seems a more reasonable response. And then the fact he took her to wife after the grave sins of adultery and homicide – the last was not an impediment [n.26].

36. To Augustine [n.4] the answer is plain [sc. from the whole preceding discussion about when adultery impedes matrimony and when it does not].

Thirty Sixth Distinction

Question One *Whether Servitude Impedes Matrimony*

1. “Now about the condition” [Lombard, *Sent.* IV d.36 ch.1 n.1].
2. About this thirty sixth distinction I ask whether servitude impedes matrimony.
3. That it does:

No one ought to give what is another’s; but the body of a slave belongs to the master, according to Aristotle *Politics* 1.4.1254a12-13.

4. Again, more favorable is profession of Religion than carnal matrimony; but a slave cannot profess Religion without the will of the master; therefore not contract matrimony either.

5. The opposite:

Gregory IX, *Decretals* IV tit.9 ch.1 ‘On the marriage of slaves’. “As in Christ neither free nor slave is someone who should be taken away from the sacraments of the Church, so too should matrimony between slaves not in any way be prohibited.”

I. To the Question

A. Certain Prefatory Remarks about Impediments to Matrimony

6. Here I preface certain things in general about impediments to matrimony. For some impediments to matrimony are from the nature of the contract, others from the condition of the person contracting, and others are from a statute of the Church. The first impediments are about the conditions of the contract, the second about the conditions of the persons contracting.

7. Now in the persons contracting there are two conditions in general, namely impotence simply and tie to another matrimonially or by matrimonial bond.

8. The first was spoken of above, where impotence was discussed [d.34 nn.9-28].

9. The second impeding condition is contained in the verses.⁹⁷ And it is plain that if one is tied to another by matrimonial bond one does not have power over one's body and so cannot give it, because no one can give to another what he does not have, I mean in the New Law. And this will be dealt with in d.38 nn.16-19.

10. From the nature of the contract there is a multiple impediment: for one is compulsion, and this was spoken about above [d.29 nn.21-33]. Another impediment is error, and this is triple, for either it is error of person (for there should be distinction of sex, as man and woman); or it is error in condition of person (as when he intends to give his body to a free woman, and yet he or she is a slave; but a slave cannot give an equal gift to a free person, as conversely, because he does not have power over his own body, but it belongs to his master, and these matters of error impede not only the contract of matrimony but every exchange); or it is error in the contract, which is 'I give if you give' (for when one gives in words exteriorly and not in mind or intention interiorly but is lying, then in no way is there a contract, as was above [d.26n.36, d.30 nn.12-13]; and likewise about the other two errors). There are, therefore, three errors from the nature of the contract.

11. Another impediment is a condition repugnant to the contract, namely against procreation or education of offspring, as 'I give myself to you such that I prevent offspring by procuring poison for sterility, or that I do not keep faith with you'; this is nothing because it contradicts matrimony and the good of it.

12. Another impediment is about a non-perpetual bond, as 'I give myself to you not perpetually but until another comes along who pleases me more'.

13. So there are, therefore, seven impediments to matrimony: two on the part of the contracting parties and five on the part of the contract. And force or fear is another impediment, and so there are eight.

14. There are other impediments from statute of the Church, and these are three in kind: first from too close kinship on the part of the persons; second is some obligation made for divine cult; third is great crime. On account of these three reasons does the Church delegitimize certain persons.

15. By obligation to the cult of God there is a double impediment to matrimony, namely vow of continence and reception of Orders.

16. Likewise, a twofold kinship impedes matrimony, namely carnal and spiritual.

17. But the vow of continence is double, as below in d.38 nn.7-11.

B. Solution of the Question

⁹⁷ A mnemonic cited by several authors, as: vow, condition, violence, spiritual proximity, error, dissimilar faith, age, crime, blood, union, time.

18. Here two things are to be looked at: first, whence servitude was brought in and whether it was justly brought in; second to the issue at hand.

1. Whence Servitude was Brought in and Whether it was Justly Brought in

19. About the first, it is said that by the law of nature all are born free, yet servitude, or more properly filial subjection to the father, is more of the law of nature, namely filial obedience pertaining to disciplining, because according to the Philosopher *Ethics* 8.14.1161b27-30, 62a4-7, “a son has from his father being and discipline.” The servitude we are speaking of here, according to which the master can sell his slave as livestock, is that of which Aristotle speaks in *Politics* 1.4-7, for a slave cannot perform acts of virtue because he must perform servile acts at the command of the master; and this servitude is that one belongs totally to the right of another. And this is not for the good, but the bad, of the slave, and this servitude is that of which Aristotle says that the slave is like an inanimate instrument [*Politics* 1.4.1253b32], and cannot be good and virtuous. Hence that servitude is not for the good but the bad of the slave, as was said. Therefore, does the Apostle say [*Galatians* 4.31-5.1, 12-13, *Romans* 6.22], “You have become free; do not be subject to slavery etc.” And hence this servitude was brought in only by positive law.

20. But how is it just? I reply: as was said in d.15 nn.93-110 about the way ownerships began to be just, so I say that this base servitude cannot be justly brought in save in two ways:

21. In one way, because such person voluntarily subjects himself to such servitude; but such subjection is vain; indeed, it is perhaps against the law of nature for a man to renounce for himself his liberty; but after it has been done, it is necessary to serve, because this is justice.

22. In another way, if some master of a community, seeing some to be so vicious that their liberty is harmful both to themselves and to the republic, can justly punish them with the penalty of servitude – just as also he could kill them in certain cases for the good of the republic.

23. If you say that there is also a third cause of servitude, as when being captured in war one is preserved alive, and thus, being preserved from death, one becomes a slave deputed to serving – I doubt this, unless it be said that a slave was there preserved alive. Nor does justice manifestly appear here because, although the captor could have justly killed the captive, if his war was just, by defending himself but not by invading (and this while the persistence of the one fighting back remains), yet from when he ceases to be persistent, because he is now a captive within one’s will, it seems inhuman to inflict a penalty on him against the law of nature. For there is not the same reason here as in the second case [n.22], because perhaps he would not remain rebellious nor abuse his liberty, but would perhaps become obedient and use well the liberty given him.

24. If it be argued against the first member [n.21], that servitude, to be sure, is not against the law of nature, because, according to the Philosopher, *Politics* 1.2.1252a31-35, he who excels in mind should rule, he who excels in strength should serve; but some naturally excel in mind and some are less prudent in mind and more robust in body; therefore some are naturally fit for lordship and some naturally fit for being slaves; therefore they ought naturally to be slaves (there can be an example for this in the members of the human body, where some naturally serve the principal part) – I reply: this

instance is worthy of note, for this is not to be understood of the extreme servitude that we were just now speaking of, but only of political servitude, whereby an inferior is disposed by a superior, and not however as something inanimate but the way one who is less vigorous in mind is ordered through him who excels more in mind.

25. If you argue against the second [n.22], that thus all servitudes that now exist would be unjust,⁹⁸ because what is against the law of nature can never be made just, for antiquity of time does not ratify crimes but rather condemns them; all servitude other than these two cases is unjust and against the law of nature; therefore through no length of time does it seem to be just that a master be justly master over such slaves. – I reply: it was touched on above, d.15 nn.105-110, how right can be acquired through prescription, if the other conditions that rights determine are concurrent, namely that he acquire it by just title and that the possessor be of good faith and that he possess it without interruption in the time determined by the law. But this point extends itself to possessions and not to servitude, because the reason for possessing gold is not the same as for possessing a slave, as far as concerns the law of nature; and it would be difficult by prescription to save the justice of detaining such slaves, unless it be presumed that they were made slaves from the beginning in one or other of the two ways.

26. If you object, why then did the Apostle bid such slaves to obey their masters? – I reply: many obligations are unjust on the part of those by whom they are made, and yet, after they have been made, they are to be kept. Hence the Apostle, showing servitude not to be laudable in itself [*Ephesians* 6.5-8], and much less the detention of anyone in servitude, says [*I Corinthians* 7.21], “If you are called a slave, let it not be of concern to you; but if you can be free, use it rather.”

2. Application to the Issue at Hand

a. Opinion of Others and the Weighing of It

27. About the second article [n.18]: some say [Thomas Aquinas, *Sent.* IV d.36 q.1 a.2, arg.2 *contra*] that a slave can contract matrimony against the will of his master – and this from the preceding article [n.24], because matrimony is of the law of nature and servitude is not, but is rather against the law of nature; and what is of the law of nature is not taken away because of anything that is only of positive law.

28. Another reason is set down [Aquinas, *ibid.* Richard of Middleton, *Sent.* IV d.36 princ.4 q.1], that a slave does not so belong to his master that he does not have his own right as concerns natural acts pertaining to preservation of the individual; for it is plain that he can use things necessary for life; therefore, by similarity, as concerns acts pertaining to the preservation of the species. The proof of the consequence is that the preservation of the species, since it is a greater natural good, belongs more to the law of nature.

29. Or in this way: a slave cannot be a brute; hence every man has, as to some acts, his own right, nor can he make himself a slave as to those acts (rather nature would make

⁹⁸ An odd remark because penal servitude, which the second case is about [n.22], hardly seems unjust. Perhaps the idea is (as Scotus' remarks agreeing with the objection, and in n.26, suggest) that since most slaves now, in Scotus' day, were slaves by being born slaves, then while their criminal forebears may have been justly slaves, the innocent descendants are not. So these descendants at least are unjustly slaves; for time does not pass the crime from parent to child, but rather shows that crime to be a crime.

him so free [as to those acts] that he cannot make himself slave); and of such sort are natural acts that are for the preservation of the individual and also for the preservation of the species, and he cannot obligate himself to any master against these acts; but he can obligate himself so as to be bound to a master as to later acts.

30. These reasons can be solved:

First because an obligation that is not of the law of nature can well impede some liberty that belongs to someone of the law of nature; and so it is here. An example: by the law of nature I owe you nothing, yet if I vow obedience to you I am bound to obey you. Now matrimony is not of the law of nature except secondarily, as was said above [d.26 n.31]; and it seems to be just as much of the law of nature to render to each his own; therefore, from the fact that he has by an obligation made himself to be slave of a master, he is bound to render the master the master's own, and bound to be held back from that which impedes such rendition, although that other impeding thing would, secondarily according to the law of nature, belong to him when not obligated.

The second reason is not probative, because it is manifest that not everyone who is bound to preserve the individual is bound to multiply the species.

31. And if you say that at any rate it is so licit for him that the fact it is licit for him cannot by man be taken away – this is true in a case of necessity, where the preservation of the species would depend on his act. But because many who are not slaves are intent on generation even in the Christian Law, therefore the act of the slave pertaining to this is not necessary for the preservation of the species, and therefore it is possible by some obligation to preclude him from it. Hence if an obligation to later acts impede prior acts which are not simply necessary for the procreation of offspring, then it does not seem that, because of such non-necessary and prior acts, he must set aside the posterior acts that belong to his master; for the procreation of offspring through him does not seem to be a necessary act simply, because the human race can be multiplied and offspring procreated through others. – There is a confirmation, that before matrimony he is bound to certain acts, as to *a, b, c*; if he contract matrimony, there will be an obligation to something that is impossible with the *b* or *c*; therefore that obligation cannot justly be made, because therein what is another's is, after the obligation is made, taken away.

b. Scotus' own Solution

32. I say, therefore, to this article [n.18] that a slave can, by the will of his master, contract matrimony; and if the burden of matrimony be something repugnant to the accustomed services, the master, by letting him contract, implicitly relaxes the accustomed services for him. And if the master afterward revoke the concession (as by totally preventing him from carnal union or sending him to far-off parts or detaining him in labors so that he cannot visit his spouse sometimes), he would commit mortal sin, and also he would manifestly have to be corrected by the Church.

33. A slave can also contract against his master's will insofar as he has some right over his own body; for he has not deprived himself of all liberty for all acts; and insofar as his body is his, he can make exchange with another. But if the other, whether slave or free, wish to be content with the modest liberty or power for a modest use that he knows he [the master] can give, he can well make the judgment beforehand for himself, and the exchange stands. And he does have so much power over his body when he is not occupied

in the service of his master, if he contract against the master's will; and then between such [contracting parties] there is only obligation to as much as they can give their bodies to, the master's justice being preserved. Hence the chapter that does allow slaves to contract, Gregory IX, *Decretals* IV tit.9 ch.1 'On Marriage of Slaves', says that a slave, if he have contracted against his master's will, has given what he had, and is bound to fulfill his services to the master, because he cannot give to another save what he had in his power; but he did not have power simply over his body; therefore etc.

34. And from this follows that the slave could contract matrimony with a free woman, provided however she know his condition and to him in such condition, because then she exchanges the power of body that she has for the little that the slave has of power over his own body. And he can make a contract with a slave girl, and then it seems that both concede what they can; and as they contract so are they bound, according to justice, to render the debt, namely insofar as those acts do not hinder them from their accustomed services.

35. But let it be that in such a case, when they contract matrimony against the will of the master, one of the masters sends his slave to Africa and the other sends his slave girl to France, is it really licit to do this?

36. I say that, because a case of matrimony is a favorable thing, the masters would have to be induced not to do this; but if they did do it, it is not apparent how, on the supposition of slavery, they would be acting there against justice; because this slave was before in the power of the master to send him thither, indeed to sell him; and that slave girl was likewise in the power of her master as to some other place; and they were not able through their own acts, without the will of their masters, make themselves freer, nor exempt themselves more from the right of their masters than they were before; therefore it is still licit.

37. But if a slave girl intend to contract with him whom she believes to be free and yet he is a slave, does she really contract?

It could be said that error of worse condition does impede the contract, because it prevents the exchanger from receiving as much as that for which they intend to make the exchange; but ignorance of better or equal condition does not impede, for the same reason.

II. To the Initial Arguments

38. To the first argument [n.3], according to this final reasoning [nn.32-33], it is plain that a slave does not belong to his master as to everything, because he has his own right as to eating and drinking and sleeping, and in brief for performing whatever acts whereby his due services are not subtracted from his master; therefore since at that time he could now and then use the carnal act, he can obligate himself to it insofar as he does have his own right.

39. And as to what the Philosopher says about that cursed servitude where the slave is like cattle, it can be understood that the slave belongs to his master as possession or as money; but not because in his acts he is only led about and does not lead, for however much he is a slave, yet he is a man and so possessed of free choice. From which a great cruelty is apparent in the first bringing in of servitude, because it makes a man, free in choice and master of his own acts for virtuous action, into a brute as it were, as if not a user of free choice, nor able to act virtuously.

40. As to the second [n.4] the case is not alike, because he who makes profession in Religion submits himself totally to obedience to the superior of the Religion, and thereby he removes himself in totality from the accustomed services of his master. Not so he who contracts matrimony, but only in some acts, which can stand along with his rendering the due and accustomed services. And the Church does not want to prejudice the right of another, nor privilege anyone to the prejudice of another.

Question Two

Whether Age of Childhood Can Impede Matrimony

41. Second I ask whether the age of childhood can impede matrimony.

42. That it cannot:

Because anyone can accept a power before he can use it; therefore in a contract of matrimony, where there is a giving of use and an accepting of power, anyone can accept the power and give before he have power for the use – and so a child can. There is a confirmation, because the age of childhood does not impede the reception of Order (this was spoken of above in distinction 25 [n.75]), and yet he receives there the power to carry out the act of Order, which he cannot at that time carry out.

43. To the opposite:

Gregory IX, *Decretals* IV tit.15 ch.2, “A child, who is not able to render the debt, is not fit for marriage.”

44. Besides, those cannot contract matrimony who cannot transfer power over their body; but a child does not have power over his body; therefore, he cannot transfer or give it.

I. To the Question

45. I reply: as was said above, distinction 34 nn.9-10, impotence does simply prevent contracting, because in this contract there is a giving of the power of marriage, and he who does not have the power gives nothing.

46. This reason is probative about children for the time for which they are children. But because this impotence is not permanent, but future power is expected, therefore can a child now promise power for the future time at which he will have it; and this happens in betrothals, because a child can contract a betrothal but not matrimony.

47. If you say he can give it for the future – I reply: this is not to give but to promise.

48. And the response that is put there about defect of intention [d.34 n.12], whether this is adduced for the contract or for matrimony, is nothing as to *b* [sc. the power], because he can have discretion enough for due intention before he have the power, if intention have to be exchanged in this contract.

49. If the time of childhood be asked for, a time of fourteen years is regularly put for a male, twelve for a female; but, however, “malice sometimes makes up for age” [*Code of Justinian* II ch.32 n.3], and bodily complexion anticipates the regular age. And then, from the fact he has the power and sufficient discretion, he can contract, because he has what he ought to have, and sufficient consent and signs.

II. To the Initial Argument

50. To the argument and confirmation [n.42], I concede that someone can receive a power before he can use it, but he cannot give a power before he have it; and in this contract there is a giving of power.

Thirty Seventh Distinction

Single Question

Whether the Sacrament of Orders Impede Matrimony

1. “There are certain Orders etc.” [Lombard, *Sent.* IV d.37 ch.1 n.1].

2. About this thirty seventh distinction I ask whether Priestly Order impedes matrimony.

3. That it does not:

I Timothy 3.2, “He must be husband of one wife,” is said there about a bishop, and likewise about a deacon.

4. Again, Gratian, *Decretum*, p.1 cause 31 ch.14, “The priests of the Greeks join in matrimony;” but they have Holy Orders the same as the Latins.

5. Again, Orders are more opposed to matrimony than the reverse; but a married man can receive Holy Orders; therefore conversely. The minor is plain, because if a married man in minor Orders afterward receive Holy Orders, he really does receive them, if it is the intention of conferrer and receiver – because before the marriage is consummated he can enter Religion and be promoted to Holy Orders.

6. To the contrary:

Gratian, *Decretum*, p.1 d.32 ch.13, “It has been agreed that bishops, priests, deacons, and subdeacons, according to prior institutes, abstain from wives,” that is, “not contract [matrimony]” as the gloss says *ibid.*

7. Again, Gratian, *Decretum*, p.1 d.27 ch.8, “We altogether forbid priests, deacons, subdeacons to contract matrimony.”

8. Again, Gratian, *Decretum*, p.1 d.28 ch.1, “Let bishops presume to make no one deacon save him who has promised to live chaste.”

I. To the Question

A. Opinion of Others Explicating the Positive Certain Conclusion

9. Here the conclusion is certain.

10. Some say [Bonaventure, Thomas Aquinas, Richard of Middleton, Alexander of Hales] that it is not licit to contract because a person who receives sacred Orders is made simply illegitimate for contracting matrimony, and this either by the Church or immediately by Christ (though it not be read in Scripture).

11. But the second alternative does not seem probable, because they were not bound in the primitive Church, unless perhaps you say that it was never licit after reception of Holy Orders to contract matrimony, though sometimes it would be licit to use a matrimony already contracted, as now among the Greeks.

12. But what is the reason for this illegitimacy?

The response of some [Bonaventure, Thomas Aquinas, Richard of Middleton]: it is because of the vow annexed to Holy Orders (and how that vow make it illegitimate will be stated in the following distinction [d.38 nn.26-28]).

13. But against this: either the vow is annexed thus, that he who receives [Holy Orders] makes a vow; or only because the vow is as it were annexed by precept of the Church, because the receiver is bound so to keep it as if he vowed.

14. Not in the first way, because no one who vows vows something he does not want; but this man, receiving Holy Orders, has explicitly in his will not to be continent; therefore, he does not vow that continence.

15. If you say that he does vow in fact because, in receiving Orders, he does what the ancient Latin fathers vowed (and he is receiving such sign [Orders]) – on the contrary: no one is bound by a vow to a vow made by another, especially if he has a contrary vow. Or as follows: no one can vow a vow of continence according to the Latin Church for some other person; therefore, neither were the first fathers able to vow for him who is ordained later.

16. Again, the Orientals receive the same sign [Orders], and yet without vow of chastity.

17. If in the second way [n.13], then he who contracts [matrimony] does simply contract it. Proof: Gregory IX, *Decretals* IV tit.16 ch.2, ‘About matrimony contracted against the interdict of the Church’: “Although one ought not to pass over to second vows against the interdict of the Church, yet it is not acceptable that, for this reason, the sacrament of matrimony be dissolved; some penitence, however, should be imposed on them, because he did it against the Church’s prohibition.

18. Therefore, if the vow of continence is only annexed to Holy Orders by precept of the Church, it follows that the Church has not simply made it illegitimate to contract [matrimony]. For it is universally established in law that what prohibits something being done does not make it illegitimate; but there is need that it contain this sort of judgment: ‘if he has made a contract, let it be broken off’, or: ‘if they have been united, they are in no way to be tolerated’.

B. Scotus’ own Opinion

19. I say, therefore, that neither is it because of a vow properly speaking of continence annexed to Holy Orders, nor is it because of a vow annexed by precept of the Church commanding such a one not to contract, that this person cannot contract, but it is from the fact that the Church makes such person simply illegitimate.

20. And this indeed was established reasonably, whether it was had from Christ or not, because such person is deputed to a sacred ministry that requires purity of mind and perspicuity of intellect and fervor of affection and bodily purity, to all which things continence disposes, and to the opposites of which frequency of the carnal act disposes.

21. Nor ought anyone to say that in this the Church is prejudicing him in his right, because the Church does not commonly compel any to reception of Holy Orders, and has made it sufficiently public that, after such Orders have been received, the receiver is unsuited for contracting; therefore if he comes voluntarily, he voluntarily incurs this unsuitability.

22. Hence from the fact that the Church prescribes continence to him when the bishop asks in the conferring of Orders “if chaste and pure etc.” [from the ordination rite in the old *Pontifical Books*] and gives him Orders in public, if he do not complain, he is from then on a person illegitimate for contracting matrimony, and nothing happens if he does contract. Statement of this illegitimacy is contained in Gratian, *Decretum*, p.1 d.27 ch.8 “For priests,” and Gregory IX, *Decretals* III tit.34 ch.10, ‘About vow etc.’ But if there could be found another reason on the part of the contract why he who is at the top as regard Holy Orders cannot contract, it would please me, but it would be difficult to find it.

II. To the Initial Arguments

23. To the first argument [n.3]: the remark of the Apostle, namely “husband of one wife etc.” is understood to be, “that is, not of several wives” – and not only then, about the present, but about the past, that is, that he not have had several, because then he would be a bigamist and irregular.

24. If, however, you say that it was also then licit to have one wife – this is true according to the custom of the primitive Church, when making use of a matrimony previously contracted; but it is not licit to contract then, even if he had had no wife before.

25. And by this is plain the answer to the following argument [n.4], for when the text says “they join in matrimony,” the gloss [*ad loc.*] expounds it, “that is, they use one already joined.”

26. To the next [n.5] I deny the likeness, because reception of Holy Orders requires only the due sex and the due minister and the due intention in receiver and minister, and therefore they are conferred on a married man, though he sin in receiving them. But matrimony requires suitability for contracting in the persons; through reception of Holy Orders he is wholly unsuitable for contracting that matrimony; hence, by the converse, the impediment of matrimony to Orders is not such as is the impediment of Orders to matrimony.

Thirty Eighth Distinction

Single Question *Whether a Vow of Continence Impedes Matrimony*

1. “Now about a vow” [Lombard, *Sent.* IV d.38 ch.1].
2. Thirty eighth distinction. About this distinction I ask whether a vow of continence impede matrimony.
3. It seems that it does not: Gregory IX, *Decretals* IV tit.6 ch.6, “A simple vow before God binds no less than a solemn one;” but a simple vow does not impede matrimony, *ibid.*, ch.3, “We remember,” and ch.2.
4. You will say that it does not impede for this reason, that a simple vow cannot be proved but a solemn one can.
5. On the contrary, if a non-solemn vow were made in the presence of many, it could be proved, because it is public, and nevertheless then it would not simply impede the contracting; therefore, that is not the reason.

6. To the opposite:

Gregory IX, *Decretals* IV tit.6 ch.7, about a certain noble woman who made a vow of continence and kept it for two years, and afterwards contracted matrimony; after that she was compelled to return to her original state; therefore, a vow destroys a matrimony already contracted.

I. To the Question

A. On Distinctions of Vow

7. I say that a vow of continence can be public or private; it can also be simple or solemn. And these distinctions are not the same, because both public and private vow can be simple or solemn; for a vow is not solemnized save in one of the ways that are set down in Boniface VIII *Decretals Book Six* III tit.15 ch.1.

8. Also Gregory IX, *Decretals* IV tit.6 ch.6, three modes are touched on in the gloss [*ibid.*], where is found the following: “A solemn vow is what is made when one of these solemnities intervenes, namely by reception of Orders, Gratian, *Decretum*, p.1 d.28 ch.8; again, by reception of sacred vestments, which should only be given to those who profess in the presence of witnesses by whom it could be proved (if he denied it), Gregory IX, *Decretals* III tit.31 ch.23; in a third way when one vow oneself, by profession, to some Religion or Abbot or Abbess [*ibid.*]. And in order that one not be able to deny it, let there be a public writing therefrom, Gratian, *Decretum*, p.2 cause 27 q.1 ch.36, in which writing let one profess that one want to live religiously. But otherwise, when a vow of continence has been made, even in the presence of many, it is said to be simple, as if not clothed with or instituted by any solemnity. This the gloss.

9. In brief these modes that are here set down, and those that are set down in the other chapter [n.7], are not matter of law save two, namely by reception of Holy Orders and by a true or presumed vow of Religion. It is presumed, indeed, when one receives the habit of the professed, when there is a distinction between the habit of novices and of the professed; and also when there is a stay beyond a year in a monastery, without protestation of not professing.

10. And the vow is called solemn, not because it is public, but because it has something annexed in it, so that it have to come into public notice, and by which the one who vows is put under the power of another man. And so it is precisely in the reception of Holy Orders and profession of Religion, because by reception of Holy Orders the receiver is made a minister of the Church and is under the power of the bishop differently than before, because the bishop can compel him to keep the clerical state and to avoid the things that are repugnant to the clerical state. Hence if he receive the aforesaid Orders in secret, it would still be solemn, for the reason already stated.

11. Thus too, profession of Religion, made in the hands of him who can receive it, has in itself something annexed whence it have to come to public notice, because such a person has to dismiss secular life and live life with others in the cloister of his order; and therefore it is solemn even if it were done in secret.

B. Solution of the Question

12. From this distinction of vow I reply to the question, because whatever the opinions say which the gloss on Gregory IX, *Decretals* IV tit.6 ch.6 recites, this opinion is the common one, that a simple vow does not simply impede, as is found there in the text: “although a simple vow impede the contracting of matrimony, yet it does not destroy a matrimony already contracted,” and only this do we say it simply impedes. But a solemn vow does impede simply, as is found there, *ibid.*, ch.7.

13. Reason assigned for the difference [Richard of Middleton, *Sent.* IV d.38 princ.7]:

One vow manifest and one not manifest, one proved and one not proved.

14. But this is nothing because, as was said [n.11], a simple vow, even if public and proved, does not destroy [an existing matrimony].

15. Another reason [Richard of Middleton, *ibid.*], because by a solemn vow one gives to him to whom one vows a right over oneself as to the act that follows the vow, and so he who solemnly vows continence gives to him, in whose hand he vows, right over himself as to making it to be observed; therefore he cannot give a right over himself, or his own [body], for the opposite act, because he does not now have that right.

16. This reason is probable.

17. However the objection may be made that he who vows with a private vow gives his body to God as to the act of the vow; therefore, he cannot give his body to his spouse for the contrary act; for one no less transfers from oneself what one vows to God immediately than one transfers what one gives to him through the medium or a human vicar.

18. But it will be said that God did not thus want power over the body to be given immediately to him, so that the following giving to a spouse would be simply null; but he wanted it thus to be about a giving made to himself through mediation of man.

19. But where does this come from? Scripture does not seem to contain this and that will of God.

20. Another reason [Richard of Middleton, *ibid.*], because he who makes a solemn vow gives himself in possession to him to whom he vows; he who vows simply does not, but as it were makes a promise.

21. But this is worth less than the second [n.15], because everything intrinsic to a vow as it regards an act of will whereby one obligates oneself by vowing, and transfers ownership of oneself to another (because it is through one’s own will that one is owner and transfers ownership) – everything, I say, is equal on this side and on that; so there is a giving here no more than there, nor a promise there more than here.

22. If a fourth reason be set down [Richard of Middleton *ibid.*], that transgression of a solemn vow is scandalous, and therefore one is bound to its observance, not only before God and oneself, but before the whole Church; the transgression of a private vow is not thus scandalous.

23. This proves nothing save that the sin here is graver than there, but the question is not about this; for not always does a graver sin take away the power to contract [matrimony].

24. Similarly, if the question were about the sin, it would seem illicit to contract matrimony after a private vow, because he simply sins mortally in contracting with the intention of consenting and consummating the carnal act; and therefore he cannot licitly contract, save with the intention of not consenting and consequently of entering Religion.

25. Also when he do consummate, he seems to sin mortally, because against his vow, although according to some [Richard of Middleton] he does not, after the first act, sin mortally in rendering it, because he is now obligated to it by a stronger bond. However, he does sin mortally in asking for it, because he has no right to this, since he has renounced such right in his vow.

26. This reason too about scandal is not compelling, because a public vow, though not a solemn one, induces scandal if the one who makes the vow ultimately transgresses it.

27. A reason, then, to be set down for this can be as follows, namely that the Church has delegitimized him who so vows; and this was reasonable because he placed himself in the power of the Church as to the opposite of that for which the contract of matrimony is. But the Church does not delegitimize him who vows privately, because he did not thus put himself in the Church's power, but because he put himself in the hand of God to keep the opposite, and he has consulted with his soul before God not to transgress it, for the Church has left him with divine judgment.

28. And if you ask why the Church has not delegitimized him, since he sins mortally by contracting matrimony save with the intention of not consummating it? I reply, the Church does not punish all evils, nor does she so prohibit them that for this reason she impose ecclesiastical penalties; and perhaps a greater evil would follow from the delegitimizing of those who vow with a simple vow than from the non-delegitimizing of them, because more frequent guilt would follow there in the carnal act, if they not wish to be continent, as is too probable about many people, unless they have their own wives whom, being content with (even if not in asking yet in rendering), they may licitly use.

29. Now the foundation for this, that it would be licit for such a one to contract with the intention of not consummating, is obtained from Christ, because Christ preferred the state of virginity and of Religion to matrimony, as is plain in the case of John; and, from his example, Macarius and Alexius and many others dismissed their wives without knowing them [sc. carnally] and adhered to Christ [d.31 n.30]. The Church, therefore, indeed Christ, rendered that state more excellent and the other inferior. And the Church regards Religion and Sacred Orders to be the same as regards the state of continence, or as regard this preeminence, because, by statute of the Church, both states delegitimize people for such contract.

II. To the Initial Argument

30. As to the argument [nn.3-5] the answer is plain, because obligation before God makes it a sin or not a sin; but on this account does it delegitimize for contracting matrimony.

Thirty Ninth Distinction

Question One *Whether Disparity of Cult Impede Matrimony*

1. “After this about disparate cult” [Lombard, *Sent.* IV d.39 ch.1 n.1].

2. About this thirty ninth distinction I ask whether disparate cult impede matrimony.

3. That it does not:

Genesis 41.45 Joseph accepted the daughter of Potiphar, although however she was a unbeliever and he of a believer.

4. Again, *Exodus* 2.21, 3.25, Moses accepted the daughter of Jethro, an unbeliever, which is proved from this that when he wanted to return to Egypt Moses circumcised his son, whence she says, “you are a spouse of blood to me.”

5. Further, in *Esther* 2.18 is contained that Esther married Ahasuerus, who was not a Jew.

6. Again, *III Kings* [*I Kings*] 11.1, Solomon accepted the daughter of Pharaoh, women of the Moabites, Ammonites, Idumeans, Sidonians, and Hittites.

7. Further, *I Corinthians* 7.12, “If any brother have an unbelieving wife, and she consent to live with him, let him not dismiss her;” therefore disparate cult does not destroy a marriage already contracted, nor does it per se contradict matrimony, because then the advice of the Apostle, that the brother stay with the unbeliever, would be counsel of fornication.

8. To the opposite:

Ezra 9 and 10, where a separation from foreign wives is made.

9. Again, *II Corinthians* 6.14-15, “Do not be yoked with unbelievers; what participation is there of light with darkness, or what part is there of the believer with an unbeliever?”

10. Again, Gratian, *Decretum*, p.2 cause 28 q.1 ch.9, “Let marriages remain united only of the same religion and faith.”

11. And *ibid.* ch.15, “Take care, only a baptized woman is to be taken in marriage, because baptism is the first sacrament.”

12. Again *Deuteronomy* 7.2-4 [Richard of Middleton, *Sent.* IV princ.1 q.1: “As is contained in *Deuteronomy* 7, the Lord commanded the sons of Israel not to join in marriage with Amorites, Canaanites, Perizzites, Hivites, and Jebusites”].

I. To the Question

13. Here two things are to be looked at: first how an unbeliever can contract or have a marriage, second how a believer can with an unbeliever.

A. How an Unbeliever Can Contract Marriage

1. The Opinion of Some and Rejection of It

14. About the first it is argued [Richard of Middleton, *ad loc.*] that an unbeliever cannot, because there cannot be the good of faith there on the unbeliever’s part, because he is not faithful to God; therefore not to his neighbor either.

15. Second because on his part there is not the good of offspring because, as far as is in him, he would educate his offspring in his own rite, and so irreligiously.

16. Third because there is not the good of the sacrament there [cf. d.31 nn.17-18], because an unbeliever, from the fact he does not have the first sacrament, is not capable of the others, as is proved in Gregory IX, *Decretals* III tit.43 ch.1 [with glosses].

17. These arguments do not move [me].

The first one does not because faith, that is, faithfulness, can be preserved without the faith by which there is belief in God, and this can unbelievers keep with unbelievers and conversely, as is obtained from Augustine, *Epistle 47 to Publicola* n.2. For this does not follow: he does not want to keep the faith with God by which the Christians are called believers, therefore he does not want to keep faith, that is, faithfulness, with his neighbor. First because this does not follow: he does not want to keep what is more perfect, therefore he does not want to keep what is less perfect; second too, because he cannot attain by natural reason to observance of this faith as he can of that.

18. The second reason does not move, because an unbeliever wants to educate offspring, insofar as he can know by natural reason that offspring are to be educated; therefore you cannot get more [from this reason] save that there is not the perfect good of offspring there, namely, that offspring be educated in the cult of God; and no wonder, because the educator does not know that offspring are to be thus educated.

19. The third reason too does not move, because to no matrimonial contracts preceding the Gospel Law was annexed a sacrament properly speaking; nor would it have been annexed to the contract in the state of innocence, if man had always remained in it, as was said above d.26 nn.51-58; nor yet would anything then have been lacking of the perfection that belongs to the contract of matrimony.

20. A contract, then, of matrimony could exist between unbelievers, though not the sacrament of matrimony, because this sacrament belongs only to the New Law and has its efficacy from the passion of Christ, as do also the other sacraments of the New Law. Hence if Christ had not suffered this sacrament would not have existed, even in the state of innocence if Adam had not fallen; because although God could have conferred grace on the matrimony and the contract in the state of innocence, and have made a sacrament of such contract, yet it would not have been a sacrament as it now is, because now it has efficacy from the passion of Christ, which then it would not have had.

21. Also, these reasons [nn.14-16], if they were valid, would prove that there could not be a contract with heretics, and yet it is not denied that a Catholic can contract with a heretic.

2. Doubts and their Solution

22. But there are two doubts that cause difficulty.

One, how can an unbeliever give his body to another, since he does not do this relying on the approval of the Divine Law because he does not know it, and no one can simply give, or at least not licitly give, save in virtue of the approval of the superior lord?

23. A second doubt is: since matrimony essentially includes indissolubility, how does an unbeliever contract matrimony since, however, it is dissoluble afterwards? For if one of the spouses be converted to the faith without the other, he can depart. And this reason the Master touches on in the text [Lombard, *Sent. IV* d.39 ch.5 nn.3-4, ch.6 n.2], saying that a matrimony of this sort is not ratified though it is legitimate.

24. But to the first of these [n.22] it can be said that God, after the fall, licensed everyone generally for such exchange, not only because of the first end, namely because of the duty, but also because of the second, namely as a remedy [cf. d.32 n.8, d.26 n.77]. And then those who use this exchange, although they do not attend to what the exchange

has licensed (because they do not know the Law of God), do not sin; just as in the case of other licenses, though one may not know that one has been licensed, yet provided one not know that what one is doing is illicit, one does not sin. It is probable too that, from the beginning, by virtue of the divine license or precept, the use of contracting became fixed even among unbelievers, who received it in accord with a certain custom derived from their fathers. And though the first unbelievers did not want to follow the fathers in the faith which is in God, yet they did imitate them in this [sc. matrimonial contracts]; and no wonder, because this is of the law of nature secondarily, as was said above [d.26 nn.13, 31]; and so it was very consonant with the minds of individuals. Let it also be that they would not have transferred [the contract] licitly in any way, yet they would have transferred it, by the fact that the superior Lord conceded the transferring of it to everyone, not only to believers but also unbelievers. Thus, therefore, on the part of the superior Lord, the transfer was perhaps licit, and at least some transfer was – and on the side of the contracting parties it was firm and just, though not complete, yet not unjust, if they observed the conditions that natural reason dictated were to be observed.

25. To the second doubt [n.23]: the matrimonies were ratified, unless anywhere a stronger bond were to supervene, with which bond this matrimony could not stand. Of this sort is a new obligation to God through reception of the faith, when the other spouse not want to remain without impediment to the faith of the former, to which faith one is more bound than to the conjugal bond. The matrimony, then, while the same conditions in the extremes remained, was ratified; but it was not ratified for the time when a stronger bond supervened, to which the observance of this [matrimonial] bond would be repugnant.

B. How a Believer Could Contract a Marriage with an Unbeliever

26. About the second article [n.13].

It is one thing for a matrimony to exist between certain persons, or for a contract to be made simply and absolutely, and another thing for it to exist licitly and honestly.

27. In the first way it is necessary to say that between a believer and an unbeliever there can be a matrimony, and also in the second way.

28. Both are proved from the saying of the Apostle [*I Corinthians 7.12*] that a believing man may not dismiss an unbelieving wife who agrees to live with him. For if there were not a matrimony, the Apostle would be persuading to fornication; likewise, if this were not done licitly and honestly, the Apostles would not counsel it.

29. In this way, then, is it plain how there can be a matrimony between a believer and an unbeliever. And the five reasons brought forward for the first article [nn.14-16, 22-23] can be brought forward against it; but their solution is plain above [nn.17-19, 24-25].

30. Can it really be contracted then [sc. a matrimony between believer and unbeliever]?

31. I reply that it can, as far as is of divine right, because from that right is no more found that the contract be null than that an obligation from a prior contract be null, because (without supposing a new impediment) he who can belong to another can give himself to another.

31. But by the positive law of the Church simply it cannot, because the Church delegitimizes a believer, not simply, but in respect of an unbeliever, as is plain in the

authority brought forward for the opposite in Gratian, *Decretum*, p.2 cause 28 [n.10]. And the Church has ordained this rationally, because this cannot be done honorably or fittingly.

And for this are some of the reasons brought valid that were forward for the first article. For it is not honorable that a believer contract with someone where the complete good of the offspring, which is education to the true cult of God, is lacking [n.18]; nor is it honorable that a believer contract with a matrimonial contract to which the sacrament of the Christian faith is not annexed [n.17]; nor is it honorable that a believer contract matrimony where there not be the good of the sacrament, that is, indissolubility, because the marriage of Christians is of a nature to have this good [n.19].

32. Nor yet does the Church delegitimize such an unbelieving person because he is not in the bosom of the Church, but the fault is the cause of delegitimization, not the person in whom is the fault. But in the first person, who is in the bosom of the Church, there is a delegitimization from contracting with an unbeliever. Hence every believer is delegitimate with respect to any unbeliever.

33. But if you ask why then does the Apostle [n.7] urge that a matrimony contracted between unbelievers is to be observed after the conversion of one of them (for if it be honorably kept because of some good end previously contracted, then it could honestly be contracted for the same end)? – I reply: the cause of the Apostle is plain there; “the unbelieving man,” he says, “will be saved by the believing woman.” Therefore, to keep a matrimony previously contracted is an occasion for bringing an unbelieving spouse to a believing one. Hence evidently, when that cause ceases, they ought not even to remain together, as that if he does not consent to live with her who has been converted, or not without injury to the Creator, namely by blaspheming or inciting the converted one to unbelief; for so singular a familiarity with someone of a contrary sect is to be avoided, save for a greater good.

34. To the issue at hand: to contract anew with an unbeliever is not a probable occasion for expecting so great a good, namely the unbeliever’s conversion, because someone who loves marriage much would do many and great things to reach it which, once the object desired is attained, he would not be going to do; and therefore, if this person does not want at the beginning to be converted so as to be able to have a marriage with a Christian woman, it is not probable that she would afterwards gain him, but rather the reverse, that he would seem to draw her away. And therefore does the reason for so much familiarity with an unbeliever cease, and the reason for fleeing that familiarity remain. And therefore did the same Apostle, who advised the converted man to remain with a non-converted woman, dissuade a believer from contracting with an unbeliever (as was argued for the opposite [n.9]).

II. To the Initial Arguments

35. To the arguments

I reply to the first two authorities [nn.3-4]: this positive law delegitimizing believer with respect to unbeliever did not then exist.

36. If you argue that nevertheless the natural reason then existed that is now the reason for delegitimizing – I reply: in the cases that the argument is about [n.34], it was perhaps probable that the believer would win over the unbeliever, or there was a necessity to flee something more unacceptable, with sure confidence in divine aid that the believer

would not be subverted by the unbeliever; and so would it be licit today had not delegitimization by the Church been added on. Hence it is not necessary for an ordinance of the Church to be founded on necessary natural reason, but enough that it is founded on probable natural reason.

37. To the next [n.5]: union with foreign women was not prohibited in the time of the Mosaic Law save with the Canaanites, because God wanted that people to be totally exterminated, and therefore Esther did not illicitly marry Ahasuerus.

38. To the point about Solomon [n.6], I concede that he, as very bad and very ungrateful to God, not only sinned in that he accepted foreign women against the Law, even from peoples specifically prohibited in the Law, but also in the multitude of women he accepted; since indeed he had according to one text [*III Kings (I Kings) 11.3*] seventy wives as queens [other texts have seven hundred], and three hundred concubines, although however the Law specifically said about the king in *Deuteronomy 17.17*, “He will not have many wives who may seduce his mind;” which Moses perhaps specifically said because of the king’s [?or Solomon’s] foreseen malice so that, if he not be held in check, he would at least be confounded, so that others not imitate him. And what is worse, Solomon was joined with them in most ardent love, to such an extent that he made idols or temples for them for worshipping their own gods. Hence not without cause did Moses add there, “who may seduce his mind.” And all these things are made worse by Solomon’s singular ingratitude for the eminent wisdom at once conceded to him by God, so that this authority [n.6] requires no response save detestation. For I believe that if all his wives had been Jews he would have sinned mortally.

39. To the final one [n.7] the answer is plain from the second article of the solution [nn.26-34], how it is licit to keep a matrimony contracted with an unbeliever, not however to contract one, because there is not the same reason on both sides.

Fortieth Distinction

Single Question

Whether Physical Kinship Impede Matrimony

1. “Now it remains to speak of kinship etc.” [Lombard, *Sent. IV d.40 ch.1 n.1*].
2. Fortieth distinction. About this fortieth distinction I ask whether physical kinship impede matrimony.

3. That it does not:

Because matrimony seems most strictly to have been keep and to need to have been keep in the law of nature. But Cain contracted with his sister [*Genesis 4.17*], and would have contracted with her also in the state of innocence, because with someone and not with his mother, from the precept “A man will leave father and mother” [*Genesis 2.24*], namely lest union be made with them matrimonially; and there was no one else save his sister, because a daughter of Adam; therefore etc.

4. Again, friendship strengthens a house, therefore it confers strength on a marriage; but those of the same blood are attached to each other with a more special friendship than with others; therefore etc.

5. Again, it is not against any good of matrimony – this is plain from running through them; therefore etc.

6. To the opposite:

In *Leviticus* 18.6-12 many persons are excluded because of consanguinity.

7. Again the Master in the text [*ibid.*, ch.1 n.2-ch.3 n.3] and Gregory IX, *Decretals* IV tit.14 ch.8, “One should not.”

I. To the Question

8. Here I set down certain things in advance: first descriptions of certain names, second the question needs to be solved.

A. Descriptions of Certain Names

9. As to the first, let this be the first description: consanguinity is a tie between persons descending by propagation from the same physical person.

10. Second: a person from whom several descend by physical propagation is called a stem.

11. Third: a line of consanguinity is an ordered collection of persons joined by consanguinity.

12. Fourth: this line is divided into ascending and descending and transverse [lateral] lines. A descending line goes from the propagating person to the propagated persons; an ascending line conversely goes from a propagated person to those from whom he descended. And although there is the same line for ascenders as for descendents, like the road from Athens to Thebes and conversely [*Ord.* d.27 n.4; d.13 n.68], yet they are different in ascending, as father, grandfather, great grandfather, etc., and different in descending, as son, grandson etc. Transverse is when both persons descend from the same person but neither from the other.

13. Fifth: a degree is a determinate closeness of person to person or a closeness coming from physical propagation. And a degree properly is found in an ascending and descending line, because there properly is there superior and inferior as to position; but it is less proper in a transverse line. However, by taking degree generally, although he who is close to another in transverse line is not properly inferior to him (for he does not descend from him), yet he is under someone else who is of the same position or degree as he; and so in a transverse line degrees are spoken of insofar as this one is under someone who is of the same position as himself, namely when in a like degree this one is in this line in some sort of degree and the other in that one.

14. First rule: in a straight line there are as many degrees as there are persons, minus one. The proof of this is that there are as many degrees as there are propagations, since a degree is a relation or closeness between person and person; and the persons are one more than the propagations, because the person presupposed to the whole collection is not propagated in it. Hence if Enoch was the seventh from Adam [*Genesis* 5.1-18], there are only six generations from Adam to Enoch, because Adam is set down as ungenerated.

15. Second rule: in a transverse line the degrees are computed according to greater remoteness from the stem, Gregory IX, *Decretals* IV tit.14 ch.9, ‘On consanguinity’, “According to the approved rule, by what number of degrees a man who is from the stem

is more remote in distance from the stem, by that number is he also remote from anyone else in another descending line." And the reason for this is that persons who are in a transverse line do not have closeness with each other save because they are in the stem or back to the stem; and therefore they cannot be more closely joined to each other than the more remote of them may be united to the stem.

16. As to the issue at hand there is also a rule that a degree in a descending line is stronger than in a transverse line. And the natural reason is that offspring are more joined to the parent than offspring to offspring; and therefore it is more against the law of nature to be conjoined in the first degree in a direct line than in a transverse line; for that conjunction was always against matrimony, and more the conjunction of son with mother than of father with daughter, because there is a greater irreverence.

17. Hence in *History of Animals* 9.47.631a1-7 Aristotle says that, after a blindfolded horse knew its mother and later discovered the fact, it threw itself down headlong; and it is read elsewhere about an elephant [*ibid.* 630b31-631a1, cited in Richard of Middleton, *Sent.* IV d.40 q.2], that was engineered into knowing its mother, and afterwards, when it perceived the fact, killed the one who engineered it. From which it is apparent that this is also against the law of nature, as it belongs to the brutes; hence a degree descending by propagation, and most especially of mother to son, impedes matrimony most of all.

B. Solution of the Question

18. About the second article [n.8] I say that in every law some closeness has been an impediment.

In the law of nature, as was said [n.16], only the closeness in the first degree in the descending line, from the word of Adam [*Genesis* 2.24], "a man will leave father and mother" (supply: as to conjugal union). Nor is this understood only of the immediate father, but of anyone in the direct line, so that if Adam were alive today, he could not marry another wife [sc. in the direct line]; perhaps too after the multiplication of the human race, if it had stood in its innocence, there would have been prohibition of certain further degrees; but at the beginning it could not be so, because there were no other women than sisters.

19. In the Mosaic Law there was prohibition as to certain further degrees, as is plain in *Leviticus* 18.8-18.

20. And in the Gospel Law there was at some time prohibition up to the seventh degree, as is plain from the Master in the text [Lombard, *Sent.* IV d.40 ch.1 n.2], but under Innocent III it was restricted to the fourth degree inclusively, Gregory IX, *Decretals* IV tit.14 ch.8, 'Of consanguinity', "Let the prohibition of conjugal union for the rest not exceed the fourth degree of consanguinity;" and it assigns the reason, "since in the further degrees it cannot now be observed without grave cost;" and afterwards it approves and ratifies it for the future, "Since, therefore," it says, "prohibition of conjugal union is already extended up to the fourth degree (namely by us here in the Council [Lateran Council IV, 1215])," and later, "thus do we wish it to be perpetual, notwithstanding the Constitutions published some time before this, whether by others or by us." It also revokes, in the same chapter, all "prohibitions about contracting marriage in the second and third degree of affinity, and about offspring got from second nuptials not being

permitted to unite with a relative of the first father – which prohibitions brought in many difficulties and,” as it says, “sometimes the peril of souls.”

21. But whence is it that such or such closeness impedes matrimony simply?

I reply: in the Gospel Law no other prohibition about this from Christ is found beyond the prohibition of the law of nature; nor did Christ explicitly confirm the prohibition about this made in the Mosaic Law. But the Church has sometimes delegitimized persons in remoter degrees, but later in the fourth degree; and the reason for delegitimization [sc. up to the fourth degree and not further] was for preserving peace and friendship in the Church; for up to the fourth degree there does remain friendship by reason of consanguinity, and from then on, as it were, people begin to be extraneous and to weaken in love; and therefore was it fitting to call back the weakening friendship by another bond, namely the conjugal bond.

II. To the Initial Arguments

22. To the first argument [n.3] it is plain that that was necessary at the beginning of the human race, namely that a contract be made in the first degree, yet in transverse line, not in direct line.

23. To the second [n.4] I say that the friendship of those of the same blood is different from the friendship of spouses. The friendship of those of the same blood, especially in the direct line, is one of reverence, as to descendants in respect of superiors, and in respect of a certain rule and presidency. Conversely, the friendship of spouses is without such reverence, rather with irreverence, so much so that he who more sincerely loves his spouse more hates that reverence in her, not only from himself but from anyone else; and therefore I concede that friendship does dispose to marriage, but friendship of a different idea altogether from that which is between those of the same blood.⁹⁹

Forty First Distinction

Single Question *Whether Affinity Impedes Matrimony*

1. “Now about affinity” [Lombard, *Sent.* IV d.41 ch.1 n.1].
2. The forty first distinction. About this forty first distinction I ask whether affinity impede matrimony.
3. That it does not.

⁹⁹ Scotus gives no response to the third argument [n.5], perhaps because it is in effect answered by the answer to the second argument [n.23], that the friendship of those of the same blood is not the friendship required for the good of matrimony that is faith or fidelity. Or, it could be said that another good of matrimony, the good of offspring, is harmed if the parents are close relatives, because of inbreeding, whose effects must have been known in Scotus’ day (they can be very obvious, in other animals as well as humans), though not the biological causes in the genes. In the case of Adam and Eve, however, on the supposition (which Scotus of course makes) that they were the first humans and were made perfect, because made directly by God, there would be no defects in the gene pool, which would have taken time to emerge. So Cain and others of Adam’s and Eve’s children could have children together without fear of such defects.

An effect is not repugnant to its cause; but affinity is an effect of matrimony, therefore it is not repugnant to matrimony.

4. Again, then incest with a sister of one's wife would impede conjugal union with one's own wife, because by that incest one attains affinity with one's wife; the consequent is false, as is contained in Gregory IX, *Decretals* IV tit.14 ch.8.

5. Or as follows: affinity would impede if it then dissolved a contracted matrimony, as it does impede contracting one; but this is false, for someone who commits incest in knowing his wife's sister is not to be separated from his wife; therefore etc.

6. To the opposite:

Gratian, *Decretum*, p.2 cause 35 q.2 and 3, ch.3, 'On close relatives'.

I. To the Question

A. On Notion, Degrees, and Lines of Affinity

7. Here the idea of affinity can be set down as this: a certain tie [bond] between person and person contracted from carnal union with a person consanguineous with a second. For it is always the case that, because a person carnally united is consanguineous with someone, then she, with whom he is carnally united, is made affinal with that someone and conversely. And there is as it were an exposition of the word 'affinal', that it is an 'accession to the confines of'; for he who is joined carnally with someone of a certain consanguinity accedes, by this, to the confines of that consanguinity, and therefore he has a tie of access to everyone of that consanguinity.

8. To this tie degrees and lines can be assigned (as before in the case of consanguinity [n.d.40 nn.9-13]), and for all these there is one brief rule: by whatever degree of consanguinity someone is distant from someone else, by that whole degree of affinity is she, who is carnally known by the former, distant from the same person. I do not say 'wife', because this is not required; for not only [by carnal union] with a wife but with a concubine or prostitute is affinity with those consanguineous with that very man contracted (indeed [contracted] in incest [too]).

9. Nor is it sufficient for affinity properly speaking that she be wife, but carnal mingling is required, as is said in Gratian, *Decretum*, p.2 cause 35 q.10 ch.1, "Of fraternity," where it is said about spouses that "if they have been one flesh, it cannot be that someone is closely related to one of them without this pertaining to the other of them;" wherein is understood that affinity is not contracted save by means of carnal mingling.

10. However, by extending affinity, it is said that it is contracted not only with a wife known carnally but also with a wife not known, where (supply) there is a matrimony but not a consummated one and, what is more, with her with whom betrothals precisely are contracted.

11. And here is to be noted that this tie, contracted with someone because of her union with someone consanguineous (and this either through matrimonial union or consent of betrothals), is commonly called the justice of public honorableness.

12. And this affinity is closeness of relationship arising from betrothals, getting its strength from institution of the Church, because of public honorableness. And about this impediment there is a rule that no one consanguineous with a husband can marry or have his wife, nor can someone consanguineous with his wife have him as husband.

B. Solution of the Question

13. To the question, then, I say that affinity simply impedes matrimony.

14. And the reason is only the statute of the Church delegitimizing the affinal, and it impedes in the same degree in which there is consanguinity; and this point indeed about affinity properly speaking is plain in Gregory IX, *Decretals* IV tit.14 ch.8, ‘On consanguinity and affinity’.

15. Likewise about affinity commonly and extensively speaking, which is called the justice of public honorableness [Gloss on *Decretals*, Thomas Aquinas, Richard of Middleton *ad loc.*]: Gregory IX, *ibid.*, ch.1, ‘Equally, as the canons say, must one abstain from those consanguineous and proper to the wife.’ About this justice of public honorableness are many things found also in Gregory IX, *ibid.*, chs.1-9 or Boniface VIII *Decretals Book Six* IV tit.1 ch.1, that from espousals which are null by the law itself (or in whatever way), while they are not null by defect of consent, this impediment to matrimony arises; and it impedes contracting matrimony and destroys one already contracted.

II. To the Initial Arguments

16. To the first argument [n.3] I say that affinity is the effect of a certain preceding matrimony, and therefore it does not impede that matrimony; but it does impede another one between those between whom affinity has through matrimony been contracted.

17. To the second [n.4, and effectively the third, n.5] I say that affinity contracted through carnal union with a sister before matrimony would simply impede matrimony for the future; but, after matrimony has been contracted, the supervening affinity does not destroy it, because this would be to the injury and the prejudice of the wife, who did not demerit anything. And the reason is that many things impede what should be done that do not destroy that which has already been done. However, an incestuous man is deprived of the right of asking [sc. for the marriage debt] because of that crime; and after the death of his wife let him remain without a wife, as is said in the same place [Gregory IX, *Decretals* IV tit.14 ch.8]; for an incestuous man cannot contract after the death of his wife without mortal sin. But if he do contract, it is done and it is valid by the law of matrimony.

Forty Second Distinction

Single Question

Whether Spiritual Kinship Impede Matrimony

1. “About the distinction of parental degrees” [Lombard, *Sent.* IV d.42 ch.1 n.1].

2. Forty second distinction. About this forty second distinction I ask whether spiritual kinship impede matrimony.

3. That it does not:

Gregory IX, *Decretals* IV tit.11 ch.2, ‘On spiritual kinship’: ‘If a woman or a man have ignorantly accepted [a spouse directly] from the sacred font [of baptism] etc.’ and there follows: ‘It seems to us that whether they did it from ignorance or malice they are

not to be separated from each other, nor ought one of them to take away from the other the debt [of matrimony].”

4. To the opposite:

Ibid.: “We command that, insofar as it has been established that the woman of the aforesaid man had raised the daughter from the sacred [of baptism] before he has betrothed her to be his wife, you are to celebrate [make public] a divorce between them.”

I. About Spiritual and Legal Kinship

5. I reply:

Spiritual kinship is a certain bond contracted, or a certain close kinship contracted, from dispensing or conferring of the sacraments, and especially of baptism and confirmation because, as is contained in Boniface VIII *Decretals Book Six* IV tit.3 ch.3, ‘Of spiritual kinship’, the last chapter, “From the giving of the other sacraments (supply: other than baptism and confirmation) a spiritual kinship in no way arises that may impede or dissolve matrimony.” And about this and its degrees diffuse treatment is found in Boniface VIII *Decretals Book Six* IV tit.3 ch.3.

6. As to the question asked, I say that if the kinship precede the matrimony, it simply impedes it, as is plain in the chapter alleged for the opposite [n.4, Gregory IX, *Decretals* IV tit.11 ch.2]. But if it follow the matrimony, it does not destroy it, as is plain in the alleged chapter [*ibid.* ch.1]. And the reason for the first is only the statute of the Church delegitimizing the persons in that case.

7. Connected thereto is also this to be noted, that legal kinship impedes matrimony, discussion of which is contained in Gregory IX, *Decretals* IV tit.12 ch.1, ‘On legal kinship’, “If in any way she has by adoption begun to be my sister, as long as the adoption between me and her remains, nuptials cannot stand.” And the gloss on that chapter [of the *Decretals*] says what is true, whether legal kinship be contracted through arrogation¹⁰⁰ or through adoption: “We are said to arrogate him who is possessed of his own right and who passes through arrogation into our power. And arrogation happens by authority of the prince, but adoption through any magistrate, nor does the one adopted pass into the power of the one adopting, but remains in the power of his father. And both the adopted and the arrogated are called adoptive sons; and between adoptive and natural or legitimate brothers [siblings] matrimony is impeded as long as the adoption lasts, as is here said [in the *Decretals*].”

8. The authorities pro and con [nn.3-4, 6] are solved, because the one is speaking of kinship that precedes matrimony, the other of kinship that follows it.

II. About Impediments that Simply Impede Matrimony

¹⁰⁰ *Digest of Justinian* I ch.7, “The name of adoption indeed is general, and it is divided into two kinds, one of which is likewise called adoption, the other arrogation [full adoption]. Sons of families are adopted, those who are possessed of their own right [legally adult] are arrogated... For general adoption happens in two ways: either by the authority of the prince or by command of the magistrate. By authority of the prince we adopt those who are possessed of their own right, which species of adoption is called arrogation... by command of the magistrate we adopt those who are in the power of a parent.”

9. From these points I bring together the impediments again, those to be sure that simply impede matrimony [cf. d.36 nn.6-17]. And I call an impediment simply one after which, if matrimony has been attempted, nothing is done (and I call an impediment not simply any prohibition because of which matrimony is illicitly done, but if it is done it is not invalid).

10. Now impediments simply are taken either from the nature of such contract or from a superadded statute of the Church.

A. About Such Impediments from the Nature of the Contract

11. If in the first way, then either from the conditions necessary for the contract, or from the conditions necessary on the side of the contracting parties. On the part of the contract, because its nature is that it is a giving of power over body for power over body of the contracting parties, and in perpetuity. Therefore what impedes such voluntary giving impedes the nature of this contract.

12. Now of such sort is, on the part of the will, involuntariness from fear that can befall a constant man, which fear comes from sufficient certitude of an impending evil that one should, according to right reason, more avoid than not contracting with this woman. Such is the evil of death, of major mutilation, of perpetual imprisonment, of servitude, of defilement, and the like. And this impediment is spoken of in d.29 [nn.27-31].

13. And involuntariness from defect of preceding knowledge (since indeed knowledge of the thing willed is required for the voluntary, *Ethics* 3.3.1111a22-24) is either from total lack of intellectual knowledge, or with some sort of knowledge but defective knowledge, because erroneous.

If in the first way, such madness impedes the voluntary while it lasts, and so impedes this contract. If however he who is mad undergoes lucid intervals, he can, during the time of a lucid interval, contract [matrimony] and, if he has contracted it, he can in the same way ask [for the debt], and the debt is to be rendered to him – but not at a time of madness, because he does not then know how to ask by virtue of his right, but he is then like a brute; then too it would for the other be a danger to their person to render the debt.

14. Now if there be some knowledge, but erroneous because with some deception, a triple deception impedes simply, because each one is about what is necessarily required for a contract. First is error of person; second error of worse condition (as of servitude); third error of mutual giving (as that she gives believing he can give back or can exchange with her, and he does not give back, though he speak words in deceit of spirit to extort from her what he lusts). And this triple error was spoken of in d.30 [nn.9-12].

15. Now the penalty for this last error, which namely is deceit in the contract, is that he truly fulfill what he is fallaciously simulating, because he is bound to render to this woman that for the rendering of which she made exchange with him. And therefore in the forum of conscience it is to be enjoined on him that he truly contract with her.

16. But if he has already contracted with her truly and cannot, consequently, fulfill it with her, he is to be penitent about the impossibility but to procure, as much as he can, a restitution of the equivalent, namely so that by him be rendered to the woman power over the body of another man equivalent to his own body as far as concerns this contract, or at least make satisfaction in other things according to the judgment of a good man.

17. But in the contentious forum, if the exterior contract be proved deceitfully made by him, he should be compelled to keep it as a true contract. But if he have contracted with another in the meantime, the Church will command him still to keep to the first; but in the forum of conscience the opposite will be said, because the second is his true wife, not the first.

18. And therefore he must uphold the sentence of the Church by keeping the truth of the divine Law, and let him impute to himself that so great a penalty remains over him because of this so great fraud that he has committed – because, too, this contract is obligatory for other goods, as keeping faith and indissolubility and taking up and educating offspring, if it happen (which three things are called the goods of matrimony [d.31. n.18]).

19. And generally, in every contract, he who contracts under a condition opposite to the contract does nothing; therefore against the idea of this contract is an opposite condition repugnant to any good of matrimony. And so there are three impediments arising from a triple condition opposed to the contract – against the three goods of matrimony; and these were spoken about above d.31 [*ibid*].

20. Now on the side of the contracting parties is required that they be able to give the power over their bodies. But he who is simply impotent for union cannot give this power, because he does not have it. Impotent also by divine Law [is he who], because he is obligated by another bond of matrimony, cannot give power over his body because his body is not now his but his spouse's.

21. Thus, therefore, impotence simply and matrimonial tie to another impede matrimony on the side of the contracting parties. And the impotence is spoken of in d.34 [nn.16-28], how one kind is natural and one by occasion, and neither, if not perpetual, impedes simply.

22. Now natural impotence in the man is through frigidity or lack of the necessary part; or in a woman by constriction simply, which 'simply' I state in contrast to constriction relative to someone. By occasion is through sorcery, and this either in respect of anyone or in respect of some determinate person. And to this impotence is reduced also the impediment of childhood, because although there not be perpetual impotence there, yet there is for that age no potency there, and so none can be given; and this impediment of childhood is spoken of in d.36 [nn.45-49].

23. So, therefore, we have on the part of the contract three impediments in kind: namely by fear, by defect of knowledge, and by emplacement of repugnant condition. And on the side of the contracting parties there are two in kind: impotence simply and impotence according to justice, because tied to another.

24. And specifically the first impediment [sc. by fear] can be multiple thus, how many the evils are that are justly feared. The second impediment is triple, according to a triple error, and a fourth according to defect of use of reason. The third impediment contains under it three things repugnant to the three goods of matrimony. The fourth impediment contains a double natural impediment, namely frigidity and mutilation of the man, and a single impediment of the woman, namely restriction simply (for frigidity in a woman does not simply impede, as neither does sterility); and one general to both sexes, namely childhood, and this general one contains under it impotence by occasion in both sexes, provided however it is permanent. The final impediment stays undivided; and the reason for this impediment is plain from d.33 [n.20], where it is said that in the Gospel

Law bigamy is not licit, nor is it licit to dismiss a wife; therefore in no way while she lives, whether dismissed in fact or not dismissed, is it licit to contract with another.

B. About Such Impediments by Statute of the Church

25. By statute of the Church there are impediments only on the part of the persons, because the Church has determined nothing about the form and matter of this contract, but has only delegitimized certain persons, making them not capable of this contract: either then because of their closeness, or because of their special association with the divine cult, or because of the enormity of some crime one should be horrified at.

26. In the first way has the Church delegitimized those of the same blood in the fourth degree and under; and those affinal in the same degree, and this either properly speaking, namely whose affinity is contracted by carnal union of someone consanguineous with the woman, or those, in an extended sense, whose bond was contracted not by carnal union but only through matrimony or betrothals, which is called the justice of public honorableness. And these impediments were spoken of: in d.40 [nn.9-21] about the first distinction, in d.41 [n.15] about the second and third distinctions. About this last impediment there is Boniface VIII *Decretals Book Six* IV tit.1 ch.1, “From betrothals pure and certain, provided they are not null by defect of consent, arises an effective impediment for impeding and destroying consequent betrothals or matrimonies, but not for dissolving preceding ones, namely the impediment of the justice of public honorableness.”

27. Along with this too is a certain closeness that is as it were a mixed carnal and spiritual one, of which sort is spiritual kinship and legal kinship, and these were spoken of in d.42 [nn.5-7]. And about this is Boniface VIII *ibid.* tit.3 ch.1, “Much more between a baptized woman and he who received her from baptism [=the sponsor], or between the same baptized woman and the sons of the one who received her and the wife known carnally before reception by the same man, indeed also between the receiver and father of the baptized woman and the mother, is it clear that a spiritual kinship is by law contracted in baptism; and this kinship impedes the contracting of matrimony, and destroys a matrimony already contracted. And the same things that are said about the receiver are also to be reckoned about the baptizer. By confirmation too, or anointing on the forehead, is a spiritual kinship contracted in the same ways, which kinship simply impedes contracting of matrimony and destroys one contracted afterwards.” “But persons other than those aforesaid from baptism or confirmation are, we have decreed, not impeded from contracting matrimony, nor is a matrimony they have contracted afterwards destroyed.

28. *Ibid.* ch.2: “Spiritual kinship is contracted through the catechizing that precedes baptism, by which kinship the contracting of matrimony is impeded; however, by that kinship is not at all severed a matrimony contracted afterwards.”

29. And *ibid.* ch.3, “If several have come to the receiving of an infant from baptism, a spiritual kinship is contracted that afterwards impedes contracting matrimonies and dissolves those contracted. As to confirmation additionally is, in this respect, the same judgment to be held. But from the giving of the other sacraments a spiritual kinship in no way arises that would impede or dissolve a matrimony.

30. And there is an order to these closenesses: for consanguinity is a purely carnal closeness; affinity arises from purely carnal closeness and from carnal union; and the justice of public honorableness arises from carnal closeness and matrimonial and betrothal contract; spiritual kinship arises from carnal closeness and reception or giving of the sacrament of baptism or confirmation; legal closeness from carnal closeness and from another bond according to law, by adoption of course.

31. Because of special association with the divine cult has the Church delegitimized him who has solemnly vowed continence, and him who has received Sacred Orders. The first was talked of in d.38 [nn.7-26] and the second in d.37 [nn.19-22].

32. Now this impediment from solemn vow (if however a handing over of the power of body for keeping chastity be done there to the Church herself or to a prelate, in whose hand the vow is made, and thereby can he not give that power over his body for the conjugal act, because he does not have it) – this impediment can be reduced to the nature of a contract, as is also that about someone tied to matrimony.

33. But if such vow not so deprive him that he not have power over his own body, then by statute of the Church delegitimization and invalidation is not only because one has handed oneself over to the Church for such act, but because Christ, by calling away John from nuptials [d.31 n.30], has preferred the vow of continence to the conjugal bond; and therefore justly has the Church delegitimized him who is in a higher degree from accepting a lower degree, or from apostatizing.

34. Finally has the Church delegitimized persons justly because of the enormity of a twofold crime only:

Because of the enormity of infidelity the Church has delegitimized a believer for contracting matrimony, not simply, but in respect of an unbeliever; and this was spoken of in d.39 [nn.31-32].

35. The other enormous crime is adultery along with contrivance in the death of the legitimate spouse, or with pledging faith about contracting matrimony after the death of the legitimate husband, and this impediment was spoken of in d.35 [n.6].

36. Thus in general, therefore, are persons by statute of the Church delegitimized by a twofold crime and a twofold attachment to the divine cult, and by a closeness of consanguinity, by a bond of affinity and by the justice of public honorableness, by kinship too, spiritual and legal.

37. And these impediments are touched on in these verses [cf. d.36 n.9]:

Error, condition, vow, kinship, and crime
 Other in cult, force, Orders, tie, honor
 If affinal, if perhaps impotent,
 These forbid marriage make; made do they stop.

38. But in these verses all the impediments are contained without any rational order. Therefore they can be explicated in due order and more in particular in these verses:

Force; person, slave, giving mistook; mad too;
 Added condition robs marriage goods three;
 Frigid, constricted, child, defect, bewitched,
 Spouse of another – joint gift all prevent.

Vow, Orders, twin cults, adulterous spouse,
 Kinship religious, legal, and carnal,
 Affinal, honor – does precept forbid.

39. These first four verses contain the impediments that are repugnant to the nature of the matrimonial contract. The first line contains five in particular, the second three, the third five, the fourth one. And so there are fourteen impediments. After these is added at the end of the fourth line “joint gift all prevent” – understand that in a contract of matrimony the aforesaid are all the obstacles.

40. The three other verses contain the impediments by statute of the Church: the first contains four, the second three, the third two, and so there are nine. And this is what is said at the beginning of the third line [end of the line in the translation] “does precept forbid,” namely by precept of the Church do they impede matrimony.

41. And so there are in particular twenty-three impediments simply.

42. Now the other common verses [n.37] only contain twelve, but under ‘error’ must be understood a fourfold impediment in particular; under ‘condition’ a triple impediment about the conditions added against the three goods of matrimony. Hence, he who refers ‘error’ to error of person, and ‘condition’ to error of condition, shows himself ignorant enough in canon law. ‘Vow’ is as it stands; ‘kinship’ is understood for carnal and spiritual and legal kinship; ‘crime’ for adultery with giving of faith or contrivance in the death of a legitimate spouse. And it could sometimes be distinguished, according to what was said in d.35 [nn.6-12], because sometimes the former two of the three and sometimes the latter two are combined [sc. in impeding], and sometimes one of them impedes; but this impediment is not distinct in these verses by a more distinct expression.

43. The other impediments are not distinguished save the last, which contains five specific impediments according to the other verses [first line thereof].

44. Nor is it a wonder that the Church has applied so much care in ordering matrimony, because the community of Christians uses matrimony, through whose use too the Christian people is multiplied. And therefore should it thus be ordered, because in its contract and use may be avoided the things that get in the way of charity either toward God or toward one’s neighbor. And the things that are fitting to honorableness should be kept, so that thus may honorable Christian matrimony fittingly signify the blessed union of Christ and the Church, of which the Apostle says [*Ephesians 5.32*], “This is a great sacrament; and I mean in Christ and the Church.”

45. This union now is by faith and some sort of love, but in the fatherland it will be by vision and perfect enjoyment of the Spouse, who has “neither spot nor wrinkle,” with the Spouse “fair before the sons of men,” [*Ephesians 5.27, Psalm 44/45.3*], to whom be honor and glory for ever and ever. Amen.