

ADAM CONTZEN

TEN BOOKS OF POLITICS

BOOK FIVE

On Laws

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CHAPTER I

The Rationale of the Undertaken Discussion concerning Laws

§ 1. To enact salutary laws for the state belongs to the highest prudence and authority; but to observe them belongs to a most excellent citizen. For nothing is more useful or honorable to a city than the guardianship of good laws. Therefore, to discuss laws, to judge laws, to recommend new ones, to amend old ones, and to pronounce that some must be abrogated appears to belong to a prince--and to a supreme prince; to venerate and kiss the laws and to undertake what has been commanded belongs to subjects. Shall I too, then, discuss laws? That, indeed, is necessary for the theologian and the philosopher; but the whole subject matter of the jurisconsult is law, for he blushes to speak without law. The statesman, however, will have constituted the state in the best and most solid manner if he brings it about that the best laws are enacted and flourish widely. For law is the soul of the city: by its vegetative influence this great body lives, and by its nod it is governed. And just as we greatly shudder at τὰς ἀνόμους κινήσεις, the lawless convulsions, of epileptics and the delirious, because they twist the members of the body contrary to the will of the mind, so too, when law has been lulled to sleep or suppressed, the state is agitated by violent movements, suffers from the falling sickness, and is about to fall suddenly with a tremendous crash. Therefore I too must speak concerning laws.

I shall not speak concerning individual laws, for that would be a work without end and would not belong to my profession. That discussion would encompass the whole of jurisprudence--the knowledge and treatment of sacred and civil laws. I shall therefore speak generally concerning the nature of right and laws, their causes and effects, and their properties and parts: those things which suffice for ordering a city and conduce to understanding and establishing particular decrees. And I shall do this chiefly according to the judgment of emperors, kings, and the most learned men, drawn from the trustworthy experience of histories--that is, of the human race.

Nor was the Persian law just--ἀνομίαν εἶναι πένθ' ἡμερῶν--that there should be no law for five days after the king had died. For that period was long enough for crimes to be conceived and perpetrated.

§ 2. But since the institutions and customs not only of different nations but even of the same people are so various that, although falsely, someone once said nevertheless not without occasion, "The distinction between honorable and base rests upon opinion alone," I shall be free to judge according to my own judgment concerning the institutions of all states. Nor ought my judgment to be constrained by the prior judgment of one state if the decrees of other cities support me. And let the judgments of others likewise be free concerning my own judgment.

I shall therefore weigh the laws and furnish the state with them. Divine law, indeed, must be considered day and night. "The law of God, therefore," says Ambrose in *On the Mansions of the Children of Israel*, at the twenty-eighth mansion, "must be examined by every most exact test and observed with the greatest diligence possible, lest perhaps we fall away from it. This present mansion teaches us this. For Bene-jaakan signifies a stirring-up. But he who thoroughly cultivates the law of God observes diligently, lest even the smallest syllable or stroke slip away through negligence."

§ 3. For this consideration directs the conscience, illuminates the mind, and gives form to the state. For this reason many of the ancients and not a few writers of the middle age treated laws, while in our own time innumerable writers have done so. The most ancient of all whose monuments survive is Plato, whose twelve books are still in our hands today: learned if you regard their antiquity, but insufficiently exact if you regard our times. Various writers then followed him, but their monuments have perished. Cicero, the foremost of the Romans, expounded Plato's judgment in three books. Before him, the eminent men who flourished in the state gave opinions concerning right and laws.

Cicero, book 1 of *On the Laws*: "I remember that there were eminent men in our state who were accustomed to interpret it for the people and to give opinions; but, though professing great things, they were occupied with small

ones. For what is so great as the power of the state? Yet what is so slight as the function of those who are consulted? How necessary it is to the people!”

Then, in the age of the emperors, hosts of jurisconsults followed. But they generally drew their doctrines from the Twelve Tables, decrees of the senate, plebiscites, decrees of princes, and opinions of the learned--not, as the ancients also had done, from the inner depths of philosophy. They discussed how people might make provision by law, how they might defend their property, and the law concerning walls, boundaries, roads, and rainwater falling from roofs. They touched sparingly upon the entire basis of universal right and law. Cicero therefore complains with justice that the ancients “professed great things but were occupied with small ones.” For the civil law which they chiefly treat “is confined to a small and narrow place. But the nature of right must be explained by us, and it must be derived from the nature of the human being. The laws by which cities ought to be governed must be considered; then those rights and commands of peoples which have been compiled and written down must be treated, among which those of our own people, which are called civil laws, will not lie hidden.”

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Thus Cicero; and he had previously given the reason: “In no kind of discussion is it more honorably disclosed what has been bestowed upon the human being by nature, how great a power of the best things the human mind contains, for the sake of cultivating and accomplishing what duty we were born and brought into the light, what the association of human beings is, and what natural fellowship exists among them. For when these things have been explained, the source of laws and right can be found.” You think, therefore, that the discipline of right must be drawn neither from the praetor’s edict, as most now think, nor from the Twelve Tables, as earlier men thought, but from the inner depths of philosophy.

§ 4. This method was followed by St. Thomas in I--II, question 90; Antoninus, part 1, title 11; Hugo, *On the Power of Laws*; Gerson, part 3, *On the Spiritual Life*, and in the first part, *On Ecclesiastical Power and the Origin of Right and Laws*; Vincent of Beauvais in the *Moral Mirror*, book 1, page 2; Alfonso de Castro, *On Penal Law*; William of Paris; and Domingo de Soto, books 1 and 2. Among the theologians of the Society was Gregory of Valencia, who also illuminated Germany by published works covering the whole of theology and by refuting heretics. His hearer Clement VIII bore testimony to him and called him “the doctor of doctors.”

Gregory of Valencia was followed by John de Salas, the Castilian, in whom, besides a profound knowledge of theology and philosophy, skill in every kind of law and equity is also apparent.

Gabriel Vásquez treated the matter in I--II, disputation 150 and those following, and did so with great and independent judgment. Martin Becanus, my teacher, treated it briefly, lucidly, and acutely, so that he could both instruct the learned and assist the busy. Francisco Suárez pursued the same material at length in ten books--yet briefly, if we consider the fertility of so vast an intellect and his other monuments. There is no need of a new encomium for me to commend those books to students of theology. I assert only that what his censors, Father Friar Luís dos Anjos, provincial of the Order of Friars Minor, and Father Friar Vicente Pereira of the Order of Preachers, pronounced is true. Luís’s judgment is this:

By command of the supreme senate of the Holy Inquisition, I have examined this treatise concerning laws, composed by the very reverend and most learned Father Francisco Suárez. In it, with the highest learning customary to him, he discusses and resolves the difficulties of this subject matter. Nothing repugnant to the faith is contained in this treatise; nothing contrary to the decrees of our nurturing Mother Church and the holy Fathers, or to good morals. Rather, I found in it so great a splendor of learning in the explanation of everything which can concern this discussion that nothing further seems capable of being desired, either for theological discussion or for the interpretation of pontifical law. I therefore judge it worthy to be offered to all in print, as necessary for those most learned in theology and canon law and most useful to the Christian state. Given at Lisbon, on 5 May, in the year of the Lord 1611.

Vicente's judgment is this:

By command of the supreme senate of the Holy Inquisition, I have carefully read this treatise concerning laws, divided into ten books, whose author is the Reverend Father Doctor Francisco Suárez, primary professor in the Academy of Coimbra, and I judge it worthy of its author. For there is more in it that is approved by sight than can be praised by the mouth, as St. Ambrose says concerning light in book 1 of the *Hexaemeron*, chapter 9. It may therefore be committed to type for the common utility of all. Given in the convent of St. Dominic at Lisbon, on 5 August, in the year 1611.

§ 5. Theologians indeed discuss laws in order to lead the minds of human beings toward obedience and a desire for what is true and honorable. My purpose, however, is to show from the rationale and nature of right and laws by what means a city may be governed best. I therefore see that many of their disputations must be left aside, that I must take up those matters which they have discussed copiously, and that many matters more commonly employed in schools than in courts and tribunals must also be passed over; but everything must be accommodated to the use and utility of men engaged in the state.

There is one matter about which I wish all who either enact laws, defend them by reason of their office, or interpret them to be admonished: that they show regard for the laws which they themselves approve. Lactantius speaks excellently in book 4 of the *Divine Institutes*: "Whoever gives precepts to human beings fashions them for life and morals. The good things which he has prescribed belong, indeed, to others; but he himself must live in the same manner in which he teaches that one must live, lest, if he lives otherwise, he detract from the credibility of his precepts and render his doctrine less weighty--if in deed he loosens what in words he strives to bind. Therefore, when someone does not do what he has prescribed, what arrogance it is that he wishes to impose upon a free human being laws which he himself does not obey! For human beings prefer examples to words, because speaking is easy, but performing is difficult."

CHAPTER II

The Definition and Division of Laws

§ 1. There are many definitions of laws, which can easily be defended but much more easily attacked. For nothing is rarer than an exact definition. Indeed, every difficulty can be reduced to a definition.

Aristotle, *To Alexander*: **Καὶ γὰρ ὁ νόμος ἐστίν, λόγος ὠρισμένος καθ' ὁμολογίαν κοινὴν πόλεως, μηνύων πῶς δεῖ πράττειν ἕκαστα.** For law too is a statement--or rational ordinance--defined by the common consent of the city, showing how each thing is to be done.

Cicero, book 1 of *On the Laws*: “Law is the highest reason implanted in nature, which commands those things that ought to be done and forbids their contraries.” And in book 2 of *On the Nature of the Gods*: “Law is the prescription of what is right and the repulsion of what is depraved.”

St. Thomas, I-II, question 91, article 4: “Law is an ordinance of reason for the common good, promulgated by him who has care of the community.”

Papinian, *Lex est*, π. *On Laws*: “Law is a common precept, the considered judgment of prudent men, the coercion of offenses committed either willingly or through ignorance, and, finally, the common pledge of the state.”

Alfonso de Castro: “Law is the right will of him who represents the people, promulgated by voice or writing, with the intention of obliging subjects to it.”

Valencia: “Law is a certain right decree of practical reason, sufficiently sanctioned by him who bears the care of the community, and established so that by its force some mode must necessarily be applied, whether in a thing or in an action, for the sake of the common good.”

John de Salas: “Law is a precept imposed upon a community, perpetually binding unless it is revoked.”

Suárez, book 1, chapter 12: “Law is a common, just, and stable precept, sufficiently promulgated.”

I willingly pass over other definitions, such as: “A law is a general command of the people or of the plebs, upon the senate’s proposal.” Gellius, book 10, chapter 20. And:

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“A law is what the Roman people established when questioned by a senatorial magistrate, such as a consul.” For these contain particular law.

Most of those definitions seem to me capable, by a suitable interpretation, of being referred to a true understanding and explanation.

Therefore, in order that we may place the thing itself before our eyes, many matters must be considered in the meaning of laws and in the thing itself.

§ 2. First, the Hebrews call law **תורה**, from **תור**, which means to explore, consider, and order. For **תור** is order, method, ordinance; for an investigation proceeds in a most orderly manner when it prudently examines a matter. At Esther 2:12 it designates a time or order. But I prefer to derive it from **ירה**, which means to teach; and among the Hebrews it is taken very broadly, so as to mean method, doctrine, disposition, judgment, and statute. Among the Greeks it is called **νόμος**, not so much from feeding as from distributing to each person his own right. Formerly, however, they called songs **νόμους**, as Aristotle is the authority, *Problems*, section 19, problem 28: “Why are most laws called songs? Is it because, before human beings knew letters, they sang their laws, lest they consign them to oblivion--a practice which

even in our own age is customary among the Agathyrsi? Therefore they also called the earliest of the later songs by the same name by which all the earlier ones were called.” Law, therefore, is called a measure, rule, norm, condition, and precept, even when inequitable; but we are speaking of law in its proper sense.

§ 3. Next, every law is composed of various parts. For in it there is a judgment, or an act of the legislator’s intellect, by which he judges that something is to be done or not done and that the subject is to be bound. Next there is a decree, or an act of the will, by which he determines to bind him. Third, there is promulgation, by which the law is made known to the subject. Fourth, there is the subject’s understanding, by which he recognizes his obligation--or, certainly, fails to know it through his own fault. Finally, there is the thing itself, or what they call the object, about which the judgment and will both of the legislator and of the subjects are occupied. The law in Paradise is: “You shall not eat from the tree of the knowledge of good and evil.” This object, known by God and human beings, is called law and is the terminus of divine command and human obedience. For it directs both the intellect and the will of the human being. First God understands that this is to be commanded; next he wills to command it; and finally he declares it by his command, upon knowledge of which the obligation to obey arises. Therefore, the matters disputed at greater length here by the theologians--whether law is a work of the intellect or of the will--are in no way necessary for us, since it embraces both. Once these matters have been established, therefore, it is easy to comprehend the nature of law in a brief definition.

Law is an equitable precept of a superior, obliging a subject to act or not to act. For *precept* is the genus; equity excludes unjust commands, which are called laws only by an abuse; and the obligation of the subject includes promulgation and the other elements. I shall speak in its proper place about stability and the other attributes of laws.

§ 4. There is a great affinity between law and right, and they are frequently confused. *Ius*, right, is so called because it is just, and it is the object of justice. For that virtue establishes its own object, just as the other virtues do. For they say that this is right which has flowed from justice as its fountain. General right, I say, is that which corresponds to general justice: namely, that which in every thing and action is consonant with right reason and equity. Particular right is that which corresponds to justice strictly taken, and it is either what law prescribes or the faculty which law grants to each person. In the usage of jurists, *ius* frequently signifies law. “Right is civil equity,” says Crispus, “either sanctioned by written laws or received in institutions or customs.” And these are the beginnings and the nature of laws.

§ 5. The division of laws and of right is, by a certain proportion, the same. The ministers of Themis themselves establish a varied partition of right. They call the natural inclination of each thing primary natural right; next, secondary natural right, such as standing by promises and harming no one. This same thing is called by some primary law of nations. Third, what is derived from this they call secondary law of nations, as that which is gathered by practical reasoning in a manner so consonant with nature that all nations--or nearly all, unless they are exceedingly savage--agree upon it. Thus natural right is not altogether distinct from the law of nations. For the emperor calls that the law of nations which natural reason has established among all human beings. Necessity establishes secondary natural right, as Aristotle says in book 1 of the *Politics*, chapter 3. An example is servitude, which is not contrary to natural right--namely, that milder servitude amended by Justinian and others; for the ancient form was altogether barbarous and tyrannical.

They likewise call right that of **τῶν νόμων ἔγγράφων**, written laws, and **ἀγράφων**, unwritten laws; others call them **θέσμις**, ordinances, and **τὸ νόμιμον**, what is lawful. There is also the right of persons, things, and actions.

From this also arose what is called civil law, which neither departs wholly from natural right or the law of nations nor serves it in every respect. Thus, when we add something to or subtract something from the common right, we understand it as proper or civil law. But if it departs altogether from natural right, it is no longer right, but injustice and tyranny.

Thus servitude belongs to the law of nations. For although all are born free--because the whole human race is one and from one--nevertheless they can become slaves by the law of nations, which is not contrary to the law of nature. For he who brings an unjust war against another and contrives his death can himself be killed:

In my judgment, guile is permitted to repel guile,

And laws allow arms to be taken up against the armed.

Nevertheless, by the humanity of civilized nations, servitude was substituted for the penalty of death. Civil law, therefore, never corrupts natural equity, but determines it. But if at times it seems to depart rather far from it, it must nevertheless have a reason which, on account of some circumstance, makes what is prescribed just. It certainly seems harsh that by prescription one should lose possession of one's own property; but lest the ownership of things be tossed into uncertainty for a very long time when the possessor is uncertain, it is more prudent to provide for public tranquility at the cost of a few. Gregory of Toulouse speaks excellently in the *Syntagma of Law*, book 11, chapter 1, § 9 and following: "In the same way, civil reason too has natural reason almost always as its companion. For a reason can scarcely be named which is not natural; yet it does not always consider what accords with the common nature of all, but sometimes only the circumstance of a particular civil society, so that someone's life may be ordered more suitably, account being taken of the customs of the present place and of what happens there more frequently than elsewhere among human beings generally."

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Hence civil law--which is proper to each city, that is, which is especially conformed to the rites and customs received in the city--partly agrees with the law of nature, as though with the leaven of equity, justice, and right, from which it has so much as is just; yet it does not serve it in every respect--that is, it does not enact altogether according to universal natural equity. For the necessity of societies sometimes commands a departure from that equity: penalties may be increased because of the frequency of crimes, or harsher provisions enacted because customs are more savage and barbarous; at other times penalties may be diminished for the contrary reason. It is expedient to temper laws in one way here and in another way elsewhere. All these laws, although different and contrary in different places, are nevertheless just and equitable, but by a different rationale and in a qualified sense--not according to the general consideration of the law of nature in the abstract, but according to natural right in the concrete, that is, according to the suitability of the subject for whom the legislator prescribes what is just. Thus I do not doubt that natural right also exists in civil law. Yet in that concrete case the designation *civil* predominates. And although civil sanctions, if they are not consonant with reason, do not make right, even though they are so named, but rather corruption; nevertheless, if they agree with reason, since that reason is natural, civil law will in this way also be natural law, and in the concrete it can be called both natural and civil law, by reason of its restriction to this or that city.

§ 6. These are the determinations they have made concerning right; the division of laws also is not dissimilar. In the *Timaeus*, Plato divides law into divine, celestial, natural, and human. He distinguishes celestial law from divine. He calls that divine which theologians call eternal law, which is the rational order existing in the divine mind and governing the universe. For Plato, celestial law is *μοῖρα*, or fate, which Christian piety does not admit except under a sound interpretation. Natural law is that which we defined above. St. Thomas divides law according to the same rationale into eternal, natural, divine, and human; others divide law or right into natural and positive. Jurists consider natural law, the law of nations, and civil law; they leave divine and canon law to theologians. Authors divide civil right or law into six parts.

For a law is what the Roman people established when questioned by a senatorial magistrate. But this definition concerns only Roman law and the law of the state while it stood. For Romulus had established that nothing should be sacrosanct unless the plebs or people had sanctioned it. What had seemed good to the curiae was referred to the senate. For the enactment of laws, the creation of magistrates, and the determination of war were in the power of the people. Indeed, the imposition of a more serious fine was also decreed by the people, Titus Livy, book 25.

A decree of the senate is what the senate determined. If any tribune interposed his veto, only a formal opinion was written down and the matter was referred to the senate and people. Many, however, exclude this kind of law; for decrees of the senate and magistrates did not possess the same force as commands of the people, since both magistrates and plebs swore to a law. Nevertheless, it can be called a true law; for lesser power or obligation does not cause it to cease being law, but causes it to be a weaker law, nor does it belong to the definition of law that subjects swear to it. For the senate is consulted in the place of the whole people, and therefore it possesses power over affairs to be conducted, except those which the people reserved.

Festus defines plebiscites as those measures which the plebs accepted in the tribal assemblies, without the Fathers, upon the proposal of a plebeian magistrate--that is, a tribune of the plebs.

Edicts were the measures which the other magistrates--such as consuls, aediles, and tribunes, but especially praetors--promulgated at the beginning of their assumption of office. For this reason it was called praetorian law, just as it was also called honorary law, because it had been declared by those who held honors.

At the beginning of their term the praetors declared what law they would pronounce concerning each matter, so that each person might prepare himself: book 2, § 5, *On the Ancient Civil Law of the Romans*, and Sigonius, book 3, chapter 5. In book 1 of the second pleading *Against Verres*, Cicero calls it an annual law. For the Kalends of January brought it to an end, and on the same Kalends its beginning arose. By this law the urban praetor pronounced judgment, not according to his own discretion, but in accordance with laws already enacted; for he assisted, supplemented, and sometimes corrected the laws of the Twelve Tables. Thus it belonged to his office to establish laws according to equity and the present condition of the city. That power was moderated, both because its end was equity and because it was annual; and if he had pronounced judgment inequitably, not only was his rejection from the consulship certain, but an accuser also threatened him. Nevertheless, it was later judged proper to make the praetors' edicts perpetual, as was provided by the Cornelian law.

The determinations of princes are those occasions when the emperor has either given a rescript, rendered judgment, or prescribed something by edict. That power was given to Caesar through the Royal Law, so that the whole ordering of laws, just as the state itself, came to one man.

Finally, the opinions of prudent men are the judgments of jurists who formerly gave opinions concerning right with public authority. A judge was not permitted to depart from their consensus. The *Institutes*, book 1, title 2, § 8, speaks thus about them: "The opinions of prudent men are the judgments and opinions of those to whom it was permitted to give opinions concerning right. For in antiquity it was established that there should be persons who publicly interpreted laws, to whom Caesar gave the right of giving opinions and who were called jurisconsults. The judgments and opinions of all of them possessed such authority that a judge was not permitted to depart from their opinion, as has been established. Unwritten law is that which usage has approved. For customs of long standing, confirmed by the consent of those who use them, imitate law. And it seems not inelegant that civil law has been distributed into two species, for its origin appears to have flowed from the institutions of two cities, namely Athens and Lacedaemon. In these cities it was customary to proceed in such a way that the Lacedaemonians committed to memory those things which they observed as laws, whereas the Athenians preserved those things which they had embraced in written laws. But natural rights, which are for the most part observed among all nations, remain always firm and immutable, having been established by a certain divine providence. Those things, however, which each city establishes for itself are often accustomed to be changed, either by the tacit consent of the people or by another law subsequently enacted. Moreover, all the right which we use pertains either to persons, to things, or to actions; and let us first consider persons, for it is a small thing to know right if the persons for whose sake it was established are unknown."

In this manner, therefore, the emperor himself defines and divides right--but written right, as he says. For customs, about which I shall speak in their proper place, pertain elsewhere. For Charles Sigonius, in book 1, chapter 5 of *On the Ancient Law of the Romans*, makes law twofold, namely, one part consisting in writing and the other in custom. And

indeed the laws of some cities were not written, as Justinian testifies. Custom and the institutions of the ancestors brought unwritten right into the state, and by their equity the austerity of the law was often tempered.

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§ 7. Certainly, among an uncultivated people there was no law at the beginning. A book of Roman law was compiled in the times of Tarquinius Superbus, concerning which Pomponius says: “At the beginning of our city, the people began at first to conduct affairs without fixed law and without fixed right, and all things were governed by the hand of the kings. Later, after the city had increased to some extent, Romulus himself is said to have divided the people into thirty parts, which he called *curiae*, because at that time he administered the care of the state through the judgments of those parts. Thus he himself proposed certain *curiate* laws to the people, and the succeeding kings also proposed them. All these laws remain compiled in the book of Sextus Papirius, who lived in those times in which Superbus, the son of Demaratus the Corinthian, was among the foremost men. That book, as we have said, is called the *Papirian civil law*--not because Papirius added anything of his own there, but because he brought together into one collection laws enacted without order.”

But they lived more by royal will than by right. Therefore, after the tyrants had been expelled and liberty had been afflicted by the domination of the patricians, thought was given to laws. From this arose the Twelve Tables, which contained a threefold right, or three kinds of laws. Ausonius, in the *Riddle of the Number Three*:

The threefold law of the Tables, which four times three sanctioned:

Sacred, private, and whatever was common to the people.

Actions, procedures, and formulas were appended to the laws. At first these were employed to shorten lawsuits, lest each person conduct cases according to his own discretion; but afterward Gnaeus Flavius published the formulas, whence came the *Flavian law*. Aelius added other actions, which the uncultivated multitude called the *Aelian law*. For when contention occurs in the forum, the brawler generally gains more authority than the jurist. And these observations suffice concerning the descriptions and divisions of right and laws, about which novices in political philosophy are customarily instructed at very great length.

CHAPTER III

The Necessity and Utility of Laws

§ 1. We do not call law necessary in the same manner in every case. For eternal law, considered in itself--that is, the object of a just command, by which right things are commanded, and of the obedience by which commands are received--is everlasting. Thus it is necessary in such a way that its nonexistence is contradictory. For that an injury must not be inflicted and that equity must be cultivated is a most sacred law, and a necessary one which no reasoning can obscure and no force can break. For by no power--not even by the omnipotent power of God--can it be brought about that inflicting injury upon another is just.

§ 2. Eternal and natural law is necessary if creatures possessing reason and intellect exist. For those living beings, or spirits, endowed with a lofty and capacious mind and a free will, are by their nature subject to the command of a greater lord. For they depend upon the will and providence of him by whose power they were created; thus it is their nature to obey. Lactantius explained this excellently in book 6, chapter 8: "True law is indeed right reason, consonant with nature, diffused among all, constant and everlasting, which calls to duty by commanding and deters from wrongdoing by forbidding. Yet it neither commands nor forbids the upright in vain, nor moves the wicked by commanding or forbidding. It is not lawful for this law to be extended, nor is it permitted that anything be derogated from it, nor can it be wholly abrogated. Nor indeed can we be released from this law either by the senate or by the people; nor must another expositor or interpreter be sought. Nor will there be one law at Rome, another at Athens; one now, another hereafter. Rather, one everlasting and immutable law will embrace all nations and every time; and God will be, as it were, the one common master and commander of all--the inventor, judge, and enactor of this law. Whoever does not obey him will flee from himself and spurn the nature of the human being; by this very fact he will suffer the greatest penalties, even if he escapes the other punishments which are so regarded."

Thus a rule has been implanted in the mind itself, and therefore in the nature of justice and holiness. Hence it was rightly said: God reigns where law reigns.

For without law, what remains for earth and heaven

To obey? All things are governed in succession,

And by turns submit beneath their proper laws; the whole

Earth submits, while fortunate Rome presses upon the diadems of kings.

To rulers it was granted to restrain her; soon authority over them

Grows for the gods above.

§ 3. Some cities were founded with laws from their very beginning; others gradually added and changed laws. Good laws have generally arisen from vices. Just as the onrushing force of diseases compelled the development of medicines, so human beings, driven by necessity, agreed upon various laws of living. Nevertheless, the condition of those cities which established laws together with their very walls is better; for since the safety of the city lies in its laws, as Aristotle advises in book 1 of the *Rhetoric*, chapter 4, fortifications of bodies give little assistance if little provision has been made for the integrity of minds.

§ 4. The principal difficulty concerns positive civil and canon laws, and even those which they call the positive laws of God. For many, hating laws and the order of laws, approve a lawless life and admire the ancient race among whom life was not conducted by law, among whom simple reason and charity stood in place of law:

Nor did the suppliant multitude fear

The face of its judge, but without a judge they were safe.

But those men fabricate ideas and, as the poet says, **ἀεροβατεῖ**, walk upon the air; they seek or fashion a state such as no age has seen or will see. We know that the virgin earth was drenched with a brother's blood and that the whole world before the flood was destroyed by waters; and yet, soon after so great a shipwreck, an insolent son mocked his parent and the lust for dominion blazed up on the plain of Shinar. I therefore judge as follows. Just as all human beings--and indeed every creature--are by their nature flexible in either direction, for by the very fact that a creature is from nothing it is mutable, waxen toward both evil and good, and therefore needs law in order that it may live in conformity with a right norm, be held back from evil, and become accustomed to virtue; so also, since we see very many persons sinning very frequently in the state, there is need of a law which not only forbids sins but also cuts away occasions for sins. But I shall omit those disputations concerning the absolute power and necessity of laws. Concerning external political laws, which are properly called civil, it is established that no city can be administered without them. For since human nature is corrupt and inclined to evil from youth, it must be restrained by fear of the laws. Without laws the society of human beings is robbery

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and injustice; it is in no way a state. Nor would it be enough for there to be princes and magistrates, for they too are frequently drawn from the many and sometimes are worse even than the multitude. Certainly they do not always judge with the same disposition; nor is it enough that they have been well instructed, for commands change even good men. Formerly the judgments of princes stood for laws; but the proven faithfulness of the prince caused laws not to be missed. Augustine, book 4 of *The City of God*, chapter 6, from Pompeius Trogus: "At the beginning of affairs, the command of peoples and nations was in the hands of kings. Not popular ambition but moderation proven among good men raised them to the summit of this majesty. The peoples were bound by no laws; the judgments of princes stood for laws. It was customary to defend rather than extend the boundaries of command. The kingdoms of each ruler ended within his own homeland. Ninus, king of the Assyrians, was the first of all to change the ancient custom, as though ancestral to the nations, through a new lust for empire. He was the first to bring wars upon his neighbors and subdued peoples still untrained in resistance as far as the boundaries of Libya." So too in book 2, at the beginning, *On the Origin of Right and Laws*, and in *On Constitutions*, § "But also what has pleased the prince."

§ 5. But law is necessary not only for these reasons; primacy also must be given to it. For law is queen of all, as Pindar admonished: **ὁ νόμος πάντων ἐστὶ βασιλεύς, θνητῶν τε καὶ ἀθανάτων**. Law is queen of all human beings and gods. The angels too had their law, and private households have theirs. Marcianus speaks excellently in book 2 *On Laws*: **ὁ νόμος πάντων ἐστὶ βασιλεύς θεῶν τε καὶ ἀνθρωπίνων πραγμάτων, δεῖ δὲ αὐτὸν προστάτην τε εἶναι τῶν καλῶν καὶ τῶν αἰσχυρῶν, καὶ ἄρχοντα καὶ ἡγεμόνα· καὶ κατὰ τοῦτο κανόνα τε εἶναι δικαίων καὶ ἀδίκων, καὶ ὅσα φύσει πολιτικὰ ζῶα, τῶν μὲν ποιητέων προστακτικόν, τῶν δὲ οὐ ποιητέων ἀπαγορευτικόν**. That is: "Law is queen of all divine and human affairs. For it ought to preside over both good and evil, and to be prince and leader; and in accordance with this, to be the rule of just and unjust things and, for all living beings that are political by nature, the commander of things to be done and the forbidding authority of things not to be done."

The necessity of order in every state, in an army, and in courts is so evident that without it no community can endure. For since innumerable things are indifferent and can rightly be done in different ways, nevertheless, unless an order is prescribed so that they are performed in some fixed manner, they cannot be done at all without difficulty. Without some right not only can no state act, but not even a band of robbers can. Conspiracies established against the laws themselves possess certain laws, nor can they have strength without some appearance of justice. Laws forbidding disgraceful things and commanding honorable things are not the only laws necessary; there are also other laws about lesser matters--about the right of boundaries, dripping rainwater, servitudes, roads, light, and overhanging roofs--without which a city cannot long endure. For all things are uncertain: not only possessions and buildings, but life itself. No one can be certain what is his and what belongs to another in a city in which nothing is acquired or retained by any law. Everything must be tossed about. No one can determine what he may leave to heirs or bequeath to

those who have deserved well. Demosthenes therefore spoke very well when he said that the whole life of mortals is governed by laws and by nature. Nature is not sufficient in a state, even when it is upright and morals are good. There is need to have, so far as possible, a fixed norm for all things, fixed orders and limits, and a method of acting. The law concerning prescription is a harsh one and, unless restoration to the former condition is granted, is sometimes unjust; nevertheless, without it the safety of the state cannot be preserved unimpaired, because ownership of things would remain uncertain for a very long time. Law therefore removes disturbances, establishes peace, and establishes charity among citizens. A multitude of lawsuits does not follow from the right ordering of laws; for it is not a moderate multitude and knowledge of laws, but ignorance, that is litigious, as Cicero very well admonished in book 1 of *On the Laws*.

Law is the eye and light of the city. When it has been removed, darkness will possess all things, together with the works of darkness--that is, crimes. But if light sometimes flashes amid that dense darkness, it nevertheless will not be capable of being seen if the eye trembles with continual shaking.

Therefore a prudent legislator will write laws concerning even small matters which will have no small importance--not only for inducing a habit and love of obedience, but also for avoiding disturbances. The Ephors' slight and ridiculous precept seemed so to many: *ξηρεῖσθαι τὸν μύστακα*, "To shave the beard." But the reason is added: *καὶ πείθεσθαι τοῖς νόμοις*, "and to obey the laws"; for there ought to be great reverence even for the smallest laws. How many laws concerning minute things did the immense majesty of God enact for the Israelites? Yet they had to be observed, and they possess a just reason. What of that law in Deuteronomy 23:15? "You shall have a place outside the camp to which you may go out for the requirements of nature, carrying a small stake in your belt; and when you sit down, you shall dig round about and cover with the displaced earth that of which you have relieved yourself." God therefore enacts a law even about the smallest and sordid things.

§ 6. Therefore, let no one esteem lightly laws concerning matters which are not great, for they concern things either necessary or useful. I have admired the care, solicitude, prudence, and vigilance of the princes of Germany--not only of each one in his own territories, but of them all together in public assemblies. Examine the imperial recesses: you will find sanctions worthy of German majesty concerning the most serious matters, and most prudent laws concerning the smallest as well--at Augsburg in the years 1530, 1551, 1559, and 1566; at Speyer in 1570; and at Frankfurt in 1577. Examine the headings: *von den Schalcknarren / Pfeifferen / Trommetern / Spielleuten / Landfährern / Sängern / vnd Reimsprechern*--concerning buffoons, pipers, trumpeters, players upon every kind of instrument, vagabonds, singers, and versifiers. For because the safety of all pertains to the care of princes, laws also had to be enacted concerning all. Nor does guardianship by laws obstruct liberty; rather, it is the fountain of liberty. It is wickedness to wish to be permitted what the laws forbid--not only in matters which nature has sanctioned, but also in those in which law has determined one part of what nature left free. The state has forbidden the carrying of swords; it is now contrary to nature for you alone to rise against all who obey and to go about girded with a sword. He who, with great labor, levels and paves roads through the rough places of hills and commands all to undertake their journey by a direct and safe route does not obstruct liberty. It is not the part of a free person, but of a madman, to run through thickets and rough places and to refuse to make use of another's kindness. Heraclitus therefore spoke very well when he said that one must fight more for laws than for walls; for a city can exist without walls, but not without laws. Sparta long held walls in contempt, and at that time was more fortunate. A bull can live without horns, a lion without claws, and a boar without the thunderbolt of its teeth,

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but none can live without a soul. Law is the soul of a city; therefore, the city cannot exist without it, since neither place nor any force of resources can preserve dominion without laws.

The state, therefore, will be safe if all fear the law as a tyrant, as Bias prudently judged, if the greatest authority resides *ἐν τῷ ποικίλῳ ξύλῳ*, in the variegated or inscribed wood.

Indeed, this too must be noted: excessive prosperity is most dangerous solely for this reason, that one who is excessively prosperous does not easily endure the yoke of laws, just as luxuriant horses throw off their rider. When Plato was once consulted about writing laws for a most flourishing and wealthy--and consequently most wanton--state, he replied: "It is not easy to write laws for such prosperous Cyrenaeans." Gregory of Toulouse also speaks excellently in the *Syntagma of Law*, book 47, chapter 3, § 2: "This is among legitimate acts, because it cannot be called a judgment unless it is made according to the laws. And magistrates then rightly administer the state if they follow the laws. For he who wishes law to rule wishes God and the laws to preside; but he who wishes a city to be governed by a human being's discretion adds a most savage beast, as Aristotle writes." Although I know that Aristotle examined most diligently whether it is more useful for the best man to command than the best law, I think it truer that laws established by the best deliberations ought rather to be followed, as inflexible things rather than the mutable wills of human beings. As Plato too rightly thinks, the destruction of the state is imminent when laws do not command magistrates, but magistrates command laws.

§ 7. The Church also approves the laws of the state and makes use of them. The bishop of Bagai sought assistance from the laws, and Augustine judged that he had done this not only rightly but necessarily, since he had followed Paul's example. Letter 50, to Count Boniface: "He therefore sought assistance from a Christian emperor, not so much for the sake of avenging himself as of defending the Church entrusted to him. If he had neglected this, his patience would not have been praiseworthy, but his negligence would deservedly have been blamed. For the Apostle Paul too was not taking thought for his transitory life, but for the Church of God, when he brought it about that the plan of those who had conspired to kill him was disclosed to the tribune. Hence it came about that an armed soldier escorted him to the place to which he was to be conducted, lest he suffer from their treachery. He also did not hesitate at all to invoke the Roman laws, proclaiming himself a Roman citizen, for Roman citizens were not then permitted to be afflicted with scourges. Likewise, lest he be handed over to the Jews who desired to kill him, he sought the aid of Caesar--a Roman prince, indeed, but not a Christian one. In this he sufficiently showed what the stewards of Christ ought to do afterward when they found Christian emperors while the Church was in danger."

The same Augustine, in Letter 48 to Vincentius, also approves that the impious be bound by the chains of civil laws as though they were frenzied; for laws, even when burdensome, correct in a salutary manner. Thus in Letter 50: "For this happened to the Donatists which happened to the accusers of holy Daniel. For just as the lions were turned against the latter, so the laws by which they wished to oppress the innocent were turned against the former--except that, on account of Christ's mercy, these laws which seem adverse to them are rather for their benefit, since many have been corrected through them and are corrected daily; and they give thanks that they have been corrected and freed from that furious destruction. Those who hated now love; and, when health has been restored, they rejoice over the most salutary laws which had been burdensome to them as greatly as they detested them in their madness. They are now aroused, with us and with a similar love, toward those who remain and with whom they would have perished, so that together we may press upon them lest they perish. For the physician is burdensome to a raging madman, and the father to an undisciplined son--the former by binding, the latter by beating, but both by loving. If, however, they neglect them and allow them to perish, that false gentleness is rather cruelty."

CHAPTER IV

The Matter of Laws Is Varied

§ 1. The matter of law is twofold: that in which law exists, which the schools call the subject of law, and that about which law exists. The subject of law is the intellect and the will. For we are not treating the law of sin about which the Apostle disputes in Romans 7. Every law, therefore, is in the mind and the will, as I taught above. Next, law exists in speech and in writings as in signs.

Nevertheless, it is not necessary that a law be written; consequently, parchments and tablets are not necessary subjects of laws. Thus, Digest, book 1, title 3, § 32: “In those cases in which we do not use written laws, that must be observed which has been introduced by customs and usage; and if this should be lacking in a particular matter, then that which is nearest and consequent upon it; but if not even that should appear, then the law which the city of Rome uses must be observed.”

“Custom grown old is deservedly observed as law--and this is the right which is said to have been established by customs. For since the laws themselves bind us for no other reason than that they have been received by the judgment of the people, those things also which the people have approved without any writing will deservedly bind all. For what difference does it make whether the people declare their will by vote or by the things and deeds themselves? Hence this too has most rightly been received: that laws are abrogated not only by a vote of the legislator, but also through disuse by the tacit consent of all.”

Lycurgus certainly did not write his laws, and formerly laws were also contained in songs, which individuals taught to their own people. The same rationale applies to canon laws, for which writing is in no way necessary. Suárez, de Salas, and Valencia teach this, and Aristotle before them in book 10 of the *Ethics*, chapter 9.

Nevertheless, it is most useful for a law to be written. First, God willed that his law, which he gave to a people now multiplied, be written; indeed, he himself inscribed it upon stone tablets with his own finger. He willed that the volume of the law should never depart from the hands of the Israelites. For writing is the principal aid to memory. Nations which are illiterate and afflicted by wars, floods, and epidemics easily change and forget all their institutions. Words easily escape; sentences are easily mutilated when trust is placed in memory alone. They must therefore be bound fast by durable characters suitable for eternity.

Basil speaks elegantly in Letter 178: “Words have a winged nature. Human beings therefore employ the characters of letters so that one who writes may catch the speed of flying speech. You, therefore, boy, must draw the characters of the letters perfectly and set their forms in the right order. For a slight error by the writer detracts very much from the discourse; but by the writer’s diligence, what has been said is completed and brought to perfection intact.”

The speech of one who is speaking cannot so easily be corrected, because it swiftly flies across after φύγεν ἔρκος ὀδόντων, it has escaped the fence of the teeth. Just as one cannot observe a bird flying beneath a cloud as readily as one which is confined in a cage.

Next, through the easiest repetition of written law,

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all agreements, covenants, and contracts are directed. Nor can the memory of one human being, however prodigious, possibly be the repository of that multitude of all the laws. Thus Exodus 17:14 and Deuteronomy 31:22: “Moses therefore wrote the song and taught it to the children of Israel. And the Lord commanded Joshua the son of Nun and said: Take courage and be strong; for you shall bring the children of Israel into the land which I promised, and I shall be with you. Therefore, after Moses wrote the words of this law in a volume and completed it, he commanded the

Levites who carried the ark of the covenant of the Lord, saying: Take this book and place it beside the ark of the covenant of the Lord your God, so that it may be there as a testimony against you.”

And Deuteronomy 17:18: “After he has taken his seat upon the throne of his kingdom, he shall write for himself a copy of this law in a volume, receiving an exemplar from the priests of the Levitical tribe; and he shall have it with him and read it all the days of his life, so that he may learn to fear the Lord his God and to keep his words and ceremonies which have been commanded in the law. Let not his heart be raised in pride above his brothers, nor let him turn aside to the right or the left, so that he and his son may reign for a long time over Israel.”

Most nations followed God in this matter and committed civil laws to writing. For although Sallust defines right as civil equity either sanctioned by written laws or received in institutions and customs, and most distinguish custom from law in such a way that law is written while custom is *ἄγραφος*, unwritten, nevertheless this has not been deduced from the nature of laws, but from the practice of states, which have published all laws in writing and maintain customs without writing. Hence Isidore admonishes in book 2 of the *Etymologies*, chapter 10: “The difference between law and custom is that law is written, whereas custom is a usage approved by antiquity, or an unwritten law.” And in book 5, chapter 3: “Law is a written constitution; custom is an unwritten usage approved by antiquity.” For most laws not only are written but also ought to be written, although without writing they too contain the nature of law.

§ 2. In the Roman state writing was required for a law. For a magistrate who was to propose a law first weighed it himself at home in written form and summoned into consultation those skilled in law and customs. Next, he referred the question of its enactment to the senate or people. Third, he posted it in public--or *published it beforehand*, as Festus says--so that it could be inspected, assessed, and judged by anyone. The interval during which the examination of the law continued was a *trinundinum*, that is, twenty-seven days. Fourth, they recommended or opposed it and commanded that it be law, and this in writing with the letters **V. R.**, that is, *uti rogas*, “as you propose”; or that it not be law, with the letter **A.**, that is, *antiquo*, “I reject it in favor of the old.” After the law had been accepted, all confirmed it by oath. Finally, it was cut into bronze, and the tablets were either displayed in public or deposited in the treasury. Roman laws, therefore, were not without writing. Hence some deny that a measure is law in the Roman Empire if it has not been written--a view which the emperor also seems to hold in the Code, *On Laws*, law *Humanum*. This practice is certainly so customary that a prince must deservedly be said to act imprudently if he promulgates a law without writing.

§ 3. The matter about which law treats consists in the actions of those who use reason and free choice. For whatever can be governed by some norm is capable of law. Various matters concerning this will occur throughout the whole book; for now I wish these few observations to be noted.

In general, therefore, laws command or forbid human acts, and civil laws are occupied with no other matter. But the actions of human beings are manifold--praiseworthy, depraved, or indifferent--and they are as many and varied as the chorus of virtues is great and the chaos of vices. Next, some actions are conceived in the mind and will alone; the work of others appears in words and deeds. Third, the performance of some works is ordinary and easy, but that of others rare, difficult, dangerous, horrifying, and full of torment. Concerning these I judge as follows.

§ 4. No civil law can command or defend any evils, even if pseudo-statesmen proclaim that this is necessary for the state. Thus civil law either forbids an evil or commands nothing concerning it, but wholly disregards it. Machiavelli therefore destroys the state when, for its protection, he admits crimes into the fellowship of the virtues as though they were useful. Sylvester asserts, under the word *Law*, § 10, that there are many unjust laws.

First, those laws which permit the son of one full brother to contract marriage with the daughter of another full brother, as in the *Institutes*, *On Abduction*, § *Inter eas*, and in the Code, *On Nuptials*, law *Nemini*; because according to the law of God such persons must be separated entirely: *On Consanguinity and Affinity*, *Non debet*, and 35, question 3, *Progeniem*.

Second, those laws which say that an abducted girl cannot contract marriage with her abductor, Code, *On the Abduction of Virgins*, sole law; because today she can do so according to the canons, *On Abduction*, final chapter, although according to the ancient canons she could not.

Third, those laws which permit an unmarried man to keep an unmarried woman as a concubine, as in the Authenticum, *By What Modes Natural Children Are Made Legitimate*, § *Si quis*; because according to the law of God even simple fornication is a sin and excludes one from the kingdom of God, 1 Corinthians 6.

Fourth, those laws which permit a husband to kill the adulterer of his wife when caught in adultery, if he is a lowly person and one to whom reverence is not owed: Digest, *On Adulteries*, law *Marito*, law 1, and law *Si adulterium*; whereas today, under the new law, he can kill him not only when caught in adultery, but anywhere after three denunciations, as in the Authenticum, *That It Be Permitted to the Mother and Grandmother*, penultimate and final sections. And those laws which permit a father who has his daughter under his power to kill the daughter's adulterer when he is committing fornication in his own house or that of the son-in-law, and to kill the daughter herself: Digest, *On Adulteries*, laws *Pater* and *Non in ea*; and even one found engaged in sexual preliminaries, by law *Quod ait*, Digest, *On Adulteries*, which according to the Gloss are things antecedent to the crime--namely preparations, conversations, an appointed place, banquets, kisses, and touches; and Bartolus holds the same. Likewise concerning a brigand and a plunderer of fields. For according to the law of God none of these killings is permitted, according to Exodus 20, "You shall not kill"; concerning which see also *Homicide* 1, § 2, part 5.

Fifth, those laws which condemn a man who retains a wife caught in adultery: Code, *On Adulteries*, laws *Crimen* and *Castitati*; because according to the law of God and canon law he can retain her without penalty, provided that she is willing to withdraw from adultery, 31, question 1, § *Obauditur*.

Sixth, those laws which permit repudiation of a wife and dissolution of a marriage duly contracted in many cases, especially in the case noted in chapter *Lege*, distinction 10, and 27, question 2. There are those who say that these laws are unjust because this is prohibited in those same chapters.

Seventh, those laws which condemn a wife who marries within the period of mourning for her husband--that is, within one year--to infamy and many penalties: Code, *On Second Marriages*, laws 1 and 2; because the Apostle says that a woman may marry whom she wishes, *On Second Marriages*, chapter 1, at the end, where Innocent notes that all penalties which are only for her punishment are remitted to her. It is otherwise if something thereby accrues to others, as Lord Antonius de Butrio declares more fully

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in the same place, saying that penalties founded upon hatred of second marriages or upon the haste of the transition have been corrected, as in the cited final chapter, because contracting marriage is neither hateful nor forbidden but permitted by the Apostle. Those penalties, however, which are founded upon favor toward the first marriage still endure. Thus, if a mother obtains anything intestate or by testament from any of the children of the former marriage, she has only the usufruct of it while she lives, while ownership remains with the children of the same marriage if any survive; if none survive, she obtains the full right, as in law *Feminae*, final section, *On Second Marriages*. Add that the penalties established in favor of children and on account of the mother's fault remain. Thus the law imposes a penalty upon a mother who has acknowledged the guardianship of her son and passes to second vows without requesting a guardian for her son, as in law *Omnem matri*, Code, *To the Tertullian Decree of the Senate*.

Eighth, those laws which say that a spurious son is not to be maintained, as above, *Son*, § 4.

Ninth, those laws which say that an heir, if he has not made an inventory, is liable for all the debts of the deceased; the contrary of this was stated above, *Inheritance* 3, § 5.

Tenth, those laws which say in certain cases that an heir is not liable for the wrongdoing of the deceased; because, as is evident above in the same place, he is liable for all his debts, even those arising from wrongdoing, insofar as the inheritance suffices.

Eleventh, those laws which will that a bequest in a last will is not valid unless it has seven or five witnesses: Code, *On Testaments*, law *Si unus* and the final law; because according to the law of God, three or even two witnesses suffice in bequests for pious causes, *On Testaments*, chapters *Cum esses* and *Relatum*.

Twelfth, those laws which say that a human being is not bound by a promise in a bare pact without another solemnity of law, since no action arises from it: Digest, *On Pacts*, law *Iuris gentium*; because according to the law of God and the canons one who withdraws from a pact sins mortally, *Extra, On Pacts*, chapter 1; 22, question 5, *Iuramenti*, together with the notes there. The same applies if I make a promise to one person receiving it on behalf of another, because according to the law of God I am bound, but not according to the civil laws--unless the promise has been made to a person existing under another's power, such as a slave or a son under paternal power, or to a procurator or manager of affairs; because through these persons an acquisition is validly made for the father and master: *Institutes, Through What Persons Obligations Are Acquired for Us*, throughout, and the Digest and Code, *On Procurators* and *On the Management of Affairs*.

Thirteenth, those laws which allow or permit deception between buyers and sellers, according to what was stated above under *Purchase* 7.

Fourteenth, those laws according to which it is not permitted to buy or sell, for a price less than the principal debt, rights and actions which someone has against another; otherwise the purchase is not valid, nor can more be sought than the amount which was paid. Nor can such rights be sold in part and donated in part: Code, *Mandati*, law *Per diversas* and law *Ab Anastasio*. But according to the law of God such a purchase is permitted, provided that it is not made as a fraudulent cover for usury, but on account of the interest or labor which may perhaps be involved in recovering the debt, or because it is feared that the debtor may flee or fall into poverty. But concerning this see below, *Usury* 2, § 1.

Fifteenth, those laws according to which a possessor in bad faith acquires by prescription over the longest period, that is, thirty or forty years; because this is false according to canon law, *Extra, On Rules of Law*, chapter *Possessor*, book 6. See below, *Prescription*.

Sixteenth, those laws which as a rule do not punish the crimes of thoughts: Digest, *On Penalties*, law *Cogitationis*; because every evil thought must be punished either by God or through penance, 33, question 2, *Omnis*.

Seventeenth, those laws which, although they punish magicians and poisoners, nevertheless reward according to their provisions those who have done these things against rains, winds, and hail: Code, *On Evildoers*, law *Eorum*; because according to the law of God, to do such things even in this manner is a most serious sin, as St. Thomas proves in II--II, question 96.

Eighteenth, those laws according to which it is lawful in a capital case to corrupt the accuser: Digest, *On Collusion*, final law; because according to the law of God this is not lawful, II--II, question 69.

Nineteenth, those laws which permit usury; but today they too have all been abrogated by the laws, as below, *Usury*, § 1, question 1, just as those laws which punished a woman in a brothel, as St. Thomas says. It would be easy to show that there are very many more inequitable laws in every kind of matter, although some of these seem capable of being excused.

§ 5. Civil laws are indeed chiefly occupied with justice, but nevertheless they also embrace the matter of all the other virtues. For they regard chiefly the public good and human concord and happiness in the city, for which justice is especially necessary. Augustine, book 2 of *The City of God*, chapter 27: "At the end of the second book Scipio had said that, just as a certain harmony composed of distinct sounds must be maintained in stringed instruments and pipes,

and in song itself and voices--a harmony which trained ears cannot bear when it has been changed and become discordant--and yet that harmony is rendered concordant and congruous by the modulation of the most dissimilar voices, so a city, by a regulated proportion among the highest, middle, and lowest orders interposed like sounds, harmonizes through the consent of the most dissimilar persons; and what is called harmony by musicians in song is concord in the city, the closest and best bond of preservation in every state, which can in no way exist without justice.” Law also strengthens and fortifies the other virtues and excludes vices. Aristotle, book 5 of the *Ethics*, chapter 1: “Law commands the performance of the offices of a brave man, such as holding one’s position and rank in the battle line, and neither fleeing nor casting away one’s arms; and those of a temperate man, such as not committing adultery or violating anyone; and those of a gentle and mild man, such as striking no one and reviling no one. Likewise in the other virtues and vices, partly by commanding and partly by forbidding: rightly, indeed, in the case of a law enacted rightly and salutarily, but wrongly in the case of one enacted negligently and inconsiderately.” The strongest rationale is taken from the end, for the purpose of law is to make its citizens happy, which cannot be brought about in any other way than through the observance of all the virtues, as was demonstrated in the second and third books. Next, so many military and sumptuary laws and others which regard the public utility demonstrate this. Thus there is no act of any virtue which cannot sometimes be commanded by an enacted law. Civil law can also forbid all sins; but because it accommodates itself to a community in which not all things can be punished--and therefore it is not fitting that all things be forbidden--it disregards certain things, not by approving them, but because human power is unequal to human vices. Nevertheless, all are forbidden by natural and divine law, because God can both know and punish all things.

§ 6. Not every determination of good works is the matter of civil law, for civil law cannot command arduous fasts or perpetual chastity. Nevertheless, such a work can accidentally be the object of law, as when those things are commanded which demand works of this kind or cannot be accomplished without them.

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CHAPTER V

The Legislator Is a Magistrate or the Whole State

§ 1. It has never entered anyone's mind to doubt that the divine majesty, to whom belongs supreme right over all creatures, can establish laws according to his own judgment. For to him to whom belongs the power of creating belongs also the whole jurisdiction of governing. "Behold, God is exalted, and there is none like him among legislators," Job 35:22. His goodness in enacting law is also supreme, concerning which the Prophet sang: "For the legislator will give a blessing; they will go from virtue to virtue; the God of gods will be seen in Zion." All ought to venerate his law; no one ought to judge it. "But if you judge the law, you are not a doer of the law but a judge. There is one legislator and judge, who can destroy and deliver," James 4:11.

§ 2. Most of the human beings who first founded states by laws either received laws from God or falsely claimed to have received them. Abraham and Moses, instructed by divine conversations and oracles, gave laws to their posterity. In emulation of them, the ancient νομοθέται, legislators, by a fraudulent fiction of religion referred the invention of new laws either to the true God or to fictitious deities.

Jeroboam attempted to found a new kingdom by superstition. Numa feigned nocturnal meetings with Egeria. Plutarch, *Numa*; Dionysius of Halicarnassus; Valerius Maximus, book 1, chapter 2. Lycurgus deceived the Spartans and Cretans by the same art: at Lacedaemon he pretended that Apollo was the author of the laws, but in Crete, Jupiter. Minos did no differently, for by withdrawing into a cave each new year he pretended that he was instructed by Jupiter's admonition. Nor is it necessary to recount ancient examples. Superstition created Muhammad's power, which he nourished with domestic blood and the destruction of nations. But in the book concerning religion I taught that those frauds always ended badly. Zoroaster, who put forward Oromasdes as the author of his laws, learned by experience that he had been an unsuccessful legislator. Trismegistus persuaded the Egyptians that Mercury gave them laws; and it is certainly credible that the demon who commanded such great and such ridiculous evils was most frivolous. Zamolxis likewise claimed that the laws which he gave to the Scythians had been received from Vesta. The Carthaginians claimed Saturn; the Athenians, the most cultivated of peoples, boasted rather than believed that Minerva was the author of their laws.

They therefore judged it a divine matter to enact law for human beings. For since human beings are free by nature, and no one--if you regard the first beginnings of birth and life--is subject to another, and since they are also tenacious of liberty and of their own right, it certainly seemed difficult and almost tyrannical for anyone to impose his own laws and for an equal to exercise power over equals. They therefore referred the authority of laws to some nature more sacred and divine. But they would have acted more rightly if they had taught that magistrates are necessary to the state and that, as a consequence, the power of establishing laws has been granted to magistrates. For since that superstition cannot be lasting and does not hold all persons equally, it also detracts esteem from the true authority of legislators. Every pretense, when it is exposed, does harm twice, for it detracts credibility both in the present and for the future.

§ 3. A private person cannot be the maker of laws; it is necessary that it be either the whole state or a magistrate. At present this belongs properly to the magistrate. For no one can bind anyone by his own laws except a subject. Political or civil dominion is required for commanding. The power of coercing and of sanctioning the observance of a law by penalties is also required, and this cannot exist in a private person. It can exist without jurisdiction strictly so called; for someone can enact a law although he lacks the power of judging, and one who lacks the power of establishing laws can judge.

§ 4. The power of establishing laws resides by nature in the state itself, or in the multitude of human beings, not in any one person. For the opinion of certain canonists who attributed this power by nature to the supreme prince and his

successor has long since been rejected. The state itself, therefore, alone possesses by nature the right of its own government and laws. It can therefore establish laws and set a magistrate over itself, and it can also confer upon him the power of establishing laws. Thus St. Thomas, question 90, article 3, and question 97, article 3; Molina, volume 1, *Institutes*, treatise 2, distinction 22; Bellarmine, volume 1, book 3, *On the Laity*.

Clear reason demonstrates this, for it cannot belong to any one person to undertake care of the multitude. No one has power over another except by the other's will or offense. Nor is that power owed to old age, primogeniture, or paternal right. Nevertheless, it resides in the state itself because the state cannot be governed without laws and an order of right. Nothing is more certain if you read title 2 of book 1 of the Digest, for the laws were first made by the people; then that power was transferred to the senate; finally, to Caesar. It therefore seems necessary to us to demonstrate the origin and development of right itself.

1. At the beginning of our city, the people first began to conduct affairs without fixed law and without fixed right, and all things were governed by the hand of the kings.

2. Later, after the city had increased to some degree, Romulus himself is said to have divided the people into thirty parts, which he called *curiae*, because at that time he administered the care of the state through the judgments of those parts. Thus he himself proposed certain *curiate* laws to the people. The succeeding kings also proposed laws, all of which remain compiled in the book of Sextus Papirius, who lived in those times in which Superbus, the son of Demaratus the Corinthian, was among the foremost men. That book, as we have said, is called the Papirian civil law--not because Papirius added anything of his own to it, but because he brought together into one collection laws enacted without order.

3. Next, after the kings had been expelled, all these laws fell out of use through the Tribunician Law. The Roman people again began to be sustained more by uncertain right and custom than by enacted law, and endured this for nearly twenty years.

4. Afterward, lest this continue any longer, it was resolved by public authority that ten men should be appointed, through whom laws might be sought from the Greek cities and the city founded upon laws. They set these laws, written upon ivory tablets, before the Rostra so that the laws might be perceived more openly. Supreme right in the city was given to them for that year, so that they might both correct the laws, if necessary, and interpret them; and no appeal from them was permitted, as it was from the other magistrates. They themselves observed that something was lacking from those first laws, and therefore in the following year they added two others to the same tablets. Thus, from this circumstance, they were called the laws of the Twelve Tables. Some have reported that a certain Hermodorus of Ephesus, an exile in Italy, was the adviser to the decemvirs in enacting them.

5. After these laws had been enacted, it began to happen, as naturally occurs, that interpretation and the disputation of the forum, necessary through the authority of prudent men, were desired. This disputation,

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and this right, which came without writing and was composed by prudent men, is not called by any proper designation, as the other parts of right are designated by their own names; rather, it is called by the common name *civil law*.

6. Next, at nearly the same time, actions by which human beings might litigate with one another were composed from these laws. Lest the people institute these actions as they wished, it was willed that they be fixed and solemn. This part of right is called *actions of the law*, that is, lawful actions. Thus at nearly the same time these three forms of right arose: the laws of the Twelve Tables; the civil law which began to flow from them; and the actions of the law composed from the same. Nevertheless, both the knowledge of interpreting all these laws and the actions were in the possession of the college of pontiffs. From among them one was appointed each year to preside over the affairs of private persons, and the people employed this custom for nearly one hundred years.

7. Later, when Appius Claudius had published these actions and reduced them to form, Gnaeus Flavius--his scribe and the son of a freedman--stole the book and delivered it to the people. That gift was so pleasing to the people that he became tribune of the plebs, senator, and curule aedile. This book, which contains the actions, is called the Flavian civil law, just as the former book is called the Papirian civil law; for Gnaeus Flavius added nothing of his own to the book. As the city increased, because certain kinds of proceeding were lacking, not long afterward Sextus Aelius composed other actions and gave the people a book which is called the Aelian law.

8. Next, when the city possessed the law of the Twelve Tables and civil law, and also possessed the actions of the law, it happened that the plebs came into discord with the Fathers, seceded, and established rights for itself, which are called plebiscites. Soon, when the plebs had been recalled, because many dissensions arose concerning these plebiscites, it was resolved by the Hortensian Law that they too should be observed as laws. Thus it came about that a plebiscite and a law differed in the form of their establishment, but their power was the same.

9. Next, because it began to be difficult for the plebs to assemble--and certainly much more difficult for the people amid so great a crowd of human beings--necessity itself transferred the care of the state to the senate. Thus the senate began to interpose itself, and whatever it established was observed. This right was called a decree of the senate.

10. At the same time the magistrates too administered justice. In order that citizens might know what right each magistrate would pronounce concerning every matter and might prepare themselves, the magistrates published edicts. These edicts of the praetors constituted honorary law. It is called honorary because it came from the praetor's honor, or office.

11. Finally, as the course of establishing right seemed, under the compulsion of circumstances themselves, to have passed to fewer persons, it gradually happened that it became necessary for the state to be provided for by one man; for the senate could not administer all the provinces equally well. Therefore, when a prince had been established, the right was given to him that whatever he established should be valid.

12. Thus in our city a rule is established either by right--that is, by statute--or it is civil law properly so called, which, without writing, consists solely in the interpretation of prudent men; or there are actions of the law, which contain the form of proceeding; or a plebiscite, which was established without the authority of the Fathers; or an edict of the magistrates, from which honorary law arises; or a decree of the senate, which is introduced solely by the senate's establishment, without a statute; or a constitution of the prince, that is, a provision that what the prince himself establishes is to be observed as law.

§ 5. The custom of all kingdoms is that the supreme prince can establish new laws and abrogate old ones. Nevertheless, this is not necessary to supreme jurisdiction, for precept, government, and coercion are one thing, and law another. Thus, although this is customary and it could scarcely be done rightly in another way, supreme power and the faculty of establishing laws are not perpetually joined. For a magistrate will be able to govern the state and coerce the wicked according to laws enacted long ago. When the state chooses a king, it can, if it pleases, retain this greatest right for itself, so that he may neither establish new laws nor abrogate old ones. Indeed, many kings swear to the laws when they receive the diadem; thus they cannot abrogate those laws which they bind themselves by oath to preserve. If, therefore, a prince can be bound not to violate or abrogate old laws, who would doubt that the same prince can be bound not to impose new ones? For there is no less danger in the establishment of new laws than in the abolition of old ones, both because everything new is burdensome to many and because, by a new law in a state which possesses many laws, some old law is ordinarily derogated from. This practice became so customary that a clause was placed in every sanction of laws and was, as Cicero calls it, a customary clause transferred from old laws into new ones.

Cicero, book 3, Letter 23 to Atticus: "The second section is the customary one, concerning immunity if anything has been done contrary to other laws for the sake of this law. My Pomponius, consider by whose counsel and by whom the third section was pressed in; for you know that Clodius sanctioned his law in such a way that it could scarcely, or not at all, be invalidated either by the senate or by the people. But you see that the sanctions of laws which were abrogated

have never been observed. For if this were so, scarcely any law could be abrogated, since there is none which does not surround itself with the difficulty of abrogation. But when a law is abrogated, that very provision prescribing the manner in which it must be abrogated is abrogated. Since this is in fact so, our eight tribunes of the plebs inserted this section: ‘If anything is written in this proposal which by the laws and plebiscites--that is, by the Clodian Law--it is not or has not been lawful to promulgate, abrogate, or derogate from without personal liability; and if on this account a penalty or fine lies against him who has promulgated, abrogated, or derogated from it, concerning this nothing is proposed by this law.’”

Thus it will have been placed within the power of the state establishing a prince either to grant the prince the power of establishing laws or not to establish them, or to moderate that faculty so that he is permitted to establish some laws and forbidden to establish others. And that power ought altogether to be tempered and not exercised without the consent of others or mature deliberation. For there are never lacking persons who desire to increase private advantages through new laws.

§ 6. Nevertheless, because new controversies arise every day, and because through continual changes it frequently happens that laws which were salutary at the beginning are rendered harmful by some circumstance and must be removed, it has come about that nearly all states have granted this right to princes or senators. Thus monarchical power--whether it is called imperial, royal, or by any other name--provided that it is absolute, will possess in a well-constituted state the right and authority to establish, explain, and abrogate laws. For the state subjects the laws themselves to the emperor and king when it receives him as, in a manner, an animate law. Hence the power of granting privileges has also been conceded to the prince, by which the common law is always derogated from. Certainly all princes, even those who are not supreme, employ this right. For who among the nobles of Germany does not sometimes remit a penalty owed under imperial laws? Who does not mitigate it? Indeed, he sometimes aggravates it when the atrocity of an offense in a crime so demands. But he could not do this unless he possessed the power of tempering the law itself. Thus, when the state gave him the principate to be administered according to the laws,

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it is judged also to have given him the faculty of showing mercy. John de Salas judged this matter excellently in disputation 7 *On Laws*, section 3: “I say fifth that some were without doubt established specially by God as kings and princes with legislative power. Unless an exception is expressed, legislative power is always understood to be granted to kings and princes. This is evident concerning Saul and David, whom God established as kings, although Samuel anointed them and the people accepted them. But although God granted Moses, Joshua, and certain other judges and leaders judicial and military power, I do not know whether God gave some of them--such as Moses and Joshua--legislative power. I am certain that the other judges did not possess it, because they were not leaders and could command nothing except in relation to rendering judgments and sentences.”

We must not therefore think that, when an association of human beings comes together as one and chooses a prince for itself, legislative power is also conferred upon him by God as though by a natural direction and consequence. Rather, that power is given only to the community itself as a property consequent upon nature. For when that body has been constituted, the necessity of right and laws, and therefore power, naturally arises; and it is communicated to the prince according to the will and usage of the state.

§ 7. This power cannot be taken away from any association without injury, unless the association itself has given cause. For just as a human being who uses reason is free by nature and cannot be dragged into servitude without the crime of kidnapping, so neither can this political body be deprived of its own right. Therefore a tyrant is more detestable than a kidnapper in proportion as he wickedly oppresses more persons. Nevertheless, a state can be stripped of its right on account of an offense if it abuses that right, attacks its neighbors, or refuses to render justice to those who seek it--just as in any private person the abuse of liberty is punished by servitude. For the public abuse of liberty is more harmful than a private abuse.

§ 8. The power of establishing law, all civil jurisdiction, and the government which either a part of the multitude or one person possesses over the multitude flow from the community itself; nor can they be just in any other way, except over those captured in war. For since that power is from God, and therefore from nature, in the association--not in individuals and not in a particular class of human beings--it cannot pass either to one person or to certain persons without the will of the others. For I am not treating kings established by God through revelation.

Not only does the first of a line of kings receive the diadem from the people, but all his successors do as well, since the people granted the right of succession.

§ 9. No civil law can bind the whole world, because no one is lord of the universe. Bartolus is mistaken at law *Hostes*, *π.*, *On Captives*, when he condemns as guilty of heresy one who denies that the emperor is lord of the world--unless someone should perhaps wish to interpret this as referring to the Roman world. Yet even so I would not wish it to be called a heresy. Nevertheless, Panormitanus, part 2, counsel 6, number 2, Paulus Castrensis, and others hold the same opinion. But very many writers, together with history and geography themselves, teach that it is false; for the Roman never possessed even a tenth part of the world, even when he crossed the Euphrates and recovered the standards from the Parthians. Nor can a Christian emperor establish civil laws for all Christians; for although he is the supreme head of the state in temporal government and is held in the greatest honor among kings, he is nevertheless not the lord of kings.

§ 10. Just as no greater power of establishing laws has been given to supreme governors than was given by the Royal Law--that is, by the consent of the state--so no power belongs to princes and others established under a king except by permission of the supreme prince. This power is extensive for electors and others in Germany but restricted in Spain, for no one except the king can enact laws unless it has been conceded to him by a special privilege. The cause of the difference in law is the less dependent jurisdiction of the princes.

§ 11. The power of establishing and abrogating laws is deservedly judged the foremost among the heads of majesty. For he to whom that faculty has been conceded possesses the right of majesty; one who lacks it is not judged to possess the right of majesty. Deservedly so, for the power of establishing laws is such that it can easily change the whole state and transform it into another form. Augustus accomplished this most artfully by retaining the names and ceremonies of the magistrates while drawing right and power to himself. Thus, in a short time, governors and free magistrates were made slaves clad in purple.

CHAPTER VI

The End of Law Is to Make Men and Citizens Equally Good

§ 1. There is an ancient opinion, both shameful and destructive to the state, that a state cannot be administered without some injustice. For this opinion admits inequitable laws--indeed, demands them--and does not possess as its end the making of good citizens. Rather, the legislator, captivated by a false appearance of it, regards some utility, and will even perform and command detestable crimes if they seem likely to be useful. How much better is Plato, who defines law as a rational method of governing and a true norm which leads us by a suitable way to what is best, fixing a penalty for one who transgresses and a reward for one who obeys. For law is from the highest good, tends toward the highest good, and both leads and draws us to it. Its end is justice; law itself is necessary to the state, is its instructor, and is its director toward what is best.

Cicero explained that end excellently in book 2 of *On the Laws*: “It is certainly established that laws were created for the safety of citizens, the preservation of cities, and the tranquil and blessed life of all; and that those who first sanctioned decrees of this kind showed the peoples that they would write and enact provisions by whose inscription and acceptance they would live honorably and blessedly. Those provisions which were thus composed and sanctioned they evidently called laws. From this it is right to understand that those who prescribed destructive and unjust commands to peoples, since they acted contrary to what they had promised and professed, enacted anything rather than laws. Thus it can be evident that, in the very interpretation of the name *law*, there is contained the force and meaning of cultivating justice and right.”

Plutarch also speaks excellently: in a city some things pertain to what is honorable and others to necessity; the highest and first of honorable things is *τὴν εὐνομίαν*, good order under law; of necessary things, *τὴν εὐπορίαν*, abundance. When he defines law as belonging to honorable things, he plainly judges that inequitable laws, laws commanding depraved things, and laws opposed to virtue in any manner are in no way worthy of so holy a title. For since law is the bond of the city, the foundation of liberty, and the fountain of equity; since the mind, spirit, counsel, judgment, and morals of the city are situated in its laws, it cannot have another end than the best end by which the whole community itself is governed. Therefore, those laws must be judged best which do not chiefly heap human beings with riches, but render them as thoroughly instructed as possible in civilized morals and prudence in civil affairs. Diodorus Siculus, book 1 of the *History*.

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§ 2. In enacting laws, therefore, great care must be taken that they are occupied not with the instruments of life but with the whole of life itself. For the legislator is the craftsman of living; and although he embraces actions individually, they too are nevertheless directed toward virtue. He establishes an error at the very beginning who thinks that laws promise only earthly works: they breathe more loftily and are a gift of God. Just as medicine is established as a cause of health and is praised only if it applies manifold knowledge and a variety of herbs to strengthening and restoring bodies, who would consider someone a physician who arranged everything rightly but nevertheless had no concern whatever for health? The legislator, therefore, will hand down a method by which citizens may easily perform every part of their duties in every matter. Let laws fortify the city and protect security and tranquility, but let them chiefly comprehend the whole of life. For no one will rightly perform those intermediate or indifferent things unless he has an end to which he may refer them. Therefore, the first foundations of justice must be laid and virtue instilled. Seneca, Letter 95: “We must set before us the end of the highest good, toward which we may strive and to which our every deed and word may look, just as the course of sailors must be directed toward some star. Life without a purpose is wandering. But if a purpose must certainly be set before us, decrees begin to be necessary. You will grant, I think, that nothing is more shameful than one who is doubtful, uncertain, and timid, now drawing back his foot and now

advancing it. This will happen to us in all things unless those things which restrain and detain our minds and prevent them from striving with their whole strength are removed.”

§ 3. Even the best laws do not always make good citizens. This is plainly so. Precepts do not always lead to right actions, but do so when a compliant disposition is present; sometimes they are applied in vain if depraved opinions beset the mind. Nevertheless, the legislator must strive, and must strive with the whole mass of the laws. For although he establishes many things excellently, prudently, and holily, if in some part he nevertheless strikes against vice, the whole impetus will roll in the direction in which the slope lies. Although he sees that many things are not done rightly, he must nevertheless hold in his hand the rule to which distorted and projecting things are to be applied, so that even if they are not corrected, they may nevertheless see their own censure and be struck by fear of it, or at least by shame.

“Many violate the laws,” you say; “vices are stronger than the good institutions of the fatherland.” This complaint is ancient. The human race inclines by nature toward vice. How few devote themselves wholly to what is honorable? How few remove the obstacles to good laws? Nevertheless, one must strive in the contrary direction, so that, if sins cannot be removed, at least the fury and course of sinning may be checked. In this way some will be saved, and those who are going to perish will fall more slowly. Medicine holds to its purpose amid so many deaths. It now has more business because bodies have been corrupted by luxury, yet it struggles against diseases. It does not immediately abandon the person whom it sees nearly given up and mourned as dead, but by art holds back his fleeing life and mitigates his torments. Why should a prince not imitate this? Why should he not strive with all his strength at least to alleviate the evils of those whom he cannot persuade to perfect virtue and whom their own obstinacy prevents him from freeing from diseases of the mind? To diminish great assaults of fevers belongs to the art.

§ 4. Once the end has been established, the other things will succeed according to one’s desire. Chief among them is that the means, or rational methods, be accommodated to the end. For just as shoes must be accommodated to feet and a bridle to a horse, so laws must be accommodated to customs—that is, to the disposition of a nation and region. When medicine has prepared excellent drugs, it examines before all things the constitution and temperament of the sick person, lest it cast him down by a remedy that is too strong or fail to move him by one that is too diluted.

Two things especially must be regarded in this matter: first, the disposition of the human beings themselves; next, the progress and increase of virtues and vices.

The legislator will consider the character of the people: whether it is hard, flexible, proud, humble, industrious, idle, frugal, luxurious, fickle, constant, irascible, or calm. Here there is need of great and almost divine prudence, so that there may be *ὁ νόμος καθ’ ὃν τρόπον*, a law accommodated to customs, and precepts suited to actions. I do not mean that the law should be a Lesbian rule and bend itself toward the vices which it ought to overturn, or incite the inclinations of human beings which it is enacted to restrain; for in this way it would go astray at the threshold. I mean that it should lead every nation toward virtue according to its customs, opinions, and affections. Unless it maintains this principle, it will utterly overturn the state. Reason itself teaches this. Asians, Egyptians, and Arabs, a servile race, are governed by the harshest command because they cannot bear liberty, but would turn it toward mutual destruction. The Swiss enjoy a moderated equality and persist in it, except that within the memory of our fathers Zwinglian superstition, when its author sounded the trumpet, enraged some against kindred blood. Italians enjoy an intermediate liberty; and although they appear to be equals, they endeavor to be superiors. Therefore, they flourish under a moderated principate and milder laws. Some peoples approve what others cannot bear. Each must be commanded that one among indifferent things which suits it. It is rightly commanded of a Swiss that he never appear in public unless girded with a sword. For the honorable carrying of a sword is a certain rudiment of war and, lest it be in vain, also animates him toward exercise and the contemplation of war. But to an Italian or Spaniard, because they are *ὀξύθυμοι* and *ἀκρόχολοι*, hot-tempered nations, the legislator will not permit even a dagger. For they will quickly rush to slaughter. At Athens he advised badly who wished the most fickle people to be free; among the Lacedaemonians he advised well, for they were more temperate. Liberty established by equitable laws brought great increases of wealth to

the German cities. Belgium, made very free by the truce, is agitated by perpetual seditions, because its character is settled only under one prince.

The second consideration is skill in observing the progress of virtues and vices. The more people have advanced in virtue, the more easily they are governed, because the road is more easily maintained when one is near the goal. In the correction of vices there is the greatest difficulty, both because they cling tenaciously and give pleasure and because every correction has change joined to it, and change is always hateful. But the more widely vices reign and threaten dangers, the more kinds of remedies must be sought on every side. When diseases are inexplicable and manifold, the physician too must be armed with many observations and kinds of things. He will not drive out bad humors with one assault, but will draw them off gradually, lest he also draw off the sound part. They advise that as much severity be added to the laws as vices have increased. This is a notable axiom, but it must be restricted--namely, to the case in which the vices of a few have increased. For if the vices of all

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have grown strong, they must be treated more gently, lest they overpower the physician. In an earlier age Christian emperors labored to abolish the bloody spectacles for which the Roman world raged. It would not have been safe even for an emperor to intervene in the midst of the fury of those turning their thumbs. What, therefore, must be done? First, provision must be made by law that a private person may not present gladiators unless he gives the citizens an equal value for a public banquet; that no one sell himself to the sword; that a trainer of gladiators may not belong to the number of citizens; that the conveniences of the amphitheater be removed; and that expenditures be transferred to distributions of meat and other gifts. In every way, finally, it must be brought about that that cruel pleasure is surrounded by many difficulties and that minds are drawn toward other things, the atrocity of the crime also being shown. Then, after minds have been prepared to respect what is honorable, those spectacles must be forbidden entirely by an enacted law. I understand these measures to apply when the power of the ruler is not equal to the vices; otherwise, such great savagery should quickly have been removed by a severe edict, as the emperors finally did. But I am speaking of the Roman senate, which, amid so many ambitious rivalries, vetoes of tribunes, and tumults of the people, I do not think was equal to abolishing so inveterate an evil.

In this manner, therefore, if some city or prince attempts to remove the vice of drunkenness from its dominion--and all ought to attempt it unless they wish to be guilty of all the evils arising from it--if they can indeed press the matter through, they will forbid drunkenness and establish a penalty which they will gradually increase. But if they cannot, first they will impose a measure upon banquets by sumptuary laws; next they will prescribe definite laws for innkeepers; and when this vice has been reduced to a few persons, they will mark it with infamy. These observations suffice concerning the end of laws and the general method leading toward the best end.

§ 5. Those persons must not be heard who seem to themselves to have invented a subtle and cunning distinction by which they may introduce license. For they maintain that the end of political laws is to make a good citizen, not a good man. In this the most cunning men stumble childishly. For those who are evil in morals are also evil citizens. How will one who neither takes account of his own life nor prudently administers his household and family be a good citizen and useful to the state, when he is not good for himself? There are evil persons whom desire carries headlong, *ἀσύλλακτοι*, disordered; and they are the more destructive because they cover their poison under a certain appearance and deliver their blow before they are detected. One who is evil in private will never be good in public. Aeschines, *Against Ctesiphon*: οὐκ ἔστι κακῶς κεχρημένον ἄνδρα τοῖς ἰδίοις εἶναι πιστὸν ἐν ἀλλοτρίοις--“It does not ordinarily happen that one who administers his own affairs badly is faithful in the affairs of others.” Certainly least of all in public affairs, which are often neglected even by diligent men. Justinian, *On the Composition of the Digest*, and Leo, Constitution 19, *Cassio*, book 5, support this judgment.

There are nevertheless others who carp at law. St. Paul in Romans 3 calls the law “the law of death,” and in chapter 4 says that it “works wrath,” and in chapter 5 that “the law entered in so that offense might abound.” But this argument

contributes nothing to the present matter. For law does not by its own force or efficacy bring it about that you can follow virtue, but shows virtue, invites you to it by reward, and deters you from vices by setting penalties before you. Hence among the impious offenses are made more serious when they rage at the occasion presented by law.

CHAPTER VII

Law Is Imposed upon a Community for the Sake of the Common Good

§ 1. Jurists ask whether a law can be imposed upon one person alone. I judge this to be a dispute about a name. For most laws are public; the eternal law binds all; and the Digest, *π.*, *On Laws*, law *Iura*, asserts the same: “Rights are established not for individual persons but generally.” A norm too belongs not to one thing alone but to all similar things. When a law seems to be imposed upon a private person, they call it a precept, not a law. But, as I have said, the dispute concerns a name. For whether law is dictated to one or to many, it possesses the same force of binding. If we regard the present mode of speaking, we scarcely call it a law; if that of the ancients, we shall properly call even those measures which pertain to one person laws. Examples are the Clodian Law concerning the interdiction of water and fire to Cicero and concerning not receiving him beneath a roof; the Gabinian Law concerning entrusting the command of the war to Pompey; the Gellian and Cornelian laws concerning the same Pompey; and innumerable others which were enacted even for condemning or absolving defendants.

§ 2. All laws are referred to the common utility. For law is a common precept established for the common utility, so much so that, although it is imposed upon a private person, it is nevertheless referred to the public utility. Aristotle, book 3 of the *Ethics*, chapter 6; Plato, *On Laws*; Plutarch, problem 40. For although the good or evil of a private person is frequently embraced by law, it is nevertheless necessary that the state’s own utility accrue from it. Concerning those measures which are proposed to the community there must be no doubt, for the public good must not be referred to the private good, but the latter to the former. Therefore, the legislator must regard not the advantages of the prince but those of the whole state. For the magistrate exists for the sake of the subjects, not they for the sake of the magistrate. Kings are ministers and must undergo dangers for the state. Even privileges themselves, which seem to derogate from the common good and favor private persons and are therefore invidious, nevertheless flow back to the common good by another route, because it is publicly advantageous for those who have deserved well to be adorned with privileges. But when privileges are given without a legitimate cause, they harm the state according to the circumstances. Some are judged to constitute a certain honor, such as the right to wear a laurel crown or dine at public expense, and other things of this kind which ambition has devised. Others benefit one person in such a way that they burden the rest, such as immunity from tribute and exemption from military service and other burdens. When some are exempted from these, the others are burdened so much the more.

§ 3. When a law is enacted publicly which indeed does not harm the community but harms a private person, and is proposed with this intention--not that provision be made for the state but that damage be inflicted upon rivals--if that law is useful to the state, it cannot be accused of injustice even though it results in the injury of private persons. Nevertheless, the legislator sins and exposes himself to great danger when he prescribes good things for an evil end. But here the seeds of great dissensions are sown, when one part of the state cries that something is not unjust and the prince judges otherwise.

For example, a privilege is given to certain churches that they possess the right of asylum, a right which has in great part been removed in France, Germany, and other places. But concerning privilege let us examine law *Pateant* 4, *On Those Who Flee to a Church*, book 9 of the Theodosian Code, title 45. The law commands that everything within the church as far as its doors be regarded as an asylum. Edward II, king of England, imposed exile after forty days and twelve hours upon an accused person who had fled to a church.

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Augustine excommunicated Count Boniface because he had dragged a suppliant out of a church. Gelasius did the same for the same offense. This privilege, therefore, was customary, that persons might flee to altars and statues of Caesar.

But license turned what mercy established into an abuse. The right of asylum was first given to those places so that slaves might have a refuge from the savagery of masters. For an asylum is a sacred boundary by which security is given to slaves. Euripides, in the *Suppliants*:

ἔχει γὰρ καταφυγὴν θῆρ μὲν πέτραν,
δοῦλος δὲ βωμοῦς θεῶν· πόλις δὲ πρὸς πόλιν
ἔπηξε χειμασθεῖσα.

For a wild beast has a rock as refuge, slaves the altars of the gods, and a city, when tossed by a storm, flees to another city.

There was an abuse which Tacitus describes in book 3 of the *Annals*: “But Tiberius, while strengthening for himself the power of the principate, offered the senate an image of antiquity by sending the petitions of the provinces to the examination of the Fathers. For throughout the Greek cities there had increased the license and impunity of establishing asylums. The temples were being filled with the worst of the slaves. By the same protection debtors against their creditors and persons suspected of capital crimes were received. Nor was any command sufficiently strong to restrain the seditions of a people protecting the crimes of human beings as though they were rites of the gods. It was therefore resolved that the cities should send their charters and ambassadors. Some voluntarily relinquished what they had falsely usurped; many trusted in ancient superstitions or services rendered to the Roman people. It was a magnificent spectacle on that day when the senate examined the benefactions of the ancestors, the treaties of allies, the decrees even of kings who had held power before Roman might, and the religious observances of the deities themselves, free as formerly to confirm or change them.

“First of all the Ephesians approached, recounting that Diana and Apollo were not born at Delos, as the multitude believed; that among them there was the Conchrian River and a place called Ortygia, where Latona, pregnant with her offspring and leaning upon an olive tree which remained even then, gave birth to those deities; and that the grove had been consecrated at the admonition of the gods. Apollo himself, after killing the Cyclopes, had there avoided the wrath of Jupiter. Later, Father Liber, victorious in war, had pardoned the suppliant Amazons who had occupied the altar. Thereafter, by the concession of Hercules when he possessed Lydia, the ceremony of the temple had been enlarged; its right had not been diminished under the dominion of the Persians, and afterward the Macedonians and then we Romans had preserved it.

“Next, the Magnesians relied upon enactments of Lucius Scipio and Lucius Sulla. The former, after Antiochus had been driven out, and the latter, after Mithridates, honored the fidelity and virtue of the Magnesians by establishing that the refuge of Diana Leucophryne should be inviolable. Afterward the Aphrodisians and Stratonicensians brought forward their ancient services to the party of Caesar the dictator and a recent decree of the deified Augustus. They had been praised because they endured an incursion of the Parthians without in any respect changing their constancy toward the Roman people. The city of the Aphrodisians defended the religious observance of Venus, that of the Stratonicensians the observance of Jupiter and Trivia. The Hierocaesareans traced their case more deeply, setting forth that among them was the Persian Diana, with a sanctuary dedicated by King Cyrus. They also recalled the names of Perpenna, Isauricus, and many other commanders who had attributed the same sanctity not only to the temple but to an area of two miles.

“Next came the Cypriots concerning three sanctuaries, of which the most ancient had been founded for the Paphian Venus by its author Aerias; afterward his son Amathus had founded one for Amathusian Venus; and Teucer, fleeing the anger of his father Telamon, one for Salaminian Jupiter. The embassies of other cities were also heard. Wearied by their abundance, and because the parties were contending through partiality, the Fathers permitted the consuls, after examining the right and whether any inequity was involved, to refer the whole matter back to the senate.

“In addition to those cities which I have mentioned, the consuls reported that the asylum of Aesculapius at Pergamum was established. They reported that the others relied upon origins obscure because of their antiquity: the Smyrnaeans upon an oracle of Apollo, by whose command they had dedicated a temple to Venus Stratoniceis; the Tenians upon a poem of the same god by which they had been commanded to consecrate an image and temple to Neptune. The Sardians relied upon a nearer grant, that of the victorious Alexander, and the Milesians likewise upon King Darius; but the cults of their deities were, respectively, the veneration of Diana and Apollo. The Cretans also petitioned for the image of the deified Augustus. Decrees of the senate were made which, although highly honorable, nevertheless prescribed a limit. They were commanded to make bronze inscriptions in the temples as a consecrated memorial, lest under the appearance of religion they descend into ambition.”

But nothing was accomplished by these measures, so much so that Tiberius was compelled to abolish every right of asylum. Thus Tranquillus, *Tiberius*, chapter 37: “He abolished the right and custom of all asylums, wherever they existed.” But the more numerous and more criminal the persons who abused that right were, the more obstinately the people defended them. At Athens, citizens who killed aspirants to tyranny after they had fled to the altar of Minerva were themselves killed by their fellow citizens, because they esteemed privileged superstition more highly than liberty. Thucydides, book 1. The Sicilians spared Ducetius, a traitor to his fatherland, who had fled into a temple. A privilege must therefore be granted slowly, because, although it brings the greatest evils, it is abrogated with the greatest difficulty.

§ 4. Another difficulty also arises because privileges are so fortified that they surround themselves by the very difficulty of abrogating them. They do not cease at the death of the person who grants them. Often those who possess them cannot even renounce them, because they contain the right of another, or magistrates are bound by oath not to yield privileges. Some also have another precept annexed so that they cannot be relinquished voluntarily. Thus, if someone possesses the power of hearing Mass during a time of interdict, he cannot renounce it, because he is bound by another law to hear Mass; and because the privilege has removed the impediment, he is now bound by the law. Next, privileges which are not invidious cannot be removed by prescription; but when others are burdened by them, those persons can prescribe against them, and they set a period of ten years. Third, privileges which are not burdensome to others and in no way prejudice them are lost through nonuse only in the external forum, not in conscience, unless in certain cases the law has disposed otherwise. Fourth, a privilege is not lost, with respect to the whole faculty, through a contrary use, although this may appear to be a tacit renunciation. Finally, it is lost through abuse, as was stated concerning asylum. But in all these matters it is most difficult either to correct the privileged or, after the privilege has been removed, to bring them back under the common law.

§ 5. The abuse of a privilege is manifold.

1. It occurs when in actual fact more is done than was conceded. Thus, when a prince has been given the right to levy soldiers for the defense of his territory, he assembles them against neighbors with whom he can contend by right.
2. It occurs when he turns the use of the privilege into an occasion for crimes; this was stated concerning the right of asylum. We see this even today: very many murders are committed in those cities where asylums have been established for murderers. The citizens defend those asylums so greatly that it seems they can scarcely be removed without sedition.
3. The most customary abuse of privileges is that which conflicts with the end of the privileges. Such today is the privilege in churches by which a two-year course of study is completed at a university. For this it is almost sufficient to have been enrolled at the university and to have passed no night outside the university town; there is very little inquiry into study and morals. A similar privilege provides that those who have arrived by the Epistle, while the office is sung in choir, receive the distributions. This was granted in favor of those who, being occupied, are compelled either to arrive later or to depart earlier. But now the abuse of that privilege is that before the Epistle and after

it they linger in the portico and the church--not without scandal to the Christian people--and suddenly enter at the Epistle, as though they had been hired not to pray but to transact every other business and to seek the reward of irreligious conversation.

Privileges are lost through these abuses. St. Augustine speaks truly in Sermon 247 *On Time*: “By the judgment of the laws, he who abuses a privilege conceded to him is cast down from the dignity obtained by right.” Yet privileges are removed with difficulty and not without a disturbance of the people. One must therefore proceed cautiously, lest they be given. It is not difficult, under the shadow of a privilege, to do many more things than the force of the privilege permits. Finally, I judge thus: one who concedes many privileges and immunities cuts the strength and sinews of the principate, furnishes matter for seditions, and arms citizens and subjects against justice and the state. But since the abuse of privileges is great, it is necessary that one who, by gratifying many, has burdened many should now gravely offend those same persons or their successors.

CHAPTER VIII

The Effects and Offices of Law Explained

§ 1. Theophrastus spoke excellently: **ὀλίγων ἀγαθοὶ νόμων δέονται**. Good persons need few laws. The cause is that in most matters they direct themselves and are taught by nature to do those things which belong to law. Evil persons need very many laws, concerning whom Seneca rightly said: “It is a miserable innocence to be good only according to law.” Virtue, anticipating law, directs the good; law deters the evil from crime and directs them toward virtue. The first office of law, therefore, is to direct the state and all citizens within the state.

§ 2. The second office of law is to command. The essence of law consists in commanding, for it is not law unless it commands. By commanding, it also forbids contrary things; and when it permits indifferent things, it commands that there be liberty in either direction and forbids impediments.

§ 3. Punishment also is an effect of law, about which we must speak later. Modestinus speaks truly in law 7 *On Laws*: “The force of law is this: to command, forbid, permit, punish, and affect with reward.” These things are clear. But we must treat the primary effect of law.

§ 4. The primary effect of law is to bind. Suárez discusses this in book 3, as do many others; but our times have seen those teachers who, by removing the obligation of human law, overturn with great temerity all order and peace in the state and the authority of the magistrate. Concerning this we establish the following.

§ 5. The power of enacting laws is not only from God but also proceeds **ἀμέσως**, immediately, from God. “For there is no power except from God.” This is indicated both by other acts and especially by punishment, which is inflicted upon bodies and above all is death, a power which cannot have been conceded to a human being except by God. But when human beings unite into one political body, they cannot prevent that power from existing among them, for it arises as a natural affection and property. Each person by his own nature is suited to entering a society of this kind; but when the state has been constituted, it is within its power to institute monarchical government, aristocratic government, or the polity of the people. Thus the state possesses power from God first and immediately; magistrates designated by it possess power mediately from God and immediately from the people. By the nature of the thing this power exists wholly in the community first and immediately. Nevertheless, if God establishes a king by revelation and by his command, or if some king has legitimately subdued a state by war, he will not be said to possess power from the people. Yet the power even of other kings is from God, because he approves it as legitimate; next, because he inclined the mind of the state to choose a king; finally, because when the king has been established, he now acts in the place of God, is greater than his own kingdom, commands the state which subjected itself to him, and writes laws. And the saying addressed by the emperor to rebellious soldiers is worthy of an emperor: “It was within their power not to choose; now that they have chosen, they must obey.”

§ 6. This power can exist, and very frequently does exist, even in unjust human beings. Thus long ago the Church and all systems of law judged against Wycliffe and Hus.

§ 7. Civil laws, with God as their author and a faithful magistrate as their director, are directed not only toward temporal but also toward eternal happiness. Civil laws possess as their end the happiness of the whole state, of perfect human society, and of individual human beings insofar as they are its members.

§ 8. Civil law is occupied only with external acts. For internal thoughts and acts of will are judged by God alone and are not subject to a secular court, because by their nature they are hidden. Therefore, witnesses cannot be summoned against them, nor can proceedings be conducted against them by laws; much less does the legislator possess coercive power to compel someone to love, hate, believe, or hope. By what instruments of torture will you compel a human

being to love you? Roman laws therefore rightly establish: “A bare thought must not be punished if the will has not passed beyond the bounds of thought.” For judges correct those crimes of which they possess full proof; they leave thoughts to him who searches hearts and reins, who gave them the precept, “You shall not covet.” Before a judge, one who has not been convicted is innocent. But God, who is present at the actions of hearts, also threatens vengeance upon them: “Woe to you who devise evils in your hearts.” Chapter *Si quis*, 15, question 1; law *Illicitas*, § *Veritas*, *On the Office of a Governor*; final law of the Code, *On Proofs*; canon *Cogitatio* and *On Penance*, distinction 1; canon *Si quandoque*, 15, question 6; canon *Si omnia*, 6, question 1.

§ 9. If, therefore, there is suspicion of a hidden thought, purgation by oath is instituted. Hostiensis, on canon *Licet*, *On Rules of Law*. But if hidden machinations have broken forth, the wickedness of the will is punished, not the outcome. For a will which has become known stands before the judge as the deed. Thus one who endeavors to create unchaste desires is held by law; one who has sought after a virgin is arraigned under the law concerning corrupters. Peter Gregory produces notable examples in the *Syntagma of Law*, book 24, chapter 12, § 12 and following.

Dio Cassius writes that certain men were condemned to death because they had encountered Livia, the mother of Tiberius Caesar, while naked. Nevertheless, she rescued them from death by a pardon, saying that to chaste women such men differed in no respect from statues. Among the islanders of Utopia, to have solicited someone to sexual violation is the same as to have committed the violation. The sacred page relates that Pharaoh was afflicted with many disasters merely for attempting the chastity of Sarah, Abraham’s wife, and Abimelech, king of Gerar, for the same causes. Marcus Claudius Marcellus, the curule aedile, accused Gaius Scantinius Capitolinus, tribune of the plebs, before the people because he had solicited his son for sexual violation; the defendant was condemned upon the testimony of the single person who had been solicited. Metellus Celer, likewise a punisher of an unchaste intention, brought Gnaeus Sergius Silo to trial because he had given money to a married woman. He was condemned, and not the deed but the intention was brought into question. The athletic contest among the people of Vienne was abolished by Trebonius Rufinus during his duumvirate, with Emperor Trajan confirming the measure, because the morals of the people of Vienne were being infected by this effeminate and unchaste contest. And things which give an occasion for wrongdoing must be removed.

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Therefore, a will which has given sufficient signs of a crime is rightly punished, yet less than a will which has been put into daring action, because the latter was more deliberate, more obstinate, and more harmful in evil. For the mind could more easily have corrected things only contemplated.

§ 10. When civil laws command good works or prohibit evil ones, they consequently bind the act of mind and will joined to external obedience in such a way that it cannot be opposed to them. For law is given to human beings as free persons, so that they may act willingly. Thus, when a law of the emperor established that no one except an equestrian might wear a ring, it also forbade anyone to possess a will contrary to the law. For such a will is opposed to the law and therefore belongs to a disobedient person.

§ 11. When a civil law is enacted without the prescription of a definite time, it binds immediately if it is negative; if it is affirmative, it binds when the command of execution presses. It does not, however, bind in those places to which knowledge of it could not morally have arrived. For an emperor establishing a law at Vienna cannot at the same time bind those who dwell upon the Rhine, since they could not yet have suspected anything about the law. It is indeed a law, but it binds only those to whom it has been sufficiently made known; for one who is ignorant of it without fault does not offend against the law.

§ 12. A law must therefore be promulgated. Nevertheless, most persons think that an imperial law does not bind until two months after its constitution. Thus the Authenticum states: “But so that the matter may be declared still more openly, we sanction that, if a law of this kind has been written, it shall have force after two months from the date assigned to it.” Yet they do not extend this to the laws of inferior magistrates.

§ 13. Acceptance of a law is not an ordinary condition for its validity. When a law is just, it must necessarily be accepted by the peoples, for in the magistrate there is the authority and will to enact law and bind subjects. The subject must therefore obey, for violators are immediately punished. Acceptance is an effect which follows obligation; but the effect of a cause is not a necessary condition for the cause to exist or act.

§ 14. Once these matters have been established, there is a great controversy whether civil law not only binds but also binds the consciences of subjects, so that those who transgress it sin against God. For example, by a sumptuary law a prince defines a fixed number of guests at weddings, and likewise the duration and manner of the courses. Titius increases the number, the courses, and the duration. Does he not offend against the law in such a way that he sins?

§ 15. All who profess the Catholic faith agree in saying that civil law also binds consciences. Many heretics deny this; some concede it. In this year 1618, a certain Scharpius, a man of malicious ignorance, attempted by many arguments to persuade others that the laws of princes do not pertain to consciences. But the Apostle Paul himself refutes him most clearly in Romans 13:1 and following: “Let every soul be subject to higher powers. For there is no power except from God, and those that exist have been ordained by God. Therefore, he who resists power resists the ordinance of God; but those who resist acquire damnation for themselves. For princes are not a terror to good work but to evil. Do you wish not to fear the power? Do good, and you will have praise from it. For he is God’s minister to you for good. But if you do evil, be afraid, for he does not carry the sword without cause. For he is God’s minister, an avenger unto wrath against him who does evil. Therefore, be subject from necessity, not only on account of wrath but also on account of conscience. For this reason you also pay tribute. For they are the ministers of God, serving God in this very thing. Render, therefore, to all their dues: tribute to whom tribute is due; tax to whom tax; fear to whom fear; honor to whom honor.”

The same Paul says in Titus 3:1: “Admonish them to be subject to princes and powers, to obey what is spoken, to be prepared for every good work, to blaspheme no one, not to be contentious but modest, showing every mildness toward all human beings.”

Nor is it surprising, since Christ commanded that those things which are Caesar’s be given to Caesar and those which are God’s to God. He himself also paid tribute, Matthew 17:24.

From this a firm and evident argument is taken: God commands obedience to the laws of kings; therefore, one who transgresses them resists God’s command, and one who resists that command sins; therefore, one who violates royal laws sins.

Hence Augustine teaches that those who obey the just laws of princes merit a great reward, while those who neglect them merit a great punishment. Certainly, obedience is owed even to harsh masters, 1 Peter 2.

For since the magistrate enacts laws as a minister of God and exercises a power received from God, in contempt for him the divine majesty itself is contemned. 1 Samuel 8: “They have not rejected you, but me, lest I reign over them.” But if the state established a prince under the condition that he not write constitutions binding conscience, it would not follow from this that no laws bind. For that state together with the king will be able to bind consciences if a law is written for that end by common consent.

Next, the law which commands obedience to princes is natural law--indeed, eternal law. “For this is the will of God,” says the Apostle. But natural law binds conscience. Hence even the gentiles frequently commend obedience. Obedience is the greatest good in the state, in military service, and at home. Xenophon, *On the Lacedaemonian State*; and Augustine, book 14 of *The City of God*, chapter 12: “In a rational creature obedience is in a certain manner the mother and guardian of the virtues.” Who would believe that the greatest good of the state, in a state established by God, does not bind citizens, or that they do not sin if they act contrary to it?

The command of masters over slaves, of a husband over a wife, and of parents over children is not only legitimate but also of such a kind that those who evade it sin gravely before God. In Deuteronomy 21 a disobedient son is

commanded to be killed. Women are commanded to be subject to their husbands; why should citizens not likewise be subject to the magistrate? To obey kings, therefore, is to obey God; to rage against the just laws of kings is to overthrow the power of God. The disobedience of all these persons injures conscience; therefore, every such command binds it.

The nature of law is to bind and direct; therefore, when a law is proposed seriously, it also binds. Otherwise coercive power could often be eluded. For many can escape an external penalty, some hold it in contempt, and most transgress in the hope of impunity. But the Calvinists, although disagreeing among themselves, rise up vehemently against this.

§ 16. Pareus, on Romans 13:5, doubt 7, says that Calvin appears to defend the negative opinion in the *Institutes*, book 3, chapter 19, numbers 15--16, and book 4, chapter 10, numbers 3--5. Beza follows him in his notes, as does Sibrandus, *On the Roman Pontiff*, book 8, chapter 7. Stapleton assails this bitterly as an infamous doctrine in the *Antidote*, page 783. Bellarmine too reproaches Calvin with it in book 3, chapter 9 of *On the Laity*, and says that John Gerson had taught the same before him in lecture 4 of *On the Spiritual Life*.

But among them all John Scharpius pleaded the worst cause most gravely and shamelessly--not the Hercules, as his flatterers call him, but the Cacus of Britain, the Ives of France. Let us therefore examine his arguments.

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Objection 1. God alone possesses right over the consciences of human beings. Romans 1:32 and 2:15; 1 Corinthians 7:25; James 4:12; 1 Peter 4:19; and elsewhere. Therefore, no law except divine law binds conscience.

I answer, first: nothing of this kind is found in Romans 1:32, nor is it there; there is only this: "Although they had known the justice of God, they did not understand that those who do such things are worthy of death--not only those who do them but also those who consent to those who do them." Among the other persons, however, he enumerated those disobedient to parents and those without order, from which the contrary is inferred. Those disobedient to parents are worthy of death; therefore, so are those disobedient to magistrates; therefore, so are those who violate the laws of magistrates. For they do not obey the magistrate but are without order; therefore, disobedience injures conscience.

Second, in Romans 2:15 the gentiles who do not possess the law are said to show the work of the law written in their hearts. He does not say that the gentiles lacked civil law, since they possessed innumerable laws, but denies that they had received the law of God under which the Jews lived. Much less does he indicate that their consciences were not bound by civil laws.

Third, in 1 Corinthians 7:35 the Apostle denies that he wishes to cast a snare upon the Corinthians. He is treating the preservation of virginity and declares that he is not establishing a precept but giving counsel. But what sort of reasoning is this? Paul does not give the Corinthians a precept to preserve virginity and does not cast a snare upon their consciences; therefore, the laws of kings do not bind subjects in conscience. Would anyone who observed any law of argument speak in this way? What has the liberty of counsels to do with the necessity of precepts?

Fourth, James 4:12: "There is one legislator and judge, who can destroy and deliver." But what has this to do with the olive trees? The Apostle admonishes them not to judge the law but to do it, because there is one legislator and judge. Yet it is not thereby proved that there are no other legislators, just as it is not proved that there are no other secondary judges. If there are other legislators and judges, but secondary ones, then there are also laws and therefore obligation.

Fifth, 1 Peter 4:19 says: "Let them commend their souls to the faithful Creator in good deeds." What follows? Are they therefore not bound by the laws of their princes? The soul is commended to God by obeying magistrates. "But God alone possesses right over consciences." Certainly, in the same way God alone possesses right over bodies and fortunes, yet he has communicated that right to others: he commanded some to reign, command, forbid, and punish, and commanded others to obey. When he gave makers of laws, he willed others to obey. The first and supreme right is in God; in God's vicars, kings, there is a participated right, just as in parents, teachers, and husbands. A prince can

therefore bind in what they call the forum of conscience, the forum of God, because God commanded that he be obeyed.

But it is preferable to answer the French minister from the opinion of another minister. Pareus, on Romans 13:5, doubt 7, objects thus: "Conscience regards God alone." He himself answers: first, conscience regards not only God but also human beings, as Paul testifies in Acts 24. Second, conscience regards civil laws, not as such, but as enacted by a minister of God and fortified by the authority of the general divine precept, "Honor your father," and so forth.

Pareus objects secondly: "To bind consciences belongs to divine law alone and therefore not to civil laws." He answers: "The fallacy of the non-cause. For God binds consciences either immediately, under the character of worship, through divine laws, or mediately, under the character of discipline, through the laws of his ministers," and so forth. By the judgment of his own people, therefore, that Calvinist who attacks the Most Christian king of France with these sayings is refuted.

Objection 2. Human law often must not be obeyed on account of conscience, Daniel 3 and 6. But divine law must always be obeyed on account of conscience. Therefore--

I answer: from this nothing against the truth is established, but only ignorance. For what sort of argument is this? Impious laws commanding idolatry must not be obeyed; therefore, the upright and useful laws of princes do not bind conscience. Augustine speaks very differently in Letter 50 to Count Boniface: "When emperors establish evil laws on behalf of falsehood against truth, those who believe rightly are tested and those who persevere are crowned. But when they establish good laws on behalf of truth against falsehood, those who rage are terrified and those who understand are corrected. Therefore, whoever refuses to obey the laws of emperors which are enacted against the truth of God acquires a great reward. But whoever refuses to obey the laws of emperors which are enacted on behalf of the truth of God acquires a great punishment."

When we say that laws must be obeyed, we are speaking of just laws. But if one reasons correctly who says, "Human laws often must not be obeyed; therefore no human law binds conscience," I do not see why we should not argue in the same manner: "A human magistrate must often not be obeyed--namely, when he commands depraved things; therefore, no commands of a magistrate bind conscience; therefore, there is no need for power, nor is a soul subject which can oppose him and even resist if he wishes to enforce his commands by punishments."

Objection 3. Laws of conscience cannot be changed, just as neither conscience nor God can be changed. But human laws are various and mutable. Therefore--

I answer that this argument too belongs to ignorant malice. It has neither the form nor the matter of a syllogism. For if it is to be put into a legitimate form, the argument must be made thus:

No law of conscience is mutable.

All human laws are mutable.

Therefore, no human law is a law of conscience.

But the major premise, understood in this manner, belongs to the Manichaeans and removes nearly the whole Old Testament, for the ceremonial and judicial laws were changed. The general law of conscience remains unmoved: evil must be avoided and good sought; nothing must be done contrary to the dictate of conscience. But particular laws which at one time bind conscience are frequently changed. Formerly, unless a soul was circumcised, it was destroyed from among its people; but now the law says, "If you are circumcised, Christ will profit you nothing." Behold, one law contrary to another: a mutable law, but an immutable God, who from eternity immutably decreed to change the law at the appointed time, to abrogate the old, and to enact the new. If Scharpius pursues this argument, therefore, he will suddenly establish that the old law of God did not bind consciences.

Objection 4. Political power is temporal and concerns external things, not internal ones, and its end is external peace. Therefore, it cannot produce a spiritual effect, that is, bind conscience.

I answer that political power is of itself occupied with external matter and therefore cannot of itself and directly introduce a spiritual obligation in a spiritual matter. Nevertheless, because honorableness and baseness can be found in external and temporal things, temporal law can introduce obligation in that matter. For it is a participation in divine power. Pareus answers weightily: “It is the same fallacy”--of the non-cause--“for although the magistrate may not intend by laws to bind consciences, nevertheless the conscience of subjects senses itself bound to obedience under guilt on account of the general command of God: ‘Honor your father and mother.’”

Yet he errs in this matter, for in reality a magistrate often enacts a law in such a way that he does not wish to bind consciences, and if he does not wish to do so, it does not bind. For the right of a law does not extend beyond the will of the legislator. Pareus himself testifies that a magistrate sometimes wishes to bind, though amid so great a rhapsody he is little mindful of himself. On Romans 13:5, doubt 7, proposition 5: “Civil laws by which a prince intends not only to make known or show what must be done, but seriously to command and to bind transgressors to guilt, bind consciences in particular and of themselves under mortal guilt and offense against God.”

The disagreement lies here. But the affirmative reasons contend validly for this position, and especially the determination of the Apostle: it is necessary to obey not only on account of wrath but also on account of conscience. The reason is evident: violation of a particular law necessarily carries with it violation of the general law concerning obedience toward the magistrate. But violation of the genus injures conscience. Therefore, so does violation of the particular law. It therefore binds conscience. These are truly the words of Pareus.

But Scharpius’s own reasoning destroys itself. He says that the end of political power is external peace. But we are bound in conscience to external peace and therefore to those things without which that peace cannot exist. Yet external peace cannot exist without laws, for laws are the bond of citizens with one another and with the magistrate. Laws therefore bind conscience.

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Objection 5. Political power cannot inflict a spiritual punishment or absolve from it; therefore, neither can it bind conscience spiritually.

I answer that the punishment of some transgression can be understood in two ways. First, an altogether spiritual punishment may be imposed for violation of a command. Political power cannot do this, for it cannot inflict upon contemners of its laws a spiritual punishment such as suspension, interdict, or excommunication. Yet it can inflict a punishment through a certain consequence, because it can bind to guilt. For since God wills the magistrate to be obeyed, there is no doubt that the violator of the divine order incurs a spiritual punishment--not so much by the force of the human precept as of the divine precept, which is condemned through violation of the human one. Let the elder Eurystheus, his parent, teach the young Hercules.

Nor is the knot loosed or tightened by saying that the magistrate must be obeyed on account of conscience, not because he can enact laws for consciences, but because with a safe conscience you cannot resist him to whose power God subjected you. For by this very statement it appears that consciences are bound by the laws of the magistrate, because it is not lawful to resist them on account of God. To resist the magistrate is to resist his laws.

Objection 6. Political power cannot absolve conscience from an offense; therefore, neither can it bind.

I answer that in *votis*, vows, and laws it is not required that one who can bind must also be able to absolve. By a vow, contract, or stipulation anyone can bind himself, but he cannot absolve himself. Suárez says that this is true when the obligation is not imposed directly. Nevertheless, that general proposition can be true in this manner: whoever can impose the obligation of a law can also remove it. First, just as the legislator can establish a law which binds consciences, so he can remit that obligation either by abrogating the law or by indicating that his intention in this

matter is to direct subjects but to bind no one's conscience. He can also dispense from his own law, provided this can be done without injury to a third party.

It is not necessary, however, that after the law has been violated he be able to remit the whole guilt. For if the just law of a viceroy is violated, not only the dignity of the viceroy but also the royal majesty, from which the authority of the inferior magistrate comes, is injured. The viceroy can remit his own injury, but not the king's, unless he has received special power concerning that matter. So too must it occur in these cases. One who transgresses a civil law is held under liability to the punishment which the magistrate established, and the same magistrate can remove that punishment. Yet he cannot bring it about that the person did not commit an offense, nor can he remit that guilt and punishment which pertain to God, for this is the power of a higher order. The transgressor acted against this will of God, which wills him to obey not only on account of wrath but also on account of conscience.

Thus the commands of parents bind the consciences of children, yet parents cannot absolve the disobedient from the offense. This belongs to divine right.

Objection 7. If civil laws bound no less than divine laws, then human laws would have to be obeyed no less than divine laws, and no one could exempt himself from the observance and punishments of human laws, because no one can exempt himself from divine laws. For where there is an equal reason, the same right ought to obtain. But the Papists teach that the latter is false when they contend for the immunity of clerics.

I answer that the question is not about equality between the obligation in divine laws and that in human laws. Divine laws bind more strictly, because they are always not only just, useful, and holy, but are also certainly known to be such. Next, in violating them divine majesty, from which they proceed immediately, is injured more greatly. Third, divine laws bind everyone; human laws do not bind everyone, because some are exempt from the jurisdiction of a political magistrate. All are equally subject to God. But just as God can exempt some from his own positive law, so too can a magistrate exempt some from his law, for someone can be given a privilege by which he is not held by a law.

Objection 8. If ecclesiastical laws do not bind conscience outside a case of scandal and contempt, then civil laws do so much less. But the former was proved above. Therefore--

I answer that we argue the contrary: if civil laws bind, ecclesiastical laws bind much more, as we shall teach in their place. The conflict between Scharpius and Pareus is extraordinary. Scharpius says that ecclesiastical law does not bind and concludes from this that civil law binds much less. But Pareus deliberately defends the contrary: ecclesiastical law does not bind for the reason that civil law does bind.

We have long experienced more than enough how much confusion this opinion produces, especially in the Roman Empire. Those who have imbibed these opinions think that neither the sentence of judges nor laws must be observed.

Objection 9. No law enacted by a human being, as such, can bind conscience, because a law extends no further than the legislator.

I answer that human law binds absolutely and that consciences are held by human laws. Whether they bind as human laws is not a question of morals; yet to deny it is contrary to good morals, since human magistrates, as such, possess the right of commanding and enacting laws. Thus this was formerly censured in Gerson, because he said that human law does not bind insofar as it is human, but insofar as it is a degree of divine law, lecture 4, corollary 4. Deservedly so. For the meaning is that the obligation to obey is founded not upon the power

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of the legislator but upon our reasoning, by which we deduce that the law which we obey is derived from divine or natural law. When this deduction is brought into morals, it must disturb the state; for according to the varying capacity of human beings, that derivation will be established variously. Next, an examination of all human laws will be undertaken by everyone, and the power of kings will be restrained according to the doubtful and most frivolous

deduction of restless human beings. Finally, how much license is here conceded to the most cunning subtleties of legal instruments? They will compare contrary laws and will set before the laws by which they are governed other laws differing from them in any manner whatsoever. It must therefore be said that obligation arises from human power and consequently that the law of human power, even as such, binds, for even as such it possesses its whole force from God because it possesses it from the vicar of God. For the rest, it is not fitting to argue so subtly, lest real tumults arise from false trifles.

Objection 10. Human law establishes a means remotely, or mediately, toward an end, and a means for preserving human society invented by human thought, in which it often errs. Therefore human law, as such, does not bind conscience before God.

I answer that a knot is being sought in a bulrush. Although Pareus and Calvin appear to think in this manner, Pareus, by dissenting from the others, sufficiently shows that he thinks human laws bind of themselves, in proposition 5 cited above. But the French Hercules indicates his meaning through other things which he teaches unsuitably: namely, that they do not bind because they do not command acts of the virtues, as he says in his response to objection 4. And in response to objection 5 he says: "Next, the laws of kings bind conscience only when they promulgate those things which God has commanded." According to his opinion, therefore, whatever the king commands, unless God has commanded it beforehand, will be rejected with a free conscience. Nor must scandal be feared, because no one is rightfully scandalized if another exercises his own right. Therefore no Calvinist instructed in this heresy will be bound to obey the king unless the king shows his law plainly in the sacred Bible. What could be more seditious than this? Finally, if divine law is promulgated by royal law, it receives no new obligation beyond that which it possessed before. For if the king possesses no jurisdiction over conscience, no new obligation will be added even when he enacts divine law.

At last Scharpius, forgetful of what he has disputed, draws this conclusion in his response to objection 7: "We are commanded to obey the magistrate on account of conscience. Therefore--" He answers: "The inference is denied, because the Apostle treats only those who condemn and spurn the magistrate and withdraw themselves from obedience to him. Next, this is said with respect to the authority in commands which is from God, not with respect to individual laws. Finally, civil laws do not bind of themselves, because the necessity of observing them does not consist in the things commanded but depends upon the authority of the magistrate and the general end of laws."

These are so many arguments against himself. First, Paul reprehends not only contempt for the magistrate but disobedience. He wills obedience on account of conscience. But when someone does not obey a law because he thinks there is no power of binding, he condemns the authority of the magistrate. Second, he says that obedience is owed with respect to the authority which is from God. But this is sufficient, for that authority has been communicated by God to magistrates; therefore obedience is owed with respect to the authority given to the magistrate, and therefore with respect to individual laws insofar as they possess authority from the magistrate. It makes no difference that civil laws concern indifferent things, for many laws of God concern only means; yet when they are commanded by God, they cease to be indifferent, for they become necessary. So too these indifferent matters of civil laws, by reason of the power which God conferred upon the magistrate, are necessary means for preserving human society.

And at last he admits this when he says: "Because the necessity of observing them does not consist in the things commanded but depends upon the authority of the magistrate and the general end of laws." If necessity depends upon the authority of the magistrate, then that authority constrains consciences, upon which it imposes the necessity of obeying. He therefore appears to hold a milder opinion than he had declared in words--if, indeed, he knows what he thinks. For heresy draws him toward depravity, reason toward truth.

In question 1, where he asks whether it is lawful for a magistrate to establish laws, he answers that it is lawful and proves it by these arguments:

1. Princes are called legislators, Proverbs 8:11 and Isaiah 33:22. Therefore--

2. If Christians can be kings, then they can also establish laws, because supreme magistracy and **νομοθεσία**, legislative power, necessarily cohere according to the rule of law: when jurisdiction has been conceded, those things without which it cannot be exercised are conceded. But the former has been proved above. Therefore--

3. A law is nothing other than the command of a king. Therefore, if kings can command, they can also enact laws.

4. Christians are human beings and therefore citizens of a state. They must therefore possess a rule of civil actions. Natural law is insufficient as the rule because it shows only certain general principles, and evangelical law is insufficient because it treats only divine matters. Human law is therefore necessary.

5. If it were not lawful for a Christian prince to bind the people by laws, this would be because it is opposed to Christian liberty. But the latter is false, because Christian liberty is opposed only to the slavery of sin, to which a just law is also opposed. Next, what possesses its foundation in integral nature is not opposed to Christian liberty. But every just civil law is such. Therefore--

§ 17. From this a firm argument, necessary for peace, is deduced. Princes are legislators; therefore, they can bind subjects. Second, **νομοθεσία**, or the power of enacting laws, is connected with jurisdiction; therefore, it binds as jurisdiction does. But jurisdiction binds in conscience; therefore, so does **νομοθεσία**. For if a judge is bound in conscience to judge according to civil laws, subjects are also bound to obey. The example is clear.

Immovable things are acquired by usucaption among persons present in ten years, and among persons absent in a period of twenty years. §1 *On Usucaptions*; the single law *On the Transformation of Usucaption*. A judge is bound in conscience to judge according to this law and adjudge the property of Gaius to Titius if Titius has acquired it by prescription. There is no one who would not judge a judge deciding otherwise impious, unjust, perjured, and a robber. His conscience is therefore held by human law, for divine law did not define periods of usucaption. But if the necessity of judging in this manner rests upon the judge, Gaius will be held by the same necessity to obey and will act against conscience if he does not obey, since the necessity of judging according to this law and that of abiding by the judgment are reciprocal. Thus the whole force and determination are in human law, though derived from divine law.

But if Gaius is a Scharpian Calvinist, he will be able to obstruct execution by any means, for he will judge that law and judgment have nothing to do with conscience. Secretly or openly, now or later, whenever his strength gives him opportunity, he will go to recover the property. Thus the war could be just on both sides: Titius will retain the property by the privilege of the matter adjudged, while Gaius will say that without guilt he can resist the judgment of human law.

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If, therefore, **νομοθεσία** is connected with jurisdiction, human law binds consciences. One who teaches otherwise introduces sheer brigandage and the overthrow of the state in place of legitimate judgments.

§ 18. I refute Scharpius from his own words as well. If a law is nothing other than the command of a king, and a command must be obeyed on account of conscience, then a law, which is nothing other than the command of a king, must also be obeyed. But a king is bound to command many things, and therefore a subject is bound to obey them. What the king is bound to demand, the subject is bound to furnish. Besides natural and evangelical laws, human law is necessary. If the law is necessary, obedience to it is therefore necessary. For it is ridiculous that in a city some law should be necessary for the city's safety, yet the observance of a necessary law should be optional and every citizen should be able to violate the necessary law.

Finally, if a just civil law does not obstruct Christian liberty, if it has its foundation in nature, and if a prince can bind his citizens, who would doubt that consciences too can be bound?

Nevertheless, these statements conflict with what he teaches in question 3 *On Antichrist*: that Christ does not wish our consciences to be pressed by this yoke. He speaks generally of the Church and secular princes. And argument 10 says:

“A human being cannot condemn someone to hell; therefore, he cannot bind conscience to observe a law under penalty of eternal death.” As though a human being endowed with divine authority could not do this. For if someone sins against the law, he has already condemned himself. Thus it is not the father but God, the avenger of disobedience, who consigns a rebellious and contumacious son to hell.

CHAPTER IX

Not All Laws, Even Just Ones, Bind Consciences; Some Bind Unequally

§ 1. Civil laws sometimes bind immediately only to punishment, but not to guilt. On this point there is some disagreement among theologians. Some contend that every law which commands or forbids binds consciences, because in every law there is power together with a will to bind, and in its violation there is disobedience, which is a sin. Thus they think that it is not even within the power of the legislator not to bind if he wishes to enact a law. Others maintain that it can happen that a legislator truly commands, and does not merely ordain or direct, and yet the transgressor does not sin, because the legislator can will not to bind him to guilt but only to punishment. It is a true law, and yet the transgressor is not held by guilt.

For example, there was an ancient law of the Venetians that a fine should be imposed upon one who built the curia--which was then humble and in no way equal to the dignity of the state--with greater magnificence. One of the doges demolished the old building and raised a beautiful structure worthy of so great an assembly. When accused, he willingly and readily paid the fine. He did not sin by that magnificence, for it was not the intention of the state to bind him to sin, but through fear of punishment to preserve the frugality of the fathers.

I said “immediately,” for in reality that law too touched conscience: after he built the palace, he was bound in conscience to pay the fine. Many laws of religious orders are of this kind: they do not bind to guilt but only to punishment, either definite or indefinite. For the whole obligation depends upon the intention of the person commanding. The transgressor is compelled to sustain the punishment, because otherwise there would be no reason for compelling him if he were held neither by conscience nor by punishment.

§ 2. We have described that law according to common usage. For if we cut the matter to the quick, that whole law binds conscience, and the person who performs the deed to which the punishment is annexed--whether it is called a punishment properly or analogically--does not properly offend against it. Rather, the one who transgresses the whole law does so; that is, he both performs the deed and refuses the punishment. For the law is: “Either do not build, or pay the fine.” Nor is it necessary that the law always be enacted in that disjunctive form. A law can be established absolutely with the intention that it bind only to punishment.

In our Society there is a law that those who leave the house write their names--which are inscribed on a tablet near the door of the house--and inform the doorkeeper where they are going. No punishment is added, nor does the legislator declare that guilt is absent; nevertheless, because at the beginning he declared that he did not wish to bind anyone’s conscience, one who omits these things does not sin. Thus, whether a law is purely penal or mixed, it will sometimes not bind to guilt. It is agreed that a purely penal law, which says only, “Whoever does this shall undergo this punishment,” does not bind. Concerning a mixed law, which truly commands or prohibits something and assigns a punishment to the transgressor, the matter too is clear: when by the command the legislator wishes to bind in no way other than to punishment, there is therefore neither a will to bind otherwise nor disobedience until the punishment is refused after the deed.

§ 3. A law founded upon a presumption of fact which is false does not bind conscience. For example, if Gaius secretly married a woman and afterward celebrates solemn nuptials with another, in the external court judgment is rendered in favor of the second marriage because witnesses and all the proofs of marriage are present, and because he is presumed to lie about the prior marriage and not to have deceived publicly. Yet in reality he is bound to the former spouse.

If a presumption is founded upon fear of danger, the law binds even though in the particular case the rationale of the law ceases; it must nevertheless be observed on account of the common good. There is a law that no one make religious profession before completing his fifteenth year, for it is presumed that this would be done rashly from

weakness of judgment. Thus, although it is done with mature judgment and prudence, it nevertheless does not bind, because the law, which regards ordinary dangers, renders the profession altogether invalid.

§ 4. Human law sometimes binds under mortal sin. For since it belongs to divine and natural right to obey just laws, the matter and circumstances can be of such a kind that transgression is judged grave and harmful. Whether a transgression is a mortal sin cannot be gathered from the words of the law alone, from the intention of the legislator, or from the severity of the punishment, but from the gravity of the matter. For since the intention of the legislator ought to be just and reasonable, he ought gravely to bind consciences only in a grave matter in which a great interest of the state is involved. But when the cause is grave, the legislator cannot bind under venial sin, because the transgression is grave by the nature of the matter.

For example, when a sumptuary law has been established and the manner and duration of courses defined, if someone violates it publicly, the act can redound to great evil for the state. But if contempt either for the legislator or for the matter of the law is added, the sin will be greater. Contempt for God is always mortal; contempt for human law in a small matter is venial; contempt for the civil legislator on account of human defects is sometimes venial and sometimes mortal. But if he is condemned insofar as he is a superior, or by reason of the power itself, the guilt is always mortal, because this contempt is insulting to divine majesty

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and its ordinance.

§ 5. Civil law can bind even with danger to life. This is seen especially in war. A soldier must not desert the ranks even if he sees that he must die. The state can command this fortitude, for if it could not, insufficient provision would have been made for the common good and defense. That defense certainly belongs to natural right, but the magistrate can assign it to particular human beings and send these or those legions, cohorts, and squadrons into evident dangers. By military law they are compelled to obey.

§ 6. The observance of a law binds with danger to life when more utility redounds to the state from its preservation than from the life of the person held by the law, or when transgression of the law is more destructive to the state than the death of a citizen. That rule is commonly approved. In it we must consider first that the danger in question be true and certain; next, that there is the greatest difficulty in judging whether the good or evil is greater.

For there are many whose life does not greatly benefit the state and indeed appears even to burden it. For what benefit to the state is a leper who is also a beggar? How easily can a public good be found greater than his life, and a loss more grave than his death? Thus the matter must be determined not only from the public good considered precisely, but also from the private good or evil of the person who is a part of the state. For it pertains to the good of the state not to be prodigal of its own blood. Nor is the sin in this matter slight, especially on the part of commanders in war, when for the sake of a small advantage they expose a soldier to great dangers. “Who could endure an ignoble village being purchased with the blood of so great a king?” the Macedonians cry. Who does not see that Drances spoke rightly?

Let the royal bride, of course, fall to Turnus,

While we, cheap lives and unburied bodies,

Lie scattered over the field.

What, then? At night enemies drive away herds stalled before a city. A leper sees them--an infirm old man, burdensome to the state. If he is silent, his silence causes public loss; if he cries out, death stands before his eyes. But there is a law which commands that the approach of an enemy be reported. I judge that even if the old man's life burdens the state rather than benefits it, and the loss of the driven-away herd is great, nevertheless the old man is not bound to act with danger to his life. Rather, so great a good for the state, or so great an evil, is required that, all things considered, the matter is worthy of one for which a prudent person would lay down his life.

In this matter the following must especially be observed: in a well-constituted state there must be the greatest charity toward individual citizens. For just as we do everything to avoid cutting off bodily members, so too the life of every individual citizen ought to be highly commended. No one is bound to undergo death for a neighbor's cattle, nor can the state command it. For the protection of individuals, even the wretched, pertains to it, and it is of concern to all that the afflictions of no one be exposed to injury.

CHAPTER X

Penal Laws Are Necessary and Bind in Various Ways

§ 1. Very many human beings are restrained in their duty neither by kindness nor by benefits. Dio speaks rightly: “Human beings endowed with so evil a disposition are overcome by no benefits, since these persons prepared snares for him from whom they had received such great benefits.” For so many evil persons, therefore, as for the sick, the medicine of legal punishments must be prepared.

Hence punishments are so frequent in the state, because very many are evil and must be restrained by fear of punishment. This was so little hidden both now and formerly that Seneca insulted the human race to applause when he said: “He who hates the evil hates everyone.”

In punishment, therefore, care must be taken that it look to the future. For just as one is not worthy of the name of physician if he torments the sick person with loathing for medicines or the pain of cutting and burning because intemperance has afflicted his health, rather than in order to heal him, so too must the legislator act. For no prudent person, as Seneca says in chapter 16 of *On Anger*, punishes because a sin has been committed, but lest it be committed. Past things cannot be recalled; future things are prevented. Those whom he wishes to make examples of wickedness ending badly he will kill openly--not only that they themselves may perish but that by perishing they may deter others.

§ 2. There were eight kinds of punishments, themselves distributed into various forms: loss, bonds, blows, retaliation, ignominy, exile, servitude, and death. All the same forms are still in use, and in so great a variety of torments they all represent to us the severity of the future judgment.

§ 3. I think that three things must be observed in these matters. First, grave punishments must be established by laws, for they are fit to terrify. If human beings commit those things for which punishments have been established, they will commit much more those for which there are none. Great harms are introduced when, through confidence in impunity, they boldly perpetrate evils.

Next, no one's power or services toward the state should be so great that he is exempted from the punishments of laws. Unless this is observed, he will become insulting and injurious, judging license to be the reward of his virtue.

§ 4. Clemency must always temper the punishments of laws according to the circumstances of persons. But let us now treat the obligation of penal laws.

The following rules can therefore be established concerning them.

Rule I. A penal law binds the judge to punish the defendant according to it. For he ought not to judge laws but to judge according to laws.

Rule II. Another law can be enacted which binds to punishment before sentence, as do certain censures of excommunication and irregularity.

Rule III. This does not occur when a law threatens punishment or uses a verb in the future tense. But when it is said that punishment is incurred by the deed itself, or from that time--which is not customary in civil laws--the punishment binds conscience before condemnation by the judge. This is much more so when an express clause indicates that the punishment has already been incurred, as frequently occurs in deprivations.

Rule IV. After sentence has been rendered, the defendant is bound to undergo the punishment patiently, without resistance.

Rule V. Indeed, if some action by the defendant is necessary for the punishment, he is bound to it. Even when he has justly been condemned to death, he is bound to leave the prison for the place of punishment and not to fight against the ministers of justice. When prison, exile, or a fine is decreed, he is also bound to execute it.

Rule VI. A law which renders acts invalid can bind conscience so that they are not performed otherwise than according to the form which it prescribed. Yet it does not always prohibit performance of the act, for someone can perform an invalid act;

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in many cases, however, it is in no way lawful.

Rule VII. Laws always have this punishment annexed: acts done contrary to the laws--indeed, without the solemnity of the laws when the laws require it for the substance of the matter--are invalid. The law of Theodosius concerning decurions was enacted and concludes thus: "For we will that no pact, no agreement, and no contract be regarded as having been concluded between those who contract when the law prohibits them from contracting." Yet in civil law such a contract becomes invalid only when this is declared by a sentence.

Rule VIII. The supreme prince, who possesses the right of tempering laws, has power to moderate punishment. Indeed, every punishment is discretionary for the supreme prince, as Baldus says on the final law *On Senators*. But this must be understood in such a way that he does not depart from equity and just severity.

These rules generally contain those things which pertain to the judge and the defendant. Meanwhile, jurists treat punishments variously. It must be noted that they are imposed sometimes by canon law and sometimes by civil law, although they are often the same.

§ 5. The first punishment is **νουθεσία**, admonition. It is usually private and the mildest, when the obligation of someone's duty is recalled to his mind. This is followed by another admonition called **παραίνεσις**, which has rebuke joined to it, called **ἐπιτίμησιν** in Greek. In Synesius there is: **νουθετήσας οὐκ ἔπεισα, ἐπιτιμήσας ἠρέθισα**--"By admonishing I did not persuade; by rebuking I provoked."

Κόλασις is vengeance rendered to the state, and it regards the correction of the person punished. **Τιμωρία** is rendered to the person who was injured. Thus Aristotle, book 1 of the *Rhetoric*: **ἡ κόλασις ἔνεκα τοῦ πάσχοντος· τιμωρία ἔνεκα τοῦ ποιούντος, ἵνα ἀποπληρωθῇ**. Correction is punishment for the sake of the person who suffers it; retribution is for the sake of the person who exacts it, namely, that the punishment be fulfilled.

The state should direct great care to ensuring that judges do not neglect that form of punishment by which they make satisfaction for the losses or injury of others. For injured persons in reality turn their hatred against the prince, as Pausanias did against Philip, if they perceive that justice is denied them.

§ 6. The forms of punishments which are referred to those eight kinds are various.

First there is infamy, when someone's reputation is marked. Among jurists, reputation is the condition of unimpaired dignity approved by laws and customs. When it is diminished or removed, the person who has been marked is rendered infamous, and every gate of dignity is closed to him. Law 2 *On Dignities*; law 12 of the Code under that title. Infamy is either of law or of fact; infamy of law belongs either to canon or imperial law. Under canon law, murderers, evil-doers, thieves, sacrilegious persons, robbers, adulterers, incestuous persons, poisoners, perjurers, false witnesses, and others like them are infamous, as are heretics, actors, plunderers of ecclesiastical goods, calumniators, and simoniacs. More persons are infamous under civil law, although not all are infamous under both systems.

Next is deposition or degradation, whether from an office, a benefice, or a rank; confiscation of goods; confinement in a monastery; prison; condemnation to public labor or the mines; servitude; and exile. All these are of various kinds.

In this class care must be taken that persons who can avenge themselves and harm the state are not punished by infamy or exile. Greece and Italy have experienced this.

Next, another grave and useful kind of punishment, extremely customary in former times but now rare, appears altogether worthy of restoration: condemnation to the mines, to public labor, to service in a public work, to saltworks, sulfur works, or sand pits. Women were condemned to service. Now almost the only remaining kind, and not even in all places, is condemnation to the galleys, and elsewhere to various labors. If the other punishments also were renewed in place of temporary or perpetual prisons, the auction block, public chastisement, branding, mutilation of ears, and exile--which now, amid divided territories and so great a multitude and rivalry of dominions, neither constitutes a great punishment nor presents a danger--if, that is, laborious punishments which recall the mind to duty were renewed, fewer crimes would be committed and the state would be aided in expense. But I shall treat this elsewhere.

CHAPTER XI

It Is Best That Laws Be Few

§ 1. At the beginning the Roman city possessed few laws, as did all states at their origin; afterward, as morals declined toward worse things, the laws increased together with the vices themselves. Certainly very few laws of Romulus and the other kings are enumerated, although it is probable that they were in great part abolished through disuse and hatred of the kings. The laws of the Twelve Tables followed; from them law was pronounced for a very long time and with great constancy, as Cicero in the *Brutus* and *On the Laws*, and others, demonstrate.

Afterward, when the city and likewise lawsuits had increased, there was added the praetorian volume of edicts. Servius Sulpicius, most learned in law and justice, wrote two books *On the Praetorian Edict*, for so they called that book, and left nearly one hundred and eighty books. Yet Aulus Ofilius appears to have composed the Edict most diligently. But even then they labored under laws and vices. For Julius Caesar intended to reduce the civil law to a definite form and from the immense and diffuse abundance of laws to bring together all the best and necessary provisions in very few books. Thus even then there were many books and laws, which wicked human beings abused for sowing discord and lawsuits.

Vespasian followed, who had some regard for justice. For from Augustus down to him a certain rage for accusing, calumniating, and overturning everything had grown strong. When the succession of lawsuits had everywhere increased so greatly that, as Suetonius says, the lifetimes of the litigants scarcely appeared likely to suffice for completing them, Vespasian chose by lot persons to decide extraordinarily and reduce to the shortest number those cases.

But justice was tossed violently until the time of Hadrian. For the praetors possessed great and almost excessive power: they published edicts and pronounced law according to them. Yet there was great care for justice, because soon afterward they could be accused of injuries and punished by law if they had issued an inequitable edict or judgment. But through civil wars and then the rule of monsters among human beings, the license of the praetors became more unpunished, because those who held power were companions of thieves. The chief occasion for wrongdoing was that law was pronounced variously. Hadrian therefore approved the labor of the jurist Salvius, who composed the Perpetual Edict, and commanded the praetors to pronounce law from it. Nevertheless, codes of laws were soon added in no smaller number. Indeed, the opportune subtlety of interpreters increased. Gaius, Domitianus, Ulpian, and Paul published commentaries upon the Perpetual Edict. Paul wrote eighty books and Ulpian eighty-three.

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It was the labor of most learned and most judicious men, but by its own mass it oppressed justice and gave pettifoggers and subtle pleading an occasion for injuries. A substantial witness to this matter is Justinian himself, who declares that the Perpetual Edict had been confused by the commentaries of interpreters. Having been taught by this evil, he wished to provide that his own Pandects not be burdened by additions of commentaries.

§ 2. Justinian's care was foremost in this kind, and the multitude of laws gave him the reason for establishing them anew. For he writes thus to Tribonian: "Since nothing in all affairs is found so worthy of study as the authority of laws, which disposes both divine and human matters well and expels all inequity, and since we have found the whole course of laws descending from the foundation of the city of Rome and the times of Romulus so confused that it extends to infinity and is comprehended by no capacity of human nature, our first concern was to begin from the most sacred former princes, to amend their constitutions, and to hand them down by a clear way, so that, gathered into one Code and freed from every superfluous similarity and most inequitable discord, they might offer to all human beings the ready protection of their integrity."

How great an abundance of frauds must there credibly have been where no human being could comprehend the multitude of laws? Justinian therefore acted excellently--if his other deeds had followed that measure.

And in the confirmation of the Digest addressed to all peoples: "Something wonderful has emerged from these books: the ancient multitude is found smaller in comparison with the present brevity. For persons who formerly conducted lawsuits, although many laws had been established, nevertheless carried their lawsuits through from a few of them, either because of the scarcity of books, which it was impossible for them to obtain, or because of ignorance itself; and lawsuits were decided more by the will of judges than by legitimate authority. But in the present completion of our Digest, laws have been collected from so many volumes that persons of former times--not merely, we say, did not know their names, but had never even heard them. All these have been collected and the most ample substance assembled, so that the ancient multitude is indeed found poor, but our brevity is rendered most wealthy. The excellent man Tribonian supplied especially the abundance of books of ancient wisdom, among which many were unknown even to the most learned human beings. When all had been read, whatever was most excellent in them was separated and passed into our best compilation. But the makers of this work read not only the volumes from which laws were placed; they also read many others and, finding in them nothing useful or new which they might extract and apply to our Digest, rejected them with excellent judgment."

And to the great Senate: "Freed, namely, from the former disturbance and confused and endless establishment of law, they will hereafter employ laws which are upright, concise, ready to everyone's hand, bring an abbreviation of lawsuits, and are prepared and exposed for easy acquisition by all who wish it. Nor will they any longer need great sums of money to collect a multitude of those useless books; rather, at the lowest price, the laws offer the means of obtaining themselves both to the richer and to those setting out from a more slender patrimony."

The emperor taught how great the multitude was in the preface to the Pandects: "Formerly, as your prudence knows, from so great a multitude of laws--which extended to two thousand books and three million lines--students received from the voice of their teacher nothing other than merely six books, themselves confused and very rarely containing useful laws, while the rest were already obsolete and inaccessible to all."

§ 3. There were therefore always persons who increased the laws, as can be seen in the history of law concerning professors and jurists. When their study and industry increased beyond measure, others reduced the confused prolixity to the brevity of the ancients.

That multitude nearly fell silent when Asia had been occupied by barbarians, Africa alienated from the empire, and kingdoms established in Europe. Lothair restored it to use. And now Germany is nearly submerged in the great multitude of laws and lawsuits.

That multitude is therefore harmful, since the work of those who cut it back is especially approved. I esteem highly the makers of laws, priests of sacred Themis; but if the emperor, employing the most learned jurists and the authority of the princes, restored this great chaos to order and transparent brevity, I would call him the savior of the state and father of the fatherland. To follow the examples of so many princes is glorious and necessary for the fatherland, which now spends more upon lawsuits than upon wars--lawsuits not to be ended, but to be continued, made harsher, quieted to the loss of the parties, or perpetuated.

§ 4. A multitude of laws is a witness to corrupted morals. For just as it is agreed that diseases existed before remedies were sought, so crimes and injuries harassed a city before laws were sanctioned by which wickedness might be opposed. Thus Demosthenes speaks in oration 2 *On Laws*: "The diseases which befall bodies are healed by the industry and aid of physicians; but the judgments of legislators repel and cast out the savagery of minds." Where there are innumerable laws, therefore, innumerable crimes must have preceded them.

Seneca prudently explained this in Letter 95: "That ancient wisdom was without doubt, as you say, crude when it was first arising, no less than the other arts whose subtlety increased in their progress. But there was not yet any need for

carefully devised remedies. Wickedness had not yet risen so high or spread so widely. Simple remedies could oppose simple vices. Now the defenses must be more elaborate in proportion as the things by which we are attacked are stronger.

“Medicine was once the knowledge of a few herbs by which flowing blood might be stopped and wounds gradually close. Afterward it arrived at such manifold variety. Nor is it surprising that then it had less business, when bodies were still strong and solid and their food simple, not corrupted by art and pleasure. After food began to be sought not to remove hunger but to irritate it, and a thousand seasonings were invented by which appetite might be aroused, things which were nourishment to the hungry became burdens to the full.

“Hence pallor and the trembling of sinews soaked with wine, and a wasting more pitiable from indigestion than from hunger; hence the uncertain feet of those who stumble, and a constant reeling like that of intoxication itself; hence fluid admitted beneath the whole skin and the distended belly, while it becomes badly accustomed to receive more than it could hold; hence the suffusion of livid bile, a discolored countenance, the wasting of those rotting within themselves, twisted fingers with stiffening joints, the numbness of unfeeling sinews, or palpitation without interruption. Why should I mention dizziness of the head? Why the torments of the eyes and ears, the crawling sensations of a fevered brain, and all the parts through which we discharge waste afflicted with internal ulcers? Besides these, there are innumerable kinds of fevers, some raging with violence, others creeping with a subtle pestilence, others coming with shivering and a great shaking of the limbs. Why should I recount the other innumerable

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diseases, the punishments of luxury? Those who had not yet dissolved themselves in delights, who commanded and ministered to themselves, were free from these evils.”

Against those monsters of diseases medicine arms itself; against crimes laws are established. And just as symptoms are aggravated by the multitude of physicians, so injuries are renewed by the variety of laws. Health is certainly restored by few medicines or none. Variety disorders all the viscera.

§ 5. A multitude of laws produces innumerable lawsuits. Plato speaks most truly: **ὅτι παρ’ οἷς πλείστοι νόμοι, καὶ δικαστήρια τέτοια, καὶ βίοι μοχθηροί.** Among those who possess the greatest number of laws, there are also lawsuits and likewise depraved morals. But why do laws--good laws, laws invented by the most skilled persons for ending lawsuits--generate new lawsuits? The laws are good and holy, but they are employed by depraved persons for injury. Where there are many laws, this cannot humanly happen otherwise.

First, human weakness is unequal to learning, remembering, or even understanding them all. For which advocate or judge, much less procurator, could not only embrace in memory two thousand books and three million lines, but compare them with one another, prefer one law to another, and adapt the efficacy of each to recollection and action?

Hence many, even the most skilled, must be ignorant of their own right; when that right occurs to the mind of another, it wins the case. Hence the slow progress of jurists; and when they are summoned from the schools to practice, they are regarded as though untrained in the laws. Third, the multitude is loved by those who are nourished and enriched by lawsuits. Just as wasting disease sets prices for physicians, so the forum does for them. Their sole concern is to bring forward laws of every kind--even obsolete and inequitable laws and those twisted into a depraved meaning--as did that advocate before Galeazzo, duke of Milan, concerning whom the most learned Lipsius relates in chapter 10 of the *Political Admonitions*.

What did Galeazzo, duke of Milan, do? When he had several times heard that there was an advocate of so cunning a disposition that he could sow lawsuits and prolong and nourish those already sown even when the law was clear, he summoned the man and addressed him: “I owe my baker one hundred gold pieces. I do not wish to pay. Can you defend me at law and draw out the matter?” He assented freely and readily placed himself at the prince’s disposal. But

the prince brought evil upon him: when he had thus confessed his fraud, Galeazzo first rebuked him with words and then commanded him to be killed publicly by the noose.

Milder is what Lipsius relates about James, king of Aragon, who always showed himself hostile to lawsuits and litigants. Among these was Ximén Rada, a distinguished and foremost jurist in that age. Because many complained that they had been afflicted by his subtlety or malice, the king prosecuted him under the law against prevaricators and expelled him from the boundaries of the kingdom.

Everyone sees that persons of this kind must be restrained seriously. Having followed an honored art of plundering, they provide everyone assistance and courage for thefts which are safe and near to justice. They are far more harmful than open enemies, for without danger to themselves they make an assault upon the fortunes of others. More persons in the Roman Empire are stripped of property under the appearance of law than formerly by war. The old complaint is:

The rage of arms and power of the sword press near;
It will confound every right by force, and a wicked crime
Will bear the name of virtue and endure through many years.

Our complaint is:

The dark rage of the forum and the power of laws press near;
It confounds every right by the pen, and a wicked crime
Will bear the name of virtue.

There is another cause why laws are causes and nurses of lawsuits. Amid so great a multitude and so great a diversity of customs, those who enact new laws cannot remember the old. They must therefore be contrary, or at least *ἀσυντάκτους*, inconsistent with one another. Or if they do not conflict with one another, nevertheless very many are *ἐναντιοφανείς*, apparently contradictory, and appear to conflict. Justinian testifies that in his time there were many contrary laws. In the letter concerning the making of the new Code addressed to the senate of the city of Constantinople, he says that he specially entrusted John, Leontius, Phocas, Basilides, Thomas, and Tribonian to compose from the same three codes and the new constitutions laws which were certain and written in concise speech, and to place them under suitable titles. They were to cut away prefaces as superfluous as far as the solidity of the laws was concerned, together with similar and contrary provisions, except where they might be aided by another division of law, and also provisions which had passed into disuse. They were to add some things and remove others, and even change their words where convenience required it; to collect into one sanction provisions dispersed throughout various constitutions; and to render their meaning clearer, yet so that the temporal order of the constitutions might become clear not only from the added dates and consuls but also from their very composition.

Yet he does not dare to assert that his own laws are altogether free from defects. For in the letter to the senate and all peoples he says: “No contrary provision placed in this Code will claim a place for itself, nor will one be found, if someone with a subtle mind examines the reasons for the diversity. Rather, something new has been discovered or placed there secretly which dissolves the complaint of dissonance and introduces another nature escaping the bounds of discord.”

He certainly totters and is anxious about antinomy, and scarcely any jurist has solved this knot. Cujas attempts it. He says that many laws can be brought into agreement if some are referred to the benign right of constitutions and others to the old laws and severe right. I hear and approve the judgment of this most learned man, but I require that when the lives and fortunes of human beings are at issue there be something certain and established. While they litigate, while one presses severe right and another benign right, meanwhile a stranger holds my estate, or in an evil lodging I lament their long-lived disputations.

Why, therefore, do we not remove many lawsuits with one word and establish that among *ἐναντιοφανεῖς*, apparently contradictory laws, one is valid and the other abrogated? Volumes have already been written concerning laws which appear contrary either in words and meaning or by consequence. Lest lawsuits therefore be perpetual, let the worse of those laws which cannot exist together fall--or even the better, because in war even an indifferent peace is more desirable. The obscurity of many laws also produces immortal lawsuits; there is no reason why it should not be removed.

This certainly can and ought to be corrected. Peter Gregory speaks excellently in book 10: "Finally, in establishing laws there ought to be a manifest decision, not enveloped in obscurity of meaning or doubtful, lest it be capable of containing any snare; for laws ought to be a norm of living for everyone, the ignorant as well as women and children. Right is certain and defined, for over a doubtful matter the law, as rule, ought to remove doubt."

All therefore rightly require this: that they be able to understand what must be done.

§ 6. This is altogether necessary for peace; otherwise laws hand down not justice but ways of litigating. Hence the subtlety of the schools obstructs not only the wisdom but also the peace and quiet

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of the state. The oracles of sacred Scripture are obscure because the knowledge and wisdom of God are unfathomably profound, and the intellects and labors of so many excellent, holy, and learned theologians are the surest proof of this fact. We experience the same in laws: so many thousands of jurists dispute concerning the meaning of laws in universities; so many hundreds fight in the forum, grow hoarse at tribunals, and grow pale in the chancelleries of princes; and yet the mind and true opinion of the law has not yet been discovered.

Hence interpretations of laws have arisen--that is, new law. For it is not the law alone that is debated; rather, the decision of the law is sought from the multitude, dignity, and learning of interpreters. I desire that these ambiguities and labyrinths be dissolved by one utterance of the prince, cutting away the shadows of their winding paths, yet in accordance with the opinion of jurists. Everyone will know not only the law but also its meaning. In this matter I demand mature deliberation together with a clear decision. Emperor Alexander enacted many useful laws by which he removed many useless ones, but he sanctioned none except according to the opinion of twenty jurists. Let the emperor therefore establish what the law says. From this we plainly see that the whole of Europe is embroiled in lawsuits and, what is worse, cannot be released from them. They are perpetuated and are conducted among children's children as though hereditary.

§ 7. Finally, what cause is so openly inequitable that it does not appear capable of being defended by some law? Laws abolished by custom should therefore be removed; laws which are, or appear to be, contrary should be reconciled either by abrogation or harmonization. The counsel of the most prudent Lipsius is salutary, if it had an executor. I summon Plato again:

εἶεν δὲ οὐκ ἂν ποτε πολῖται φίλοι, ὅπου πολλὰ μὲν δίκαι ἐν ἀλλήλοις εἶεν, πολλὰ δὲ ἀδικίαι, ἀλλ' ὅπου ὡς ὅτι σμικρόταται καὶ ὀλίγιστα.

Citizens will never be harmonious or loving toward one another where there are many mutual lawsuits, but where these are shortest and fewest. Note the final words: he wishes lawsuits to be not only few but brief. I agree with you. Where are we now? A lawsuit of some size occupies a Metonic year. This happens through the wrappings of laws and the sordid practices of advocates; those adjournments are for gain and petty profit. One sails through the Symplegades to Colchis and the golden fleece.

Neither Plato nor I blame true counsellors learned in law and justice. We detest plunderers, pirates, and robbers who plunder securely in the forum before the eyes of the city, and we judge that the instruments of fraud and imposture must be removed.

Nor do the princes of Germany now think otherwise, for the complaint concerning reform of justice and tribunals is perpetual. Let all the imperial recesses be examined. Yet amid so great an army of those whom lawsuits nourish, they will not be able to attain this except by equalizing the laws. Weapons against right and equity will always be supplied from the very sanctuaries of justice and the laws.

§ 8. But learned men defend the variety and multitude of their laws by a great and difficult argument. First, the authority of Aristotle is brought forward for this opinion, book 1 of the *Rhetoric*, chapter α.: “It is therefore most fitting that rightly enacted laws themselves determine whatever they can and leave as little as possible to those who judge.” But if laws must be established concerning very many matters and very few things left to those who will judge, very many laws are necessary.

Thus they turn their consideration to debating whether it is better that a city be governed without laws by the equity and prudence of magistrates and judges, or that everything be distinctly embraced by laws. In this matter I agree with them: laws must indeed be used. Thus Aristotle in the same place. First, because it is easier to find one or a few persons than many who judge rightly and are able to enact a law and establish right. Next, enactments of laws arise from considerations extending over a long time, but judgments are rendered suddenly, so that those who judge find it difficult to possess a right account of justice and utility. And what is greatest of all, the judgment of the legislator concerns neither singular nor present things, but future and universal things; an assembly and a judge judge present and definite things, with which love, hatred, and personal utility are very often joined, so that they can no longer perceive adequately what is true, but personal pleasure or distress obscures judgment. As we were saying, concerning other matters the arbitrator must be made master of as few things as possible. But judgment concerning whether a thing was done or not done, will or will not occur, exists or does not exist, must altogether be left to the arbitrators, for the legislator cannot foresee these things.

These arguments in no way move me to approve the present multitude of laws. For judges decide very many things from similarity of causes, conjectures, and the abilities of commentators. Many events and cases are not now embraced in that infinite multitude of laws and interpretations; in this respect, therefore, we are oppressed by a scarcity of laws. Next, abundance here is worse than scarcity. The multitude said to be accommodated to more events provides occasion for various calumnies, for by those laws through which justice could be protected in one case, many cases are oppressed. Third, this has no bearing upon so many similar, contrary, doubtful, and obscure laws. Let those be removed and the others enacted universally; where shameful subtlety inserts a lawsuit, let it be met by adding or changing a word. Fourth, if laws are clear and provision has been made for the integrity of judges, many extremely grave cases will easily be decided, and much free discretion will not be left to the judge; whereas now, amid our multitude of laws, nearly everything is left free. For what opinion will a judge pronounce today which cannot be fortified by the approval or distortion of some law?

Moreover, many things can restrain the license of a judge, such as visitation, examination of the sentence, appeal, the counsels of assessors, and the determinations of universities. Finally, what prevents laws from being much shorter? Do you desire an example? Law 2, π., title 7: “It is forbidden that anyone remove by force a person summoned to court.” A clear matter is treated by these laws.

The praetor proposed this edict so that by fear of punishment he might restrain those who forcibly rescue persons summoned to court.

1. Pomponius writes that a noxal action must also be granted in the name of a slave, unless he did it with his master’s knowledge; for then the master must accept the action without surrendering the offender. Ofilius thinks that this edict has no application if a person who could not be summoned to court was removed—for example, a parent, patron, and other such persons. This opinion appears to me more true. Certainly, if the person who summoned him offended, the person who removed him did not offend.

2. For when each acts against the edict--both the freedman who summons his patron and the person who forcibly removes the patron--the freedman who sustains the role of plaintiff is nevertheless in the worse position in an equal offense. The same equity applies to one who

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was summoned to court at a place other than where he ought to have been. But it must be said still more strongly that a person is not regarded as forcibly removed when the law grants him the right not to be sued there.

3. But if someone removed a slave summoned to court, Pedius thinks that the edict does not apply, because he was not a person who could be summoned to court. What then? An action for production will lie. If someone removes a person summoned before a delegated judge, the punishment of this edict will not apply. What the praetor commands is, "removes by force." Does this require force, or also evil fraud? Force suffices even if evil fraud is absent.

4. But the word "removing" is general, as Pomponius says. To rescue is to take from someone's hands; to remove is to carry away in any manner by seizure. Thus, if someone does not take the person away but causes a delay so that he cannot come to court--so that the day for the action expires or the thing is lost through time--he will be regarded as having removed him although he did not remove his body. If he detained him in that place but did not lead him away, he is held by these words. Likewise, it is agreed that if someone removes a person who is summoned through calumny, he is held by this edict. The praetor says, "or does anything with evil fraud whereby he might more readily be removed," for this can occur without evil fraud, as when there is a just cause for the removal.

5. If someone removes him through another person, he is held by this clause whether he was present or absent. Against one who removed him by force, an action on the facts is granted. It contains not what the thing is worth in truth, but the amount at which the plaintiff valued the matter in controversy. This was added to make clear that even if someone is a calumniator, he nevertheless pursues this punishment. He must show, however, that through this removal it occurred that the person was not brought to court. But if he was nevertheless brought forward, the punishment does not apply, because the words must be understood as requiring an effect. This is an action on the facts, and if several persons offended, it will be granted against each; nevertheless, the person who was removed remains obligated. It will be granted to heirs if they have an interest. It will not be granted against an heir or after a year. One who forcibly removed a debtor does not free the defendant if he pays, because he pays his own punishment.

So many disputes were generated by so few words. Why, therefore, is the law not proposed clearly and briefly? "Let no one, whether slave or free, remove or delay, by force or evil fraud, personally or through another, a person legitimately summoned to court before a competent judge, so that he cannot appear." These matters are indeed usefully explained at greater length, but they can be stated much more briefly and, amid so great a weakness of intellects, ought to be. In many things natural reason truly teaches justice. For what need is there to add that assistance can be given to one who is dragged before a tribunal contrary to right and equity, and that he can be freed from those who drag him away? For we rightly rescue a person surrounded by beasts or robbers from danger; why should we abandon one harassed and afflicted by calumniators? The bite of a calumniator is more poisonous than that of beasts. What remains, therefore, except that decemvirs be established for reducing the laws and that the laws be confirmed by the supreme magistrate?

§ 9. In the laws of the Roman Empire I also require something else which use and necessity have approved: namely, that there are too many general laws which had to be abrogated by municipal laws and provincial statutes. For since there is such diversity of persons, places, and affairs that what is most just elsewhere is inequitable in another place, it was necessary to establish laws accommodated to provinces, towns, and villages. We plainly see that natural equity requires different laws in cities and villages. In some places it is observed that the children of a first marriage are heirs in full to the immovable goods both of the father and of the mother, but the offspring of another marriage enters upon all movables, livestock, household goods, and money as its part of the inheritance. This does not appear unjust in

places where the principal wealth is judged to consist in vineyards, fields, pastures, and houses; but in a city where there is a great abundance of merchandise and money and very few possess fields, another law must be established.

Hence it readily appears why all nations neither ought nor can use one law, and indeed why regions which once used Roman law have retained few of its laws. Even within Germany itself diverse laws are found. The territories of Belgium, Saxony, and Austria employ their own particular laws.

From these confusions another difficulty also arises, a fruitful mother of lawsuits: private agreements. The natural equity of the edict concerning agreements is $\pi.$, law 2, title 14: “For what is so congruent with human good faith as to preserve those things which persons have agreed among themselves?” Hence come the dotal agreements of marriages, and hence the thousand conditions and securities of sales and contracts which mutually entangle one another. For very many exceptions are granted against agreements. Next, they can never be composed so cautiously that calumny cannot search out some fold or hiding place through which it may insinuate itself into the agreements; for it will say either that the agreement is contrary to common law or that there are other agreements. Hence the instruments concerning one little field are so manifold that to have lost or insufficiently understood them is as dangerous as for the field to have been submerged by waters. Thus, while brothers, kinsmen, and relations by marriage strive especially to flee lawsuits and foster concord, by their very diligence they cast themselves and their posterity into lawsuits and conflicts.

We therefore experience what Tacitus admonished: “In the most corrupt state, laws are most numerous”; and what follows from it, pettifoggers are most numerous--just as in houses where many extremely grave diseases rage, we see everything full of medicines. What formerly afflicted the state of the Thurians has occurred. Strabo, book 4, relates that Zaleucus formerly gave the Thurians few and simple laws, but others followed who added other laws through subtlety and superfluous care, from which it happened that they became more celebrated than good.

CHAPTER XII

Laws Ought to Be Just, Equal, and Moderate

§ 1. The laws and institutions of all nations are not just. Cicero truly says in book 1 *On the Laws*: “Now it is indeed most foolish to suppose that all things are just which have been enacted in the institutions or laws of peoples. Even if they should be laws of tyrants? If those Thirty had wished to impose laws upon Athens? Or if all the Athenians delighted in tyrannical laws, would those laws therefore be held just? No more so, I think, than that law which our interrex carried, that a dictator might with impunity kill whichever of the citizens he wished without hearing his cause. For there is one right by which the society of human beings is bound together and which one law establishes. That law is right reason in commanding and prohibiting; whoever is ignorant of it is unjust, whether it has been written anywhere or nowhere.”

And thereafter: “But if rights were established by the commands of peoples, by the decrees of princes, or by the judgments of judges, it would be right to commit robbery, right to commit adultery, and right to substitute false wills, if these things were approved by the votes or enactments of the multitude. But if there is so great a power in the opinions of fools that the nature of things is transformed by their votes, why do they not ordain that things which are evil and pernicious be held good and salutary? Or why, since a law can make right out of wrong, can the same law not make good out of evil? Yet we can distinguish a good law from a bad by no other standard than the natural one. And not only is right judged by nature, but altogether all honorable and shameful things.”

And Augustine says: “For then”—that is, between the Second

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and Third Punic Wars--“that Voconian law was also carried, that no one should make a woman his heir, even an only daughter. What could be said or thought more inequitable than that law I do not know.”

It is certainly astonishing that not merely inequitable but also most foolish laws have publicly pleased nations. The Ethiopians chose as king from among their priests the one who most displayed himself, by a fanatical running about, as full of divine inspiration. Among the same people, if the king sent an attendant to someone to announce his death, he at once killed himself with his own hand. A certain Egyptian law granted confessed thieves a fourth part of the theft. The Carthaginians offered brides to the lust of their kings, so that they were not led as virgins into their husbands' homes. The Nasamonians also offered them to the sport of the wedding guests. Among the Massagetae intercourse took place openly; among the Troglodytes wives were held in common. Certain Arabs, with no account taken of blood relationship, coupled in the manner of cattle, while intercourse with an outsider was regarded as adultery. The luxury of the Medes advanced so far that they provided by law that no one should have fewer than seven wives. Among the kings of the Indians, the guards were purchased women; if any one of them killed the king, she had as the reward of her parricide marriage to his successor.

Under the laws of other Indians the flesh of parents and companions became food for banquets; lest it be made worse by disease, they killed the sick, adding as their reason, “You are spoiling my meat.” The Issedones were milder, for they ate their parents only after they were dead. The Romans cast away monstrous offspring. The Lacedaemonians cast rejected infants into the place which they called the *Apothetae*. There would be no end if I wished to enumerate inequitable laws. I should rightly deny that these are laws and rights. And with me does a just and holy man, Augustine, book 19 of *The City of God*, chapter 21: “But what he calls the agreement of right he explains in the course of his discussion, showing by this that a state cannot be conducted without justice. Therefore, where true justice does not exist, neither can right exist. For what is done by right is assuredly done justly; but what is done unjustly cannot be done by right. For the inequitable enactments of human beings are neither to be called nor thought rights, since they

themselves say that this is right which has flowed from the fountain of justice; and that what is commonly said by some who think incorrectly is false: that right is whatever is useful to him who has greater power.” If it is not right, therefore, neither is it a law, which establishes what is lawful and in which right resides.

§ 2. From this matter I also define what jurists and theologians are accustomed to propose: whether it belongs to the essence of a law that it be just. For the answer must be that a law which commands what is unjust is in no way a law. For it obliges no one to obey, and the law of the supreme divinity has been imposed upon all, by which they are commanded not to obey a law commanding unjust things. Divine law is always necessarily just, because the reason of divine law is his will, through its essence infinitely just. Therefore it can command nothing except what is just, although it sometimes commands what appears unjust but which his supreme power nevertheless makes just, as when he commands Abraham to sacrifice his only-begotten son. But things which can never be done honorably he cannot command—for example, to hate God, to be proud, or to envy.

§ 3. Next, not only must the things which a law commands be just, but it is necessary that the one commanding do so justly; that is, he must possess legitimate authority and jurisdiction. Otherwise it is not a law and has no force of obliging. Furthermore, unjust laws are made in many ways, but chiefly in one: when they are carried for the advantage of one party, to the detriment of others. The power of the nobles, the king, or the people is sought through the circuitous devices of such laws, whose malice appears in their execution and oppression. For in popular government it arms the plebs to seize the goods of the wealthy; in aristocracy it destines free citizens to be the slaves of nobles; in kingship it increases the fisc beyond measure. Sometimes it even rises to such madness that it establishes its enactments against divine laws. Thus Nebuchadnezzar ordained that the statue be worshiped; by not doing this, the Hebrews pleased God. The golden maxim of eternal truth remains: “Whoever refuses to obey the laws of emperors which are carried against the truth of God acquires a great reward.” A law, therefore, will be just if it adheres to no party but regards the whole—that is, the common utility—if it guards and champions commutative and distributive justice. And in this matter indeed, when the advantages of some or burdens are transferred to others, there is great danger, as I have said.

§ 4. For a law, therefore, it is necessary, as I have often admonished, that it produce equality. This is the foundation of peace and charity in the state. Aristotle, book 5 of the *Ethics*, chapter 10: “It exists among human beings who are joined to one another by a community and fellowship of life, who are free and equal either proportionally or numerically, so that they abound of themselves in supplies of things necessary for living and require nothing from abroad. Therefore, among those for whom this is not so, there is no civil right among themselves, but a certain right so called from its likeness to that. For those among whom there is also a common law use a common right. But their law is common whose injustice also is common. For a judgment is an adjudication concerning right and wrong. But among those among whom injustice has a place there is also a place for the doing of wrong, though injustice is not immediately found in all of them. To do wrong is to assign to oneself more of those things which are absolutely good and less of those which are absolutely evil. Therefore, we do not permit a human being to rule, but the law or reason, because he is accustomed to do this for himself and becomes a tyrant. But the person who presides is the guardian of right; and if of right, therefore also of equality.”

And with the same thought Cicero says in book 2 *On Duties*: “For when in the beginning the multitude was oppressed by those who possessed greater resources, they took refuge with some one person outstanding in virtue, who, when he protected the weaker from wrong, maintained the highest together with the lowest under equal right by establishing equity. The cause for establishing laws was the same as that for establishing kings. For an equal right was always sought; otherwise it would not be right. If they obtained it from one just and good man, they were content with him. When this occurred less often, laws were invented which would speak to all always with one and the same voice.”

Pheidon of Corinth was indeed led by an argument not bad in appearance, but one least useful for carrying laws: for he wished households and their number to be equal, although at the beginning shares of goods unequal in size had fallen to them by lot. But no prudent legislator seeks this equality.

§ 5. The prince must take the greatest care that laws be moderate. This moderation is discerned both in the very kind of matters and in the punishment established for violators. In the laws themselves it must be observed that the things commanded can be done. For what is beyond our power cannot be commanded, much less oblige anyone or render him liable to punishment. Certainly, no one is capable of law unless freedom is in him; that is the faculty of doing what pleases each person, except what is prohibited by force or right, §1 *On the Law of Persons*, law 4. Faculty is *δύναμις*, by which we are able to act; it does not introduce a necessity that a thing be done, but makes it possible that it be done. No one except

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a madman will carry a law concerning things which altogether cannot be done--just as did that Egyptian tyrant, the archetype of all tyrants: "I do not give you straw; go and gather it wherever you can find it, and nothing shall be diminished from your work." Those who proclaim an impossible law fashion for us a God who is a tyrant of this kind. Dionysius of Syracuse imitated him, but more mildly. For after he had exhausted the people by exactions and saw them growing furious at new contributions, he vigorously pressed the business, not unaware that their anger was born from grief over money about to be lost. But when at last he saw them carefree and laughing, he believed that nothing remained, and therefore that a further law was impossible.

Yet many carry difficult and burdensome laws which, when human frailty and custom are considered, appear impossible. For laws must be adjusted not only to the common race of human beings but also to custom and the usages of the fatherland--to custom, I say, unless it is depraved. Therefore that Muhammadan law by which wine was prohibited was tyrannical, for so great a change of drink compelled many to meet death before their day. Lysurgus must be accused no less of the severity of the laws which Sparta rejected after a short time. The Romans refused to receive them, as Augustine says, book 2, chapter 16. For although he fabricated the claim that he had received them from Apollo, the Romans nevertheless prudently refused to believe it. Such was the law given by the Ammonite to the men of Jabesh-gilead concerning the gouging out of their right eyes.

Next, laws are judged inequitable when they lack just moderation of punishment. The laws of Draco sanctioned every smallest matter with capital punishment; therefore they were truly called cruel and Draconian, for they punished leisure and idleness with death. I shall speak of punishments in their own place. Here the legislator must be admonished always to wish to keep the punishment within the desert of the fault, mindful of human frailty, except in atrocious crimes, as was set forth in the chapter on clemency.

§ 6. First, therefore, savage laws must be cut away. Thus Solon corrected the laws of Draco; thus the Romans amended many. Tertullian's discussion of this matter in chapter 3 of the *Apology* is beautiful:

"But since our truth meets you at every point, and finally the authority of the laws is erected against it, so that either it is said that nothing is to be reconsidered after the laws, or the necessity of obedience is preferred to truth even by the unwilling, I shall first enter the contest with you concerning the laws, as with the guardians of the laws. Now first, when you harshly determine by saying, 'It is not lawful for you to exist,' and prescribe this without any more humane reconsideration, you profess force and exercise an inequitable domination, if you deny that it is lawful because you wish it, not because it ought not to be lawful.

"But if you do not wish it to be lawful because it ought not to be, without doubt that ought not to be lawful which is done badly; and by this very prejudgment it is decided that what is done well is lawful. If I shall find that to be good which your law has prohibited, does it not follow from that prejudgment that it cannot prohibit me from what, if it were evil, it would rightly prohibit?

"If your law has erred, I suppose it was conceived by a human being, for it did not fall from heaven. Do you marvel either that a human being could have erred in establishing a law, or that he came to his senses in rejecting it? Were not

even the laws of Lycurgus amended by the Lacedaemonians, inflicting such pain upon their author that in retirement he passed judgment upon himself by starvation?

“And do not you yourselves daily, as experiences illuminate the darkness of antiquity, lop and hew down that whole old and squalid forest of laws with the new axes of imperial rescripts and edicts? Did not Severus, most steadfast of princes, only yesterday exclude the most empty Papian laws, which compel children to be begotten before the Julian laws compel marriage to be contracted, after the old age of such great authority? There were also laws that condemned debtors be cut into parts by their creditors; nevertheless, by public consent their cruelty was afterwards erased. The capital punishment was converted into a mark of shame: with confiscation of goods applied, it preferred to suffuse a person’s blood rather than to pour it out.”

In chapter 8 of the Laws of the Twelve Tables, concerning debtors in bondage: “On the third market day let him suffer capital punishment, or let him go abroad beyond the Tiber. But if there are several”--that is, if there are several creditors to whom the debtor has been adjudged--“on the third market day let them cut the parts. If they have cut more or less, let it be without fraud.” They abrogated this cruel law, also attributed to Romulus, in the 630th year of the city. The most avaricious cruelty of the ancient laws against the most wretched of human beings, Roman slaves, was also removed. After they had endured the most toilsome slavery, they were sold to the beasts like useless cattle. A cruelty extending widely and raging against many hundreds of thousands was restrained at home only late. It was answered that one is held under the Cornelian Law concerning Assassins if he gave a slave to the beasts without a judge, or sold or bought one for that purpose: Modestinus, in law *Circumcidere*, §1, *On the Cornelian Law concerning Assassins*. But when cruelty increased, by senatorial decrees and the Petronian Law the power of masters to hand slaves over to the beasts at their own discretion, without the sentence of a judge, was taken away. Martianus prohibited the same; and at last that entire power of life and death was taken from masters. Indeed, provision was even made that they should not rage beyond measure, although short of death: Martianus, law *Domini*, 42, *On Contracting a Sale*.

CHAPTER XIII

Laws Are Not to Be Changed Easily

§ 1. That laws can be changed, and indeed ought to be, and have frequently been changed, I have already shown with Tertullian as witness. Julius Caesar wished this; it was attempted under Hadrian; Theodosius, Justinian, Charlemagne, Alfonso, Charles IV, and now princes daily have done it, because laws must be accommodated not only to places and customs but also to times. Indeed, the books of laws themselves teach that this can be done, as does Augustine, book 3 of the *Confessions*, chapter 7:

“And I did not know true inward justice, which judges not from custom but from the most righteous law of almighty God, by which the customs of regions and days were formed according to regions and days, while it itself was everywhere one and simple, not one thing elsewhere and another otherwise; according to which Abraham and Isaac and Jacob and Moses and David and all those praised by the mouth of God were just. Yet they are judged unjust by the unskilled, who judge according to the human day and measure all the customs of the human race by a part of their own custom--as though someone ignorant, in an army, of what is fitted to each member should wish the head to be covered with a greave and the foot to be shod with a helmet, and should complain that it does not fit suitably; or, when a cessation of business has been proclaimed on one day from the afternoon hours, someone should be angry that he is not permitted to offer something for sale because it was permitted in the morning; or in one house he should see something handled by any servant which the one who serves the cups is not permitted to do, or something done behind the stables which is prohibited before the table, and should be indignant that, although there is one dwelling and one household, the same thing is not assigned everywhere and to everyone.

“Such are those who are indignant when they hear that in that age something was lawful for the just which in this age is not lawful for the just, and that God commanded one thing to them and another to these for temporal reasons, although both served the same justice; while in one human being and in one day and in one house they see one thing suit one member and another another, and one thing have been lawful a little while ago but not lawful an hour later,

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and something permitted or commanded in that corner which in this is justly prohibited and punished. Is justice therefore various and mutable? Rather, the times over which it presides do not proceed equally, for they are times. But human beings, whose life upon earth is brief, because they are not strong enough in perception to connect the causes of former ages and of other nations which they have not experienced with those which they have experienced--although in one body or day or house they can easily see what suits each member, what suits particular moments, and what suits particular parts or persons--take offense in the former matters but submit in the latter.”

Aristotle also held the same opinion, book 2 of the *Politics*, chapter 8: “For some doubt whether it is harmful or useful to disturb and change the ancestral laws, if there is another law better than one of them. Therefore it is not easy to assent and concede to what has been said about decreeing a reward to such persons on the ground that it is something useful to the city, if it is not expedient that anything in the state be changed. For it can happen that some may recommend either the abrogation of laws or a change in the form of administering the state as though it were a common good. But since we have fallen into this discussion, it will be better to dispute a little further about this matter. For, as we have said, it involves doubt. And it certainly appears better to change. For in the other sciences this has been profitable: medicine changed from ancestral institutions, and the art of exercising bodies, which the Greeks call gymnastics; finally, all arts and faculties, when changed, have brought great advantages to states. Therefore, since political prudence is also to be numbered among these, plainly it is necessary to hold the same opinion concerning it as well. Someone might take an argument for what we say from deeds and events. For ancient laws are very simple and

barbarous. The Greeks were accustomed both to carry swords and to buy wives from one another; and the remaining ancient institutions are altogether stupid and foolish. For example, at Cumae there is a law concerning matters which pertain to murder: if an accuser should produce a certain number of witnesses who are related to him, the accused is held liable to the penalty for murder.”

Bad laws, therefore, must be removed very quickly; those which merely appear useless, slowly. Agesilaus suspended the laws for one day because of the battle of Leuctra, by which action he showed that laws ought both to be stable and not altogether immutable. It is better, however, to allow them to slip away and perish gradually.

§ 2. The continuance of laws is either altogether immutable or immutable in a certain manner. The eternal and natural law is simply immutable, for it was carried by God to remain eternally, and the matter which is its object is honorable of itself; therefore its obligation cannot be abrogated. But the old ceremonial law of God has now been abrogated; the new will continue to the end of the world. Human laws can be changed, nor can any be carried in such a way that it is forever immutable, because it can be abrogated by the legislator or by his successor, who is furnished with equal power, or by the state itself.

Francisco Suárez recognizes a threefold perpetuity of a human law. First, because it does not die with the legislator. Second, because it obliges posterity. Third, because it always endures until it is either revoked or its matter is so changed that it ceases to be just. In the first manner the legislator generally imposes an obligation, and this is the custom of laws; for thus they now distinguish a law from a precept, which is temporary. But this usage is now customary, whereas in former times it was also called a temporary precept or command. I should therefore prefer to distinguish law into temporary and perpetual. It is this duration, then, which must be discussed.

§ 3. I therefore think it must be said that a law whose foundation remains and whose matter is not made unjust is not to be changed easily, although its abolition may appear advantageous, unless it is manifest that the new law will be more advantageous to the present condition of the times and it is established that new disadvantages will not arise from that change. Cleon certainly judged prudently that the condition of a state which uses worse but stable laws is better than that of one which frequently changes them.

The primary reason is that novelty always produces suspicion; from suspicion come complaints, and thence a commotion of the people or the nobles. For the abrogation of old laws brings harm to some, while a new law does not make those whom it benefits friends of the legislator, because they regard it with suspicion, doubt his constancy, and fear that amid so many changes it too will be changed. Therefore, those for whom the change is burdensome impute the damage wholly to the prince; those for whom it is a source of profit or honor, because they do not think that account was taken of them personally in a common law, do not consider themselves bound by any favor. For each person judges that things given in common are owed to him.

Nor is it expedient for the opinion to gain strength that in carrying a law account was taken not of public advantage but of private favor or hostility toward a definite class of human beings. For this opinion will supply fuel for hatreds and discord, and it offends even those whom it assists and makes them objects of envy and therefore of hatred. Thus, to carry a new law is a matter full of danger--not only among the Locrians, where men recommended a law with a noose placed around the neck so that, unless they persuaded the people, they would immediately be strangled with their throat bound, but in every state, because it is necessary that very many be offended and none reconciled except slightly.

§ 4. A second reason is added, from the weakness of the human intellect and its slender foresight. It notices the offenses of the law which it uses, but cannot foresee all the offenses of another law which it is contemplating. The Romans established pay for their citizens serving in the army at Veii. The measure was pleasing to the army but burdensome to many, for there was need of a treasury, assessments, and exactions; and from this, I believe, it happened that they were offended with Camillus. Those eager for new laws are accustomed to experience what happens to those who travel along a difficult and broken road: they proclaim those happy whom they see gliding along

in a gentle course of waters upon a favorable river, and compare their own evils with the goods of others; but when they observe the winds rising, the skiff being tossed, driven upon the sands, or dashed against the rocks, they now console themselves concerning their own labor.

With great struggles the Roman plebs obtained equality with its patricians. Laws were established concerning this matter; auspices, the curule chair, priesthoods, and the dictatorship itself came into the possession of the ignoble. But from that time the city was always hostile to itself, until through civil wars it slid into servitude.

We also see in the Church not a few laws changed in the succession of times. At one time the people elected bishops and presented them for consecration; but since ambition in that crowd often snatched the place from virtue, nomination was granted to neighboring bishops or the metropolitan, and sometimes to the emperor. But when it was evident that favor and gifts intervened here also, at last that power was delegated to colleges of clerics. That legitimate law stood for a long time and gave many distinguished prelates. Afterwards, however, in some places a depraved custom gained strength, so that they not only put bishoprics and votes up for sale, but by private statutes so ensnared and constrained the bishop that he could not exercise the force and vigor of the sacred canons against those upon whom above all he ought to exercise it. Before the election they established certain

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decrees concerning his freedom and the non-reformation of morals, to all of which they swore. If anyone refused, there was no doubt that he alienated from himself the minds of all the more frivolous persons. Thus new laws always draw new disadvantages after them.

§ 5. Nor indeed is it lawful to propose a new law in a matter of great importance unless the novelty is of great advantage to the state.

For there is scarcely any new law which does not privately harm many persons very greatly. It is therefore necessary that there be such a public utility or necessity as compensates for the losses of private persons. For since private persons are parts and members of the great body, they must suffer their own losses to be borne for the public good; but if the losses of individuals are balanced by no distinguished public advantage, the innovation is inequitable. Indeed, the state is injured when its members are harassed to no profit of its own.

By a most salutary law, upon the opinion of the council and the princes, the Most Christian Louis XIII, king of France, recently ordained that dignities and offices should not be bought with money, nor could they be sold by those who had bought them. That measure affected countless persons with great disadvantages; but because the safety of the fatherland required this most sacred law, consideration for or the loss of a few ought not to have intervened to impede it--especially since by it they might more honorably conduct a contest of virtue than promises concerning morals. That law, therefore, was most just and most sacred.

But if public benefit is absent and private burdens grow heavier, the proposal of a new law will be a crime. Indeed, so will the restoration of a law which has been abolished.

When the fatal names and factions of the Guelfs and Ghibellines divided Italy, the Guelfs held the principate at Florence and, as is accustomed to happen in the zeal of factions, by public law excluded the Ghibellines from holding magistracies. But in time the law became obsolete, and now persons who drew their origin from the Ghibellines as well as from the Guelfs occupied great dignities without distinction. Then Hunguerius, prince of the Guelfs, renewed the old law and, with the law, the hatreds, hostilities, and former calamities--to the great harm of the Ghibellines, then to the destruction of his own people, and to no advantage of the common cause. For nothing is more pernicious than to administer the state according to one's own passion, and to fasten and unfasten laws in bronze.

§ 6. In change there is also this danger: those who are pressed by private evils are made eager for innovations. While they see many laws being abolished, they conceive wicked hopes that even the best can be abolished. For after an attack has once been made upon the laws, those whose destruction appears likely to carry the greatest rewards with it

are especially attacked. Just as, when a city has been taken by force, men run not to plunder the fortunes of the most guilty but those of the rich, so also the best laws are attacked most fiercely by the vilest persons.

But since many are nauseated by present things and live suspended in expectation of future things, an ingenious poet spoke truly:

The novelty of all things is also most pleasing.

For:

Whatever we saw in former years is cheap to us,

and whatever we beheld long ago is sordid.

This propensity toward the pursuit of innovations ought not to be assisted and provoked by public leniency, for nothing will be so firm that it is not torn down. For in truth what Homer says happens in songs will occur:

τὴν γὰρ ἀοιδὴν μᾶλλον ἐπικλείουσ' ἄνθρωποι

ἥτις ἀκουόντεσσι νεωτάτη ἀμφιπέληται.

Human beings celebrate most highly that song which has come most newly to its hearers. Thus, just as they demanded **νεαρὰ ἄνθεα ὕμνων**, new flowers of songs, so also by an inborn curiosity they demanded new laws, **νόμους ἀπ' ἀκροσφυρίων**, fresh from the anvil and the bellows. Plato indeed stood so hostile to this curiosity that he forbade young men not only to dispute about the justice and integrity of laws but even to inquire into them.

For new things, although better, sometimes offend, as we perceive in a change of food, drink, or climate. Things to which we are accustomed please us as though natural and similar; new things strike us as though contrary. I shall close this place with the maxim of Augustine, letter 118 to Januarius: "For the very change of a custom--or law--even when it helps by its utility, disturbs by its novelty. Therefore, a change which is not useful is consequently harmful through fruitless disturbance."

§ 7. Laws in which there is some error, which are carried suddenly, or which appear to favor some vice are also abrogated with the greatest difficulty. By the most ancient laws the power of life and death was permitted to masters over slaves; with great effort and by many laws it could scarcely be revoked. I present an example in small matters which nevertheless cause grave harm. There is an old law, law 11, code, title 25, *Concerning Able-Bodied Beggars*:

"After all whom uncertain beggary has called to public gain have been inspected, let soundness of body and the strength of years be examined in each; and let necessity be imposed upon idle persons who are to be pitied without any debility, so that, in the case of those whom servile condition holds, the zealous and diligent informer may obtain them as master; but in the case of those whom freedom of birth alone attends, whoever has disclosed and proved indulgence of this kind may be supported by their perpetual colonate--saving to masters an action against those who perhaps furnished a hiding place to fugitives or counsel for undertaking beggary."

Who does not see what evils the abrogation or neglect of that law brings? Everything is filled with idle persons, thieves, and the most worthless gluttons, although the state could be assisted by putting them to work.

Public spectacles were granted by the worst custom and most cruel laws; scarcely could the clemency of Christian times and the power of the emperors remove them. Therefore laws must be carried and examined with great care, lest they be proposed through vice.

CHAPTER XIV

There Is an Eternal Law, and It Is the Source of All Laws

§ 1. Although my purpose is to transmit practical politics and to abstain from speculations, nevertheless, because it is true that honorable actions are produced by doctrines, not only by precepts, and most arts--and the most liberal among them all--have their doctrines, not only precepts, and no art is without its own doctrines, which the Greeks call *dogmata*, it seemed good to me to comprehend briefly those things which theologians and jurists teach concerning laws. For canon and civil laws are derived from these. They therefore define them thus.

§ 2. Eternal law is a dictate of the divine mind by which it judges that certain things are both right and to be observed by creatures, together with the will to oblige creatures.

§ 3. Second, eternal law is the rule of eternal

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and practical truth, to which all creatures are obliged by nature: irrational and brute creatures only naturally, intelligent creatures also morally.

§ 4. Third, that law is necessarily in God, because all things are governed by the providence of God; but law is the practical reason of the whole government.

§ 5. Fourth, it is distinguished by reason from an Idea, because it concerns not a thing to be made but a thing to be governed; next, it obliges, which an Idea does not do. This is called a law in God, although it has not yet been promulgated; if anyone contends about the word, we shall not be troublesome.

§ 6. Fifth, the necessary actions of God, such as the generation of the Son and the procession of the Holy Spirit, are not subject to the eternal law, because they are from natural necessity, not from providence.

§ 7. Sixth, the free actions of God are not properly said to be under the eternal law. Nevertheless, because, in a certain manner of conceiving, infinite prudence is the reason of the most holy will, just as immutability is the reason of eternity, we shall not unsuitably say that all the free actions of God are done according to the eternal law. For if the effects themselves of the divine mind, will, and power are under that law, then also the ordering and will of the effects are governed by that law; that is, it has from itself the ability and will to act with immutable rectitude.

§ 8. Without promulgation that law can be perfect, because its decrees are immutable by nature and always oblige without any variation as soon as a creature uses reason. Nevertheless, of itself it does not oblige immediately, but through other laws; therefore, when no creature exists, it obliges potentially rather than actually.

§ 9. Eternal law is one in itself, just as divine providence and will are one. Nevertheless, according to its multiple relations to diverse matter, it is called multiple--just as are Idea, providence, and will.

§ 10. From this law flows all the obligation which exists in the other laws. For all power is from God, and all direction proceeds from eternal wisdom. Natural law and the positive law of God, if they are considered not as they are in the conception and will of God but as they are in creatures and promulgated, are thus judged effects of the eternal law and have their force immediately from it. But the laws of princes and states are not derived from the eternal law in that manner, but with the power and will of a created legislator intervening.

§ 11. Eternal law is altogether immutable; for God cannot change, reject, or abrogate it, since he would deny his own intelligence and goodness. Nevertheless, some of its precepts are immutable, such as that one must not lie and that God

must not be held in hatred, for they can never be removed. Others are mutable, such as circumcision, holocausts, and similar things, which by the prescription of eternal law were imposed until the time of correction.

§ 12. The foundation of natural law is eternal law. Hence a nature furnished with intelligence and choice is considered as possible; for what is consonant with it is good, but what is alien and repugnant to it insofar as it possesses reason and will is evil. Nevertheless, this is not properly natural law, because it is not a precept; indeed, it precedes the will of God. The same must be thought concerning maxims, or the general axioms of morals--that evil is not to be done and that God is to be worshiped--if they are considered in nature as they are conceived to exist in the judgment of God antecedent to his will. For in that state they do not possess the character of a precept.

§ 13. Natural law, as it is in creatures using reason, is a dictate of natural, and therefore right, reason which indicates the goodness and wickedness existing in necessary matter, and which promulgates the divine will commanding necessary goods and forbidding evils, together with the obligation to obey. For all the matter of natural law is necessary: it is therefore commanded because it is good, and therefore forbidden because it is evil. Hence no creature can be created with reason and freedom of choice which is not held by natural law. For it would be a creature to which it was lawful to sin, which cannot happen; for if it were lawful, it would not be sin. That law is not promulgated through human beings or signs, but is implanted in reason itself; nor is there any people so barbarous or corrupt upon whom it has not been imposed.

§ 14. Natural law contains various precepts of all the virtues and prohibitions of the vices. Nevertheless, it can be called one law, because it is observed under the one character of natural good.

This natural right remains firm and one among all nations if you consider first act--that is, the natural light of the human intellect. If you consider second act--whether actual judgment or even depraved habits born from that judgment--it has variation.

For some nations have so corrupted natural judgments by evil customs that they established inequitable laws contrary to natural right. The Sardinians killed parents weakened by old age after beating them with clubs, because they called it an outrage for them to lead idle and inactive lives. Other nations violated the right of nature in other matters.

§ 15. Hence it appears that we are obliged by this law above all, not only to do honorable things and flee shameful things, but also to do this honorably. For fulfillment of the law ought to proceed from knowledge and will.

§ 16. That natural law is altogether immutable is evident from its matter. When an honorable thing is commanded, it is of such a kind that it is always honorable; and when a shameful thing is prohibited, it is such that it can never be honorable. Therefore, both negative and affirmative precepts are always necessary, nor do circumstances ever cause a natural precept to be rendered useless, imprudent, or harmful.

§ 17. Therefore, when a sword is not returned to a madman, and when a robber is killed, no sin is committed against natural law, although it is commanded that a deposit be returned and the killing of one's neighbor is prohibited. For the precept of the law is that a deposit be returned justly, without danger and wrong to another, and that a killing not be committed by private authority and unjustly. For the circumstances cause these particulars not to be contained under the general law, since it is a natural law not to return a sword to a madman.

§ 18. When natural law is restricted and determined to a definite kind by a positive law, whether divine or human, it is not changed, but, remaining wholly intact, receives a certain addition--or rather a mode, which nevertheless can be changed. God must be worshiped; positive law prescribes the mode of worship, adoration, and sacrifices. Parents must be honored by all, but the honor of parents varies according to the custom of regions.

§ 19. Therefore no one can dispense from the natural law, because no inferior can

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abrogate the law of a superior. But since natural law concerns necessary matter, it never ceases; nor indeed can God dispense from it. For things which are immutably evil, such as idolatry and similar things, he cannot make lawful by any law; and things which are good he cannot make evil by a law, such as loving God and willing to live well.

§ 20. The principal theologians teach that the law of nations is distinct in matter from natural law. For they say that the law of nations is a human law which, *ἀγράφως*, without writing, has been established by the consent of all peoples; its matter is in itself neither good nor evil but receives honorableness or shamefulness from the law, and therefore obliges because the nations have consented to that obligation. To this law belong receiving ambassadors and dismissing them in safety, conducting commerce, making contracts, pursuing enemies in war, and making those captured in war slaves. We see that all nations, unless they are altogether barbarous, live by this law. Therefore, if any nation violates ambassadors, it is oppressed by the just war of all nations.

§ 21. Jurists define natural right a little differently, but the disagreement concerns words; in the matter itself we agree. They call the natural inclination of each thing natural right, and this they call primary natural right. Second, they call that which is proper to human beings secondary natural right, such as standing by promises and harming no one; this is what theologians call natural law simply. Jurists call it the primary law of nations. But what those jurists call the secondary law of nations is that which has been gathered by practical reasoning, such as that ambassadors are to be inviolate.

CHAPTER XV

On the Adjuncts of Human Laws, and First of All on Interpretation

§ 1. There are certain affections and circumstances of laws which no less than the laws themselves either assist or oppress the state. The first of these is interpretation, by which laws are either extended or restricted and their meaning is in some manner expounded to us.

Next is *ἐπιείκεια*, when a law is understood according to equity and goodness, not according to rigid right. Third, dispensation. Finally, abrogation. These must be discussed briefly.

§ 2. Interpreters of laws were once held in the greatest honor and are so even now, for they are, as it were, living laws and speaking justice, no less necessary to the state than the laws themselves. For what are rights if there are no persons to give answers concerning right? But many abuse this sacred and royal office for pride and avarice. The reason why there is need of interpreters is that, in matters which are various, hidden, unusual, and possess names proper to their discipline, the mind of the legislator is not easily perceived without a great consideration of all things, unless a great part of those matters is understood. But I said above how the infinite multitude of laws now has produced more interpretations and interpreters, and how new interpreters multiply new expositions of laws.

§ 3. Interpretation of laws is threefold: authentic, customary, and doctrinal. Authentic interpretation is that made by the state or a magistrate possessing the legitimate power of carrying law. For it has the force of law when it does not decide a single case, but declares with authority that this is the meaning of the law. Constantine speaks of this, as it is in the Code, *On Laws and Constitutions of Princes*: “It both belongs and is permitted to us alone to examine an interpretation interposed between equity and right. Given on the third day before the Nones of December, in the consulship of Sabinus and Rufinus.”

The emperor must be judged to claim for himself alone authentic interpretation, which is in a certain manner a new law.

For the judgment of the supreme prince has the force of law and is extended to similar cases, as it is in the last law of the same title: “If the imperial majesty has judicially examined a cause and, with the parties placed face to face, has pronounced judgment, let absolutely all judges who are under our empire know that this is a law not only for that cause for which it was produced, but also for all similar causes. For what is greater, what more sacred than the imperial majesty? Or who is swollen with the disdain of such pride that he contemns the royal judgment? Since the founders of the ancient law also openly and clearly define that constitutions which proceeded from an imperial decree obtain the force of laws. Therefore, since we also find it doubted in the ancient laws whether, if the imperial judgment has interpreted a law, a royal interpretation of this kind ought to obtain, we have both laughed at their empty subtlety and judged that it must be corrected. We define that every interpretation of the laws made by the emperors--whether in petitions, in judgments, or in any other manner--is to be held valid and undoubted. For if at present it is conceded to the emperor alone to establish laws, it is fitting that to interpret laws also be worthy of the imperial power alone. But why, if a doubt arises in lawsuits and the leading men judge themselves neither fit nor sufficient for deciding the suit, is recourse made to us through their reports? And why do our ears receive all the ambiguities of judges which happen to arise from the laws, if pure interpretation does not proceed from us?”

Therefore, this *ἀπόφασις* of the prince--for thus the Greeks call the emperor's judgment--makes a law which interprets the former law. This is the best Doctor:

Who solves the knots of right and the riddles of laws.

Thus the axiom must be understood: “The prince is the sole founder and interpreter of laws.” O how great the disturbances, how destructive the subtleties, which royal majesty would remove with one utterance, if kings deigned to interpret ambiguous laws according to equity and goodness! Indeed, sometimes in interpreting they may take away, add, or alter certain things and accommodate them to the present time. Thus it was done in chapter 1, *On the Oath of Calumny*, and in the sole chapter *On the Marriage of Clerics*, in the Sixth.

§ 4. Customary interpretation is that which has now obtained by custom and use; precedents and judgments belong to it. This is chiefly employed today. Therefore, those who have devoted themselves to law in academies are trained in the imperial chamber and attend chiefly not to how variously teachers interpret a law, but to what judges pronounce in the supreme tribunal. For this knowledge is especially necessary to those about to plead causes.

§ 5. The third interpretation is that of Doctors, who expound a law not by pronouncing judgment but by giving an opinion. Their authority has now perished in great part through disagreements, nor can it be established except by laws.

In this matter, first, natural equity is considered; next, from the adjuncts, the mind of the legislator; third, the proper meaning of the words; fourth, the likeness of other laws, for a meaning of a doubtful law which conflicts with other manifest laws is false.

§ 6. There is a great controversy concerning the extension of a law, which is said to occur when a law is taken not only for the things immediately signified but is extended to

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certain other matters. This sometimes happens by understanding a law of all and only those things which are comprehended by the natural signification of the words, if it is favorable and no other law or equity obstructs. Thus, when a son under paternal power repels a creditor by the exception of the Macedonian senatorial decree, we understand a daughter under paternal power to enjoy the same right. For daughters also come under the name of sons.

Next, when there is the same disposition of right in a favorable law, the words are extended to a civil signification; for adopted sons, who are sons civilly, can use the same exception.

Third, when otherwise the law would be null, absurd, or unjust unless it were understood improperly, the words can be extended to an improper signification. Thus, when an interdict is imposed upon a city, the suburbs also are understood.

Fourth, when a law is extended because of similarity or identity of reason. Many think that, when the reason is equal, those in whom it is equal are comprehended by the law.

But this must in no way be admitted, because when a determination has been made concerning one deed or punishment, it is not therefore lawful to draw it from equality to another deed. If the legislator had wished this, he himself would have done it. For example, there is a law: “If a freeborn woman has joined herself to another person’s slave, let her be a fellow slave of his.” Equality of reason does not extend the law to a freeborn man; indeed, not even identity of reason, which exists here, does so. For the gravity of the sin is the same in either sex, although it is not estimated so civilly. Certainly, the conscience of no one will be obligated by this interpretation.

Fourth, restriction is contrary to extension. It is necessary when the words of a law, taken generally, contain injustice in some deed or harm an innocent person; for the legislator is never presumed to wish to harm the innocent. Very many laws require restriction, because many things which the legislator could not foresee are accustomed to occur, and justice compels that they be excepted. For a rule fails where equity advises something else.

CHAPTER XVI

Laws Sometimes Cease Although They Are Not Abrogated

§ 1. The highest right is sometimes the highest wrong, and this arises from a rigid interpretation of laws. What they call equity, or *ἐπιείκειαν*, remedies this. It then corrects a law when, in a singular deed which the legislator could not foresee but which, had he foreseen it, he would expressly have excepted, the law is judged not to oblige. Thus St. Thomas, *Summa theologiae* I--II, question 96, article 2.

§ 2. The interpretation of equity arises from a defect of a law which speaks universally; therefore it has no place either in natural law or in positive divine law, since their legislator foresaw all things. When this equity is evident, it is lawful for anyone; when doubtful, it must be determined by the superior.

§ 3. For a law to be judged not to oblige on grounds of equity, it is not a sufficient reason that the cause of the law ceases. It ceases in a particular case only when the law errs because of its universality, so that it would be either inequitable or harmful if it were observed. For example, let the law be: "Let no one ascend the wall; if anyone ascends it, let it be a capital offense." Gaius ascends the wall in order to repel the enemy. Who would doubt that Gaius is unjustly summoned as guilty of violating the law? But the legitimate reason must be of such a kind. For although the reason ceases negatively in the particular case, if it remains in common the will of the legislator can will to oblige the person in whom it ceases in the particular case.

Otherwise a great dissolution would arise in the state, and many laws would be violated without fraud. It is therefore necessary that the reason of the law cease in the particular case in such a way that the law would be unjust or very burdensome in that particular case. The matter is manifest from an example. The cause why ascending the wall is a capital offense is that an enemy or traitor may not seek an opportunity to destroy the city. Gaius is an excellent man, most loving toward his fatherland, and exceedingly rich; his safety depends upon the safety of his fatherland. There is therefore no danger that, by ascending the wall, he himself will create danger for his fatherland. The cause of the law therefore ceases in his case. Yet because it remains in common, and the legislator rightly comprehends even the best citizens under that law so that he may cut off the opportunity from the wicked, Gaius will be bound by that law. For if he ascends, many will follow who will also assert that they are most loving toward their fatherland, and thus it will be conceded to every most wicked person.

Next, it is necessary that it be the adequate reason of the law which ceases. Guardianship is entrusted to the nearest agnates, law 1, *On Legitimate Guardianship*, π. The reason of the law is that the law believed that goods could be administered no more safely and preserved no better than by the person who hopes that the same goods will at some time come to himself and his own. And thereafter, because it is equitable that the person who hopes for the profit should also undertake the burdens; a closer affection and friendship is added. It can happen that the reason of the law ceases, if it were known that the agnate would administer neither better nor more safely, and would not love the wards more; indeed, ordinarily a neighbor or some other person is more friendly than kindred. Nevertheless, the agnate is not to be repelled from the guardianship unless it is established that he would administer badly and had been hostile to the agnate.

The law of Solon was contrary to this: *Τῶν ὀρφανῶν κληρονόμον ἐπίτροπον μὴ εἶναι*. "Let the heir of orphans not be their guardian." The reason was that he judged it dangerous for the ward to be in the power of one to whom his death would be profitable. That law had to be maintained at Athens although the ward's heir was a man of the greatest integrity, from whom there was no danger. But if that heir were childless and rich, and had instituted the ward as his heir; if the ward had lawsuits which he would most willingly and ably prosecute; and if the ward would suffer great

loss through lacking him as guardian--then the law would be abrogated through equity. Otherwise, if the reason is not grave, it is always expedient that particulars accommodate themselves to common rules.

§ 4. When a human law concerns indifferent matters, upon the cessation of its adequate cause, whether negatively or contrarily, the law itself altogether ceases. Thus, if there is a law for contributing taxes to build a bridge, once it has been completed the law of the tax ceases; indeed, it is unjust. For when its cause ceases, the law is useless to the state, and the state is not to be burdened by laws which contribute nothing to the public good.

§ 5. For this reason very many laws of the ancients were abolished by Justinian's jurists, as the emperor acknowledges in the prefaces, and so was a great part of the laws of the Pandects and the Codes which has now been amended by other laws.

§ 6. If a human law prescribes a law which commands some act of virtue, it will retain its force even when the cause ceases. For there is sufficient cause in the exercise of virtue itself for the law to have been carried, provided that it is not excessively burdensome. For that act is capable of law of itself and by its nature; therefore the obligation remains until it is taken away by the prince. An example is that it was ordained that at first, against the Arians, there should be sung in the churches: "Glory to the Father, and to the Son, and to the Holy Spirit." Because that act is good and religious by its nature, that law remains although in many places not even the name of the Arians survives.

§ 7. Dispensation in a human law occurs when, while

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the law and its cause remain, the obligation is removed from one, another, or several persons.

There was a law which guarded Roman liberty, that in the administration of provinces there should be annual succession. Released from the law, Caesar governed the Gauls for ten years. From another quarter it was arranged that Pompey should be released from the laws. They properly call it dispensation when someone is released from a law for a time; otherwise, when he is perpetually free from a law, it is called exemption. When it is converted into another obligation, it is called commutation of the law.

§ 8. A prince, whether ecclesiastical or secular, can dispense from his own laws and those of his predecessors. For since it is in their power to oblige, it will also be in their power to remove an obligation, and to do so from this or that person as reason dictates. Next, an inferior magistrate can dispense from the law of a superior with the tacit or express consent of the superior, or by custom. Indeed, if the matter is of small importance and frequent, he can do so without approaching the superior.

§ 9. For a dispensation to be legitimate, it is necessary that its cause be legitimate. For it is contrary to the common good that some be released from laws without any cause, since all ought to conform themselves to the community. Next, the prince is bound by his own laws; if he can dispense without cause, he will never be bound by them. Therefore, a prince sins by dispensing without cause. Next, one who uses the dispensation commits an offense against the natural law which commands that a part be conformed to the whole state. Nevertheless, the thing itself which is conceded is valid. But if the cause of the dispensation was just, when it ceases the dispensation also ceases; when the cause returns, the dispensation returns.

But if the law has simply been removed, although the cause ceases before execution, the person can use that removal. Thus, if someone has been dispensed from an irregularity because of a scarcity of priests, even if the scarcity ceases before he has received orders, the dispensation nevertheless remains, because the irregularity has been altogether removed.

CHAPTER XVII

A Law Can Be Abrogated for a Just Cause

§ 1. A law unjust either from the beginning or through a change of times is not worthy of the name of law; and when the condition of the times has changed and it begins to be unjust, it has also ceased to be a law. We therefore treat of the abrogation of a just and useful law, which is abrogated when it is burdensome and its abrogation appears more useful to the common good than its observance. In this matter it is necessary that grave causes intervene.

§ 2. The founder can abrogate it, as can his successor and the superior the law of his inferior, but the inferior cannot abrogate the law of his superior. Concerning the last point there are great disputes, for certain cities and princes establish municipal laws contrary to imperial law, although they do not possess the power to do so unless it has been conferred upon them by a superior. It is certainly dangerous that common law should be derogated by private laws. Therefore, for the laws of princes and of subordinate cities to be just, it is necessary that they be certain determinations of common law.

§ 3. Every later law contrary to an earlier law abrogates it, whether it contains mention of it or does not contain it. For since they cannot possess force at the same time, the later will revoke the earlier.

§ 4. Unless it possesses a derogatory clause, it does not remove the earlier law when it is opposed to it, for they can be reconciled and each retain its force. Nothing else occurs concerning this matter except that abrogation should take place considerately, rarely, and for great causes, because of the reasons which I brought forward above.

Meanwhile, laws must be abrogated slowly and with great deliberation. He is worthy to succeed his ancestors if he does not change their institutions unless a new order of affairs demands new laws; and thus he will not change former counsellors either, unless they are found guilty of wickedness or are openly unworthy. See Olaus, book 8, chapter 3. He who has no gratitude toward his author, but begins his power from contempt of him, is believed likely to be unjust toward many.

CHAPTER XVIII

Privileges Are to Be Granted, but for Merits and Moderately

§ 1. A privilege is, as it were, a private law, or a law conceded to a private person. It is defined as a power conceded by law to someone or to several persons to act or not to act, or to receive or not to receive, beyond common law. It is a great matter, and one from which very great harm can be brought upon the state unless careful provision is made.

§ 2. There are various kinds of privileges.

1. One privilege is divine, another human. Very many divine privileges were conceded to the ancient priesthood. The rest are human, such as those military privileges of the *evocati*, that, like the others, they should be exempt except for repelling the enemy. 2. Affirmative and negative. By the latter one is freed from some burden; by the former one obtains the faculty of acting. 3. Personal and real. The latter adheres to things themselves, the former to persons. 4. Gratuitous, which is given from benevolence alone, and remunerative, which is given in consideration of merits. 5. That which is against right and that which is beyond right. 6. Conventional and without an agreement, or pure. 7. Perpetual and temporary; favorable and odious. Every privilege is favorable, but here we call favorable that which results in no harm to another third person, and odious that which harms others. 8. Of one person or of a community which is nevertheless part of another state. 9. In the internal and external forum. 10. By concession and by custom. 11. Ecclesiastical and civil.

§ 3. A state which has the power of establishing law can also concede privileges contrary to the law; one which lacks this faculty cannot concede privileges. Therefore, privileges are given only to one's own subject or to one who is subject in some manner. Thus many concede privileges within their territories to neighboring cities and distant merchants, because in some part they are superiors.

§ 4. That privileges be given to the well deserving pertains to the good of the state. For virtue is aroused by honor and reward, and very many are sharpened for the defense of the fatherland. The Roman state, as the mother of soldiers, was especially liberal. The primary privilege was not to be drawn into the ordinary forum but to be judged by their own commanders.

Gregory of Toulouse enumerates very many of their privileges in book 19 of the *Syntagma*, chapter 16. Privileges were also conceded to the persons of soldiers, of which take some: namely, that ignorance of the law, or an error in an exception which was to be proposed in its proper place but was omitted by a soldier before sentence, should have restitution to the original condition. In other solemnities also introduced by law, the military office

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relieves them, since it is more expedient for soldiers to know arms than laws. Another privilege of military service is found in Juvenal:

Let us treat, he says, of the advantages--first those common to all,
among which this will be by no means the least: that no man in a toga
dare strike you, or show the praetor his knocked-out teeth
and the black lump upon his face with swollen bruises, and so forth.

The sons of chief centurions follow their father's condition, and sons born from officials are summoned to the military service of their parents. Immunities from burdens and offices were conceded to veterans in all places: from civil duties, public works, contributions, and tolls which are furnished at fairs; so that they should neither be permitted to serve if

they wished nor compelled to serve against their will; should be struck by no incongruous injuries; and should be separated from others in punishments, so that they should not be given to the beasts or beaten with clubs. The same honor is accorded to veterans and their children as to decurions. They are excused from the construction of ships and are not appointed collectors of taxes. If, however, veterans have permitted themselves to be enrolled in the order of decurions, they are compelled to perform the offices by their tacit consent. But if they have not been selected into the order, but voluntarily undertake some office of the city, they ought not from this to be compelled to undertake others. Veterans do, however, undergo tolls and the customary burdens of patrimony, such as the paving of a road and the compulsory service of ships.

Veterans lose their privileges if they have devoted themselves to brigandage. Nobility is especially favored when illustrious men are produced from it and when they serve as soldiers, so that in a trial concerning injuries they are not compelled to be present, but can conduct the lawsuit through a procurator. They can also by agreement give their inheritance *inter vivos*, although among civilians an agreement concerning it is disapproved. And certainly, when the affairs and condition of military service are reduced to the truth, scarcely any other persons seem to me worthy of privileges or greater compassion, whether soldiers are good or evil, on account of their use. Indeed, the worse and more savage are better for this office. Philemon says:

Στρατιῶτα, κοῦκ ἄνθρωπε, καὶ σιτούμενε

ὥσπερ ἱερεῖον, ἵν' ὅταν ᾗ καιρὸς τυθῇς.

That is:

O soldier, not a human being, who are fed

like sacrificial victims, so that when the time comes you may be sacrificed.

And they must be incited by privileges to meet death, which all flee by nature. And thus, by the privileged life and death of criminals, the safety and goods of good human beings are preserved with slight detriment. There are equally good and strenuous soldiers, who are occupied for the safety of the state and are rightly honored with privileges as well deserving; others are allured by the same privileges to deserve well.

The cause was that military service was difficult, dangerous, and laborious: to dig a trench, carry a rampart, and pass one's life with slender provisions and under the harshest laws.

§ 5. Nevertheless, as formerly, so now also there have been abuses of privileges, and enormous disadvantages have arisen. For first, this is discerned in every kind of privilege: real privileges, while they are handed down through families and successions, gradually tend toward this, that they acknowledge no prince and obey in nothing. Personal privileges are less lasting, but they become cheap through their multitude, and persons upon whom too many are heaped generally fall headlong and are oppressed by their mass. Remunerative privileges are less odious but generally make men ungrateful and proud. Conventional privileges belong properly to sale, and recipients do not place among benefactions even those which they acquired for a small price.

Those which they call odious--that is, those which derogate from the right of others--must especially be guarded against. Thus, when immunity from tolls and public offices is given to many, it is necessary that the rest be burdened more heavily. Therefore Valentinian and Theodosius ordained that soldiers of the unarmed service should not be immune from public functions. But those privileges concerning forum and jurisdiction have now been removed, for they are summoned for civil matters and drawn for criminal matters to diverse judgments. For what will a soldier not dare when about to plead a bad cause before a centurion and companion in plunder? Hence so many extortions, exactions, and insults against provincials.

Next, privileges derogate from common law, either expressly, when the words themselves declare it, or in fact. Although common laws protect themselves and frequently possess an appended clause by which they remove all

privileges conceded to the contrary, nevertheless privileges often elude the law together with the clause itself. But there ought to be a great cause for laws to be diminished by a privilege. For what is not observed by many, and by the more honorable, according to right, is easily contemned by all. For example, certain nobles possess a privilege that they should not be drawn into chains because of debts. Many use it, contract great debt, and moreover insult their creditors; others imitate them and cause the good faith of contracts to lie wholly prostrate.

§ 6. Since odious privileges, and those which tend to burden others, are to be restricted so that they endure for the least possible time and obtain the fewest possible effects, nevertheless, through the importunity of the privileged, they are frequently extended contrary to the norm of right to correlative persons and to others. And what is dangerous to kings when affairs or dangers are adverse, many nobles and cities defend themselves by privilege so that they need not be present with aid or labor for common affairs. Those upon whom taxes, ships, grain, soldiers, and money could rightly and deservedly have been imposed now leave room not even for entreaties.

By no other thing more than privileges do slaves gain strength against masters and clients against patrons. Nor do I fear to say that the origin of all the seditions which for two hundred years have shaken the principalities and cities of Germany flowed from privileges, many and great. Formerly, in the age of the emperors, although many cities possessed the right of Roman citizenship, nevertheless the privileges of the Quirites were distinguishing marks of the inhabitants. At last Constantinople was made equal to it. Code, law 1, title 20: "Let the city of Constantinople rejoice not only in Italian right but also in its prerogative," concerning which see also canon 28 of the Synod of Chalcedon.

§ 7. Although privileges cease for many causes, nevertheless they are revoked with the greatest difficulty, and with greater difficulty the more they incline toward the detriment of the state. For the more of the public good they draw to themselves, the more obstinately they are retained as though most useful. That matter must be explained more fully for the public advantage.

§ 8. A privilege which through a change of affairs is rendered unjust from just must be altogether removed. The emperors did this even in private possessions. Constantine ordained that a possessor should not be obligated to fiscal offices, law 11, title 25, Code: "It is our pleasure that our private possessions be immune from all sordid offices, and that neither their lessees nor their coloni be summoned to extraordinary offices or any superindictions."

Valens removed this privilege in the same place: "For the sake of relieving the provincials, we wish our private estate to sustain canonical necessities under the condition under which we wish all

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persons to sustain them. But occasion has exceeded the command, since grain which must be carried from diverse places is not drawn to the customary places, but is carried so far that conveying it is burdensome and harmful. Therefore, let Your Spectable Sincerity cause those remaining in the same places to fulfill the functions of their own by which they formerly furnished grain."

Honorius and Theodosius declared that those works were not sordid: "Far be it from us to number among sordid offices the construction of a public road and the works of bridges and paved roads, dedicated under the titles of greater princes. Therefore, no class of human beings, and no one by the merits of any dignity and veneration, ought to be exempt from the construction and repair of roads and bridges. We gladly enroll even the divine houses under so praiseworthy a title."

Theodosius and Valentinian nevertheless restored them again: "Excepting the patrimony of our piety, whose revenues indeed we very frequently assign to public necessities, we judge that all possessors ought to acknowledge the functions in the titles imposed above without exception of any benefice."

Privileges are taken away from the idle. When the cause ceases, the effect ceases: law 13, *π.*, *On Adoption*; final law, *π.*, *On Testamentary Guardianship*. Through neglect of letters and dissolution of life, students fall from their right. See Horatius Lucius, *On the Privileges of Scholars*.

CHAPTER XIX

The Legislator Must Take the Greatest Account of Custom

§ 1. Custom makes a law and abrogates a law; or, if the severity of a prince strives against it, the law produces hatred and this hatred sedition. Therefore, a prudent legislator must above all have at heart the customs of his state. Custom is that which, without a law, has become customary just as though it were lawful--namely, right instituted by usages, which is received in place of law. Thus the author *To Herennius*. Isidore, in Gratian, adds to the latter definition, "when the law is lacking"; this part of the definition was taken from Tertullian, *On the Soldier's Crown*. It is also called usage and practice, and signifies a frequency of acts. It is understood concerning things which someone does over a long and continuous period.

Frequency of acts introduces a habit or inclination and a certain right, from which arises an obligation to act in the same manner and to abrogate other contrary laws. Custom therefore makes right and law; prescription, however, transfers ownership, gaining strength and being confirmed by the deed of a private person, whereas custom belongs to a people.

§ 2. Custom is concerned with things and persons, with human actions, and with most matters in which law exists. One is most common and is almost the law of nations; another exists in some one state; another is private, belonging either to a person or to an imperfect community which cannot make law. Yet this is accustomed to clamor against common law. Custom is also divided into ecclesiastical and civil custom.

There is also custom according to right, beyond right, and contrary to right. Every good and legitimate custom is according to natural right--that is, consonant with it--and according to positive divine right. Next, natural right and divine right cannot be abrogated by any custom.

§ 3. A custom contrary to the law of nations can have force if you consider the nature of the matter, for the contrary of what has been received by the law of nations is not evil by nature; therefore it can be introduced by custom. By nature it can be, but in fact it cannot, because of circumstances and the enactments and concord of other nations. The example is usually brought forward of persons captured in war, who become slaves by the law of nations, although this does not occur in certain regions.

But I do not think that the law of nations is removed by Christian Europeans because they do not reduce other Christians to slavery. For the law of nations is that persons captured in war should not be killed but preserved, and for that reason they were called slaves. Therefore the primary agreement by the law of nations is that the savagery of wars should not be excessive and that the sword of the victor should not rage to extermination. Gentleness is approved in the manner of servitude, and much more if they permit the captives to be redeemed and exchanged and if they are treated kindly. I judge this to be much more according to the law of nations than the most cruel slavery under which masters possessed the right of life and death, and under which persons could be sold to wretched labors in the mines, to the beasts, and to unspeakable things. For when Cicero and others determine that liberty is to be defended even by death, they spoke not hyperbolically but from the experience of affairs; for ancient slavery was in truth more grievous than death.

Therefore, I deny that any nation can introduce a custom contrary to the law of nations, because with respect to nations and this law there is equality of the human race; nor can they change that law without the consent of the whole, since the others are bound by that law.

Next, the law of nations cannot be abolished by a contrary law of one prince, because this would occur with harm to other nations. He can determine and mitigate it, as if he should command that enemies who have surrendered be

preserved; for they surrendered themselves to the mercy, not the cruelty, of the victor. He cannot abolish it except against an enemy who had himself previously violated the law of nations.

A custom beyond the law of nations can be given, just as another can be given beyond divine right. Thus, by divine right, forty blows were inflicted upon the guilty person; by the custom of the Israelites one fewer was given, lest by chance they exceed the number. Whatever custom is contrary to divine right is an abuse; it introduces no right but renders persons guilty of punishment.

Custom according to a human law confirms it; custom contrary to the law abrogates it.

To customs I refer style--that is, the manner and order of acting--and rite--that is, the solemnity of acts received by usage, so that it is now not lawful to institute the right otherwise.

§ 4. It belongs to every custom that it be just, useful, and for the sake of the common good; for what makes a law void must also be understood concerning custom. Therefore, just as bad laws, so also customs are to be abolished. Hence, just as a better custom can abrogate a worse law, so a better custom can abrogate a useless or burdensome custom. A law cannot prohibit for the future a custom contrary to itself, even if it forbids that custom to be introduced; for although it was introduced contrary to law, it is nevertheless reasonable. That it has been received into usages confirms the custom, since peoples observe the usage from agreement; for agreement inheres in custom.

Hence it is clear that a custom which is in the place of law can be introduced by a state or by a part of a state which possesses the power either to carry a law or at least to receive one; nor is it necessary that the custom be observed by all, but by the greater part.

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§ 5. The force of custom therefore begins from acts and from tacit agreement, whether by acts or omissions, but is perfected through the consent of the prince. This consent is either known from a law, if, seeing a just and useful custom gaining strength, he approves it by carrying a law--and thus it is law--or, observing it, he disassembles, or at least by a common law approves all honorable and useful customs.

Now common law approves reasonable and legitimate customs. Thus distinction 1, *Mos*: "Because usages make a law, and common right consists of laws and usages"; distinction 1, *Omnes*; distinction 8, *Mala*; distinction 12, *Omnia talia*; question 16.3, *Dicet*: "Because the custom of those with whom we associate, if it is not depraved, must be observed"; and distinction 11, *Quis*: "Because the customs of the Roman Church are to be observed."

Civil law has the same in law *Forma censuali*, § *Si vero, On Censuses*. Thus also a custom whose beginning is beyond memory sustains an aqueduct from public ground, for the prince appears to have held it valid. These things must chiefly be understood of the custom which is called prescriptive; prescription occurs between persons present over a period of ten years, and between persons absent over twenty.

A judicial sentence is not required for it to be approved; nevertheless, unless it is proved thoroughly, judgment must not easily be made according to it--except when it is prescriptive, or approved by manifest consent, or, according to most Doctors, is the interpreter of some law.

§ 6. An unjust, useless, or pernicious custom must be carefully investigated. A sign of it is if it is vehemently desired by one class of human beings, for since it is useful to them, it will be useless to the rest. Generally, the exceptional advantage of a part redounds to the harm of the whole. It must be seen whether the custom arose from evil usages; for just as good laws arise from evil usages, so depraved customs also arise from them.

Hence good laws opposed to evil usages generally appear burdensome and seem to those who prefer to live by their own usages rather than by public laws to be removable through customs. For example, it is the custom of many churches that, if someone is present on one or another day of the year, he receives what they call the Body, although

during the rest of the time he has not even looked upon a church. That custom arose from plurality of benefices, and this from avarice; therefore the custom is rightly suspect.

When a custom conflicts with several laws, especially ecclesiastical laws, it is suspect. Isidore, in the *Synonyms*, chapter 16, says that custom yields to laws, but he appears to treat of a depraved custom. For depraved usage is overcome by reason and law. And distinction 11, chapter 2: “Let usage yield to authority; let law and reason overcome depraved usage.” And canon 4: “The authority of custom and long-standing usage is not slight; nevertheless, its importance will not have such force that it overcomes either reason or law.”

But canon 5 teaches that a custom which is shown to conflict with neither sacred canons nor human laws is inviolable. This must be understood of private and non-prescriptive customs, for it is evident that sacred canons concerning indifferent matters can be changed, as in distinction 12, chapter 7: “In those matters concerning which divine Scripture has established nothing certain, the custom of the people of God and the institutions of the ancestors are to be held as law. And just as transgressors of divine laws, so contemners of ecclesiastical customs are to be restrained.”

§ 7. I judge that custom must be carefully examined, so that, if it is evil, it can be abolished before it is strengthened. For it generally has its beginnings from evil persons; for those who begin a custom which is contrary to laws undoubtedly sin by violating the law. A good custom therefore has its origin in transgression of laws and disobedience; laws, on the contrary, have their origin from deliberation, from the senate, and from the prince. Since this is so, custom is especially dangerous in ecclesiastical matters if it removes the canons from their place.

For in civil matters a law more easily begins to be unjust and accordingly is more rightly changed; nor does its change always take its beginning from evil usages, since in very many instances its matter is of such a kind that it does not pertain to morals. But canonical laws concern divine worship and morals; they have foundations and reasons from Scripture and apostolic sanctions, and also require severity and integrity of life, so that contrary customs are generally vicious. For canonical laws concern indifferent matters far less often than civil laws; therefore the examination of customs is more exact in sacred than in profane matters.

The eleventh canon is read in distinction 44: “For reverence toward God and priests, the whole holy synod ordained that--because idle tales are accustomed frequently to be interposed at tables--a reading of the divine Scriptures should be mingled in every priestly banquet. For by this both souls are built up toward the good and unnecessary tales are prohibited.” Thus the Third Council of Toledo, chapter 7. Now that most beautiful law has been abrogated by a contrary custom, while the pontiff and bishops dissemble. Nevertheless, there is no one who does not prefer so holy a law to the custom; nor is there doubt that those who first violated the law sinned.

Therefore, the beginnings of a custom which is contrary to law are generally shameful, introduced by the worse part of the city, especially in ecclesiastical matters, which were established excellently from the beginning.

For the account of the earthly city is altogether different from that of the ecclesiastical city. The former began from a few and gradually, by experience, instruction, and the example of others, amended ancient and barbarous laws. The latter, instituted by Christ and the apostles, had the best precepts for living in its very beginnings and did not easily make a change except for the worse.

Basil the Great, *On the Holy Spirit*, certainly judged that customs which flowed from tradition must be seriously guarded. I shall transcribe the passage because it too was transferred into the Decree, distinction 12, canon 5:

“Of the doctrines and institutions which have been preserved in the Church, some indeed we possess from teaching consigned to writing, while others transmitted to us from the tradition of the apostles we have received in mystery. Both possess the same force for piety. Certainly, no one furnished with even slight experience of ecclesiastical laws will contradict these things. For if we undertake imprudently to reject those things which consist not in writing but only in custom, we shall harm the Gospel, and indeed in its principal parts, or rather shall reduce the institutions themselves to a certain empty name.

“For example--to commemorate in the first place what is first and most common--who taught in writing that those who have placed their hope in the name of our Lord Jesus Christ should be marked with the figure of the cross? When we pray,

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what writings taught us to turn toward the rising sun? Which of the holy Fathers left us in writing the words of invocation when the Eucharistic bread and the cup of blessing are offered? For we are not content with those things of which the apostle and the Gospel made mention, but we also say other things both before and after, as things which possess great importance for the mystery itself, instructed by teaching not written but handed down.

“We bless the water of baptism and the oil of anointing, and furthermore the person himself who is baptized--from what Scripture? Is it not from hidden and mystical tradition? What? What written discourse taught the anointing with oil itself? Whence have we received that a human being is to be immersed three times? What Scripture commanded renouncing Satan and his angels and all the remaining things whatsoever which we observe in baptism? Are they not from this teaching, not made public but secret, which our fathers guarded with quiet and altogether incurious silence? They understood well that the majesty of the mysteries is preserved by silence.”

I shall conclude with the golden maxim of Pope Nicholas to Hincmar, archbishop of Reims: “An evil custom, which is to be avoided no less than a pernicious corruption, unless it is more quickly torn out by the roots, is assumed by the wicked as a right of privileges; and transgressions and various presumptions, if they are not very swiftly suppressed, begin to be revered as laws and perpetually celebrated in the manner of privileges.” It is an oracle which is fulfilled daily.

CHAPTER XX

The Prince Is Bound by the Laws

§ 1. The theologians and jurists appear to me here not so much to hold different opinions as to employ different words. For the matter concerning a king, as it seems to me, can least of all be doubtful; for this reason I shall dispose of it in a few statements.

1. Every prince, and indeed the state, is bound in conscience by divine and natural laws no less than the subjects are. Indeed, by acting contrary to them, because the crime is more conspicuous and does the greatest harm by example, he sins more gravely than a subject. Plutarch speaks rightly about that law in *On Kingship*: οὐκ ἐν βιβλίοις ἔξω γεγραμμένος, οὐδὲ τισι ξύλοις, ἀλλ' ἔμψυχος ὢν ἐν αὐτῷ λόγος, ἀεὶ συνοικῶν καὶ παραφυλάττων καὶ μηδέποτε τὴν ψυχὴν ἔξω ἔρημον ἡγεμονίας. One must live by that law which is not written externally in books or upon tablets, but which is reason implanted in the soul, always dwelling with him and guarding him, and never leaving the soul without its own guardianship and care.

§ 2. Since in law there is a directive and a coercive power, the prince is bound neither to natural nor to civil law by coercive power. The reason is at hand: because that power comes from outside and acts against one unwilling; but none of the subjects can coerce the prince, because he possesses no legitimate authority over the prince. Nor is the prince said to coerce himself, but he does voluntarily what he does by his own choice. Still less can an external prince do this, because an equal has no power over an equal.

It is therefore pleasing that there be someone in the state who observes the laws from no fear of punishment--without fear of human punishment, that is, not without fear of divine punishment. For whatever the subjects fear in the prince, the prince expects from God.

§ 3. By violating divine laws, the prince incurs punishment and is rendered liable to eternal punishment; nevertheless, he is not punished with temporal punishment according to the laws. The precept of divine law is: "Whoever shall shed blood, his blood shall be shed"; and Deuteronomy 22:22, that both should die, the adulterer and the adulteress. King David committed both a crime and a shameful deed--the adulterer of the wife and the slayer of the husband--and owed punishment to God; yet he did not pay it according to the law, not because he was not guilty, but because an executor was lacking. For he was not obliged to accuse himself or hand himself over for punishment, but to await divine judgment, which he did.

For since he had no superior by whom he might legitimately be punished, and accordingly was compelled to obey no one in undergoing the punishment, he was not bound to that punishment except by a special command.

For the law was given to the magistrate so that, by ordinary power and after the case had been heard, he might kill the murderer and adulterer--not so that the murderer and adulterer himself should voluntarily present himself for judgment or inflict death upon himself. Kings therefore enjoy the same liberty, and by it they cannot be punished by a human being.

§ 4. The prince is bound to undergo certain penalties of divine law which bind others also in common, and which are of such a kind as neither to be unseemly for a prince nor to require the force of another, and which are laws rather than penalties, although they contain a penalty. For in the Old Testament both kings and the people were bound to offer the appointed victims for their sin, since in these matters each person was the executor of his own penalty. I do not dispute whether this was properly the act of unwilling persons, or whether they were properly penalties.

And certainly it is not expedient that persons be established in the state to punish the crimes of kings; for from this arise hatreds and wars. For if a king knows that he has transgressed, he will strive with all his power to escape

punishment, and more evil will arise from fear of the punishment than from the offense. It is easy for him to be just whose breast is free from fear; if he has deserved punishment, by the death of those whom he fears he will procure security for himself.

§ 5. I judge that the prince is sometimes bound by the penalties of civil laws and sometimes free from them. He is bound by a penalty when the offense tends toward the harm of another, or when a tacit agreement has been interposed.

And indeed there is no doubt concerning an agreement, for this is a principal virtue of a prince: to stand by agreements and covenants. But when a penalty or satisfaction is expressed in agreements, it must be undergone by a prince no less than by a private person.

For that matter passes into a debt. For example: by common law, donations between spouses are prohibited--those, namely, by which the recipient is made richer. The prince is bound by that law, and if he neglects to restore the gift, he is compelled in conscience, because the rationale of the law has much greater force in the prince; for he can both wheedle it from her, and, if the things requested are refused by his wife, a greater evil is to be feared. Thus the laws, *π.*, title *On Doubtful Matters*, law *If between Husband and Wife*. The cause is that they should not despoil one another through mutual love, failing to restrain themselves in donations but abusing their lavish liberality toward one another. And for this reason the law has barred the slippery roads to poverty. Here too the prince will be bound to make restitution, so that he may fulfill the law. And he is bound to this by natural right and by the common law according to which he is held to marry a wife. For what honorable man would give his daughter to a prince if the prince did not marry her according to the common law?

Next, whatever is conceded by way of agreement must be given, and a penalty, when it is to the prejudice of a third party, must be paid. An example is this: in

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a forest common to the prince and the nobility, let no one hunt except in autumn; if he does so, let him lack the right of hunting for two years. The prince hunts before the appointed time, catches nothing, and does not frighten the beasts away; consequently no harm was done. Nevertheless, because the law is common by agreement, he shall abstain from hunting for two years.

Next, when omission of the penalty tends toward the loss of others, he is compelled to discharge the penalty. For then natural reason, which forbids one to be troublesome to and harm others by violating the law, compels him to give satisfaction. For if it is the tutor's duty to appoint a judge, final law *On an Arbitrator in a Guardianship*, chapter *And Whoever Neglects This*, that person is infamous and the testator cannot remit it; if the prince undertakes a guardianship, he too must make an inventory, and if harm follows from its not having been made, he will be obliged to compensate the ward.

Next, sureties, guarantors, and nominators of tutors are bound for the giving of security, and sometimes also the magistrates who do not admit suitable tutors. In these matters, therefore, the prince is bound by natural right. For if he has compelled the tutors to give security that the ward's property will be safe, he has exempted himself from every penalty; if he has not observed the law, through which the ward suffered loss, let him impute it to himself.

If there is no loss to a third party, the prince will not be bound by the penalty of the law. German drinking challenges were prohibited at Augsburg in the years 1500, 1530, and 1548; at Cologne in 1512; and at Frankfurt in 1577. Let us suppose that a penalty was imposed whereby anyone who proposed a drink, or made another person or himself drunk, should offer a sextarius of wine to the poorhouse. The prince proposed a drink without drunkenness in himself or another; he is not bound by the penalty, although he contracted guilt.

For no injury is inflicted upon a third party such that he is thereby compelled to pay the penalty, nor can a judge compel him. No one is bound except by his own judge, chapter *But If Clerics*, *On Judgments*. Or, in his own case, he is not bound to be a judge against himself. Nevertheless, he sins more gravely and is left to be punished by God. Nor will

he defraud that creditor: punishments will creep upon him in a slow column, and cares and sorrows wandering about his ensnared roof will make him wretched.

§ 6. The prince is civilly bound by his own law, and therefore he must stand by contracts whose validity arises from civil law alone. Accordingly, a subject can also prescribe against him, and he is bound to surrender the thing to that subject. A civil obligation, however, is not necessarily coercive.

Nor, nevertheless, is directive force without coercive force empty, nor is the state greatly burdened. First, because it gravely binds the conscience. Next, because there is no reason why the prince should wish to deceive in small matters. For where the leading men or the people hold the helm of the state, individuals can be coerced. Finally, the loss in one man's liberty is not great. Let the state see that it elects such a person as one to whom, although very much is lawful, very little is pleasing.

§ 7. Finally, a civil law, whether the prince's own or his predecessors', for as long as it remains--for he can abrogate it for a just cause--truly binds the prince in conscience, provided that the matter commanded is common to the prince and the people; for some laws are written for the common people alone, others for the nobility. For example, if just prices of things are established, or weights and measures, the prince's treasury cannot sell those things more dearly or institute a lighter weight. The same rationale applies to coinage: since its value has been assessed by the prince's law, he cannot alter the coin so as to diminish or increase its value. Let this, therefore, remain firm and fixed: "Obey the law, whoever you are who have sanctioned the law."

This obligation arises from the force and nature of law. For the legal authorities teach that the prince is bound by law; therefore he is bound by the force and rationale of law, not merely from some other source. Thus distinction 9, chapter 2: "It is just for the prince to obey his own laws. For then let him think that his laws must be guarded by everyone, when he too offers reverence to them. It is fitting that princes be bound by their own laws, nor that the laws which they establish for their subjects can be condemned in their own case. For the authority of their pronouncement is just if they do not allow themselves to do what they prohibit to the peoples."

If this is just, and consequently the contrary unjust, it is just from no other source than law; for law constitutes the mean of justice, both in the king and in the people. So also in chapter *It Is Not Permitted to the Pope*, question 17.1, and in civil law, Code *On Laws and Constitutions of Princes*, law 1, title 14: "It is an utterance worthy of the majesty of one who reigns for the prince to profess himself bound by the laws. To such a degree does our authority depend upon the authority of law; and in truth it is greater than sovereign power to submit the principate to the laws; and by the oracle of the present edict we indicate that what we do not permit ourselves is unlawful." Given at Ravenna, on the third day before the Ides of June, in the consulship of Florentinus and Dionysius, 429.

And law 3.1, *On Testaments*: "It is proper to the emperor to live by the laws." And Cato most excellently: "Submit to the law which you yourself have carried." And law 23, π., *On Legacies*: "Whatever rule of law each person has established against another, let him himself use the same," *On the Praetor's Edict*. "It is just for the prince to obey his own laws." Pliny speaks truly in the *Panegyric*: "The prince is not above the laws, but the laws above the prince." And Ambrose, Letter 32 to Valentinian: "What you have prescribed for others, you have prescribed also for yourself; for the emperor carries laws which he himself should be the first to guard." With the emperor justice avails more than license, as Symmachus wisely says. Indeed, this too is true: the prince is not exempt from the laws, but appears to be. Accordingly, when he is said to be ἐπάνω τῶν νόμων, "above the laws," this must be understood of penalties alone. Ἀμαρτίαις γὰρ οὐ κολάζεται--for he is not punished for sins.

He is worthy of great punishment if he subjects not only his dignity but also the instruments of virtues to vices; but this must be tolerated, because it cannot be avenged except by God. For the manifold offenses of others also are tolerated when they elude the severity of the laws.

§ 8. The state also binds the prince by the laws; for in truth, when he promulgates a law common to the whole state, he at the same time includes himself and by public will subjects himself to it. For the prince's authority depends upon right, and therefore whatever he has established is presumed to have been moved by a just cause. For that analogy and conformity is understood whereby the head is not unlike the rest of the body. How discordant would it be for a fast to have been proclaimed throughout the whole city and temperance to be observed, but for the prince alone to live festively in the court?

Since, therefore, the state cannot for a legitimate reason exempt the prince in laws common to every part and to the head, he will necessarily also be bound by his own law; for it is contrary to right reason, and therefore to natural law, which is right reason, for the head of the state not to agree with the body. For why should they bind heavy works upon the subjects, while they themselves are unwilling to move them with a finger?

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Hence we also understand that ecclesiastical laws are not to be imposed upon others unless the legislators themselves wish to be bound by them.

§ 9. But because the observance of a law that has been carried pertains to natural right, Suárez rightly teaches in book 3, chapter 35 of *On Laws* that it is commanded by God. I answer, therefore, that God, who is the principal author of this power, confers it under the aforesaid condition and not otherwise, and that this very thing is gathered from natural reason itself without any other revelation or human agreement. It is explained in this way: every legislative power is principally from God, either immediately, as in ecclesiastical power, or through the mediation of the state, as in civil power. Hence, although a human being immediately carries a law, in that act he conducts himself as a minister and steward of God, as we have adduced above from Paul. Therefore the intention and will of the prince carrying the law must be conformed to the intention of God giving the power; indeed, the efficacy of the law for binding depends more upon the intention of God than upon that of the particular legislator. But God, not only as the author of grace but also as the author of nature, wills that a human legislator should not possess the power to carry laws except with their universal obligation, which comprehends the whole state as consisting of body and head. Therefore--

The minor premise is proved from the very necessity of the common good, to which this power is ordained; for it is given for edification, not for destruction. That it pertains to such a common good that this power be given to the prince in such a manner that, although it lies within his will to carry a law, nevertheless, if it is carried, it is universal and comprehends him, is sufficiently declared by the testimonies of Scripture and the reasons adduced, and by the common consensus not only of the Fathers but also of the philosophers. For this reason Aristotle said most excellently near the end of *Politics* 3.7 that law ought to rule in the state. For, as Saint Thomas rightly explains there, when a sufficient reason for excepting something from a law does not occur, even the prince himself must be subject to it and either act or judge according to that law, because otherwise the law is rendered useless and the state is disturbed.

If, therefore, the prince has the power of carrying laws immediately from God, then he has it under the condition that he carry them according to right reason. If he has it mediately from God through the state, he has also received from the state a limited power, so that he himself is held to be bound by God and by the state.

Accordingly, the obligation arises from positive and natural law; although he is not bound to carry a law, nevertheless, once it has been established, he is bound by it. And this is what is said: "Law is the common pledge of the city." Those therefore err who say that, when law is said to command princes, this must be understood not of written but of natural law; for both natural and written law subject the prince, provided that its subject matter also pertains to the prince.

And hence those things which are disputed in favor of the license of kings against the laws are easily answered: when some assert that princes are greater than the laws; when they say that the intention of legislators is not to subject themselves to the laws; when they say that law is the work of the prince and that there is a difference between the giver and the receiver. Those who say these things themselves sufficiently show that they are not firm. For, once a law has

been established, the legislator's will, if it is right, must be that he be subject to the laws; for this has been established by God and belongs to natural right. God and the state, moreover, are distinct from the legislator.

Law is the work of the prince, and the prince is animate justice, but he is bound above all by his own work. So too a vow is manifestly the work of the person vowing, and nevertheless the vow cannot be violated. Certainly, those who make these objections nevertheless bind princes by the laws, as does Gregory of Toledo, book 7, chapter 20, §34.

Moreover, the laws which established the principate--such as those concerning the succession of the firstborn, the prohibition of alienating dominions, and the exclusion of women from succession to the kingdom--cannot, any more than other laws, be ruptured and broken by princes who attained the principate through law, unless the quality and condition of the kingdom and principate are also overturned. Nor can one who has wished to obtain the principate after the law of the kingdom has been changed escape the title of tyrant, because he will usurp the principate contrary to law. Therefore, when Samuel at God's command chose Saul as the first king in Israel, he spoke the law of the kingdom to the people in the king's presence, wrote it in a book, and laid it up before the Lord. And Plato says: "It is probable that this disease belongs especially to kings who live arrogantly on account of delights: they wished to strive to have more power than the laws, nor did they remain in concord in that which they had approved by words and oath; whence seditions arose."

Thus, by the peers of France, the agreements entered into at Troyes in Champagne between King Charles VI and Henry V, king of England, were declared void. By these agreements it had been resolved that the offspring born of Margaret, daughter of Charles VI, and King Henry should be successors in the kingdom of France, to the exclusion of Charles VII, because the agreements had been made contrary to the Salic law, which is fundamental to the kingdom of France. There will also be an example in the law of electing the emperor, which one who wishes to be called a legitimate emperor is not permitted to overturn. And if anyone wishes by his own rashness and forces to invert this law and overthrow in it the authority of the electors and the supreme pontiff, either he will accomplish little or he will stir up almost innumerable slaughters. Likewise, if anyone, scorning the laws for electing the supreme pontiff, should hasten to election, he will disturb with schisms the peace of the whole Christian state. In sum, gather this same conclusion concerning other principalities, in which, if anyone should wish at his own choice to shatter the laws of succession or election, it will come to pass that no state will be firm or safe, or preserved by upright laws or morals. The whole world in which such innovations are made will be nothing other than a cave of robbers and a Lerna of evils, and all things will be done by force rather than justice.

Now if I ask why princes cannot change the law concerning the succession of the firstborn, and if they adduce external causes--disturbances, scandals, and the like--it can come to pass that passing over the firstborn will produce neither sedition nor offenses. The cause, therefore, is the common pledge of the state and the will of God.

§ 10. Laws cannot be stable unless they are confirmed by princes, while the sinew and bond of law is usage. Drinking challenges have been prohibited in Germany by so many good and severe laws, yet moderation could never be introduced among the people because in the courts of certain princes compulsion to equal drinking challenges remains. Their drunken madness has extinguished all the vigor of the law, and the very assemblies in which sobriety was sanctioned resounded with the voices of drunkards. Within our grandfathers' memory, princes of Flaminia and Aemilia craftily carried laws sanctioned by great penalties, which nevertheless they themselves were the first to transgress; and when the laws were held in contempt and the number of transgressors was great, they exacted the most grievous fines. Those men were wicked tyrants, for they both

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carried laws badly and transgressed them worse, and punished those who had violated them worst of all. Nevertheless, by their example they showed how much power the life of princes possesses in the observance of laws. So indeed it is; Lorenzo de' Medici spoke truly: the city is such as are the morals of the prince.

§ 11. Those who exempt the prince from law are also accustomed to defend their opinion from Novella 105: “But from all things said by us let the fortune of the emperor be excepted, to whom God has subjected the laws themselves, sending him to human beings as animate law, because a perpetual and unceasing consulship has fallen to the emperor among all cities, peoples, and nations, as he distributes in each case the things that are pleasing.”

Indeed, nothing is established from that law for this purpose. For the emperor writes to Strategius, count of the Sacred Largesses, and moderates the expenses of consuls, since they had grown excessive. The rationale of the law is that this customary honor, ordinarily given to the best men, should not diminish their property.

“But none of those who come to the honor of the consulship will experience difficulty if, making moderate expenditure in this manner, he should remain so at every time. And everything whatsoever that those who have hitherto possessed the honor of the consulship received both from the court of your Highness and from our most glorious prefects, or even from elsewhere through our munificence, we shall also now give to them, abbreviating the expenditures to be made by them but not diminishing our liberality. But from all things said by us let the fortune of the emperor be excepted, to whom God has subjected the laws themselves, sending him to human beings as animate law.”

From this I answer first that this law belongs to the class which is not common to the prince and the people. For it pertains to relieving the expenditures of private persons, lest they incur loss from an honor. I answer secondly that the law does not extend more broadly than its rationale, while the rationale does not apply to the emperor, since it expressly says that the emperor’s fortune is greater and that an unceasing consulship has fallen to him. Finally, the consulship follows the scepters of imperial power; he therefore adduces a cause not only just and equitable but also favorable for why he does not wish to use that law himself--namely, lest he restrict his benefactions toward peoples and cities. The pronouncement, therefore, accommodated to that present matter effects nothing against the emperor’s obligation.

God subjected the laws to the prince because he can, according to the opportunity of the times, carry new laws and abolish old ones. Yet he did not subject them in such a way that the prince can at his choice violate them while they remain and bind the whole state.

For God also subjected the bodies of the subjects and their goods to the prince, but he possesses them only by sovereign command, not by ownership. Therefore, without legitimate cause he can neither take goods from the subjects nor use the labor of their bodies or rage against them. Book 5 of the same title, *On the Julian Law of Treason*, and title *On the Goods of the Condemned*. So too he cannot remove laws or dispense himself from them unless there is a legitimate cause for dispensing. Therefore, too lax was the royal law among the Persians which permitted whatever the king wished, and which was introduced by flatterers; for at the beginning the kings themselves also lived by the laws. Pernicious was the utterance of Julia, an incestuous woman: “Do you not know that you are emperor and give laws, not receive them?” Accordingly, in many matters the prince uses the same law as others. Novella 9, chapter 11, law 31, and $\pi.$, *Who May Make a Testament*, penultimate book, and $\pi.$, *On the Institution of Heirs*, book 15. Nevertheless, he enjoys his privileges, so that he is held greater than others. For the prince is animate law, as law is a mute prince.

Since, therefore, it is the emperor’s office perpetually to take counsel for the subjects, and he is accordingly a perpetual consul, as that law teaches, while he takes counsel best if he himself observes the laws, he must not be exempted from the obligation of observing the laws. For besides the legitimate power which they exercise, they will arrogate to themselves a certain immeasurable license and on a slight occasion will be changed into tyrants.

§ 12. When a contract or some act is rendered void by a law, the prince also is bound by the same law, so that the act itself is in truth not valid. Thus law 3, title 23, law 6 of the same: “It has often been established that not even the emperor can claim an inheritance from an imperfect testament. For although the law of imperial power has released the emperor from the solemnities of law, nevertheless nothing is so proper to imperial power as to live by the laws.” Promulgated on the eleventh day before the Kalends of January, in the consulship of Lupus and Maximus, 233.

Because the law of imperial power releases the emperor from the solemnities of law, it is certain that he is bound unless he has been released; therefore, from the nature of the matter, the emperor is bound by them. Here he does not use that law by which he has been released, because it appeared shameful for him to obtain an inheritance from an imperfect testament.

Since, therefore, for a just cause a dispensation has been granted from following the solemnities of law--so that, if the prince is present and acts, his person and good faith are held in place of the solemnities, lest what has been done be void--it is altogether sufficiently shown that in other matters he is bound. For although that invalidating law appears to be penal, nevertheless, because it intends in itself that the act not be valid, he is therefore bound by it.

The cause of this matter is that a certain manner of acting has been established for the common good in order to avoid frauds. Accordingly, an invalidating law regards the common good and the execution of right and justice, which the prince is bound not to diminish but to increase and confirm. Moreover, not every law invalidating an act is penal, because sometimes it gives form to the act, and therefore it also binds the prince. Thus Panormitanus on chapter 2, *On Constitutions*. For this is the directive law by which the state is bound.

The other solemnities, which are accidental, are supplied by the majesty of the prince, because law or custom has granted this to him. For unless we so establish, many disadvantages will follow. For by his testimony alone the prince will be able to raise up or ruin cases if no solemnity or number of witnesses is required. Nor is there another custom in most places, for all matters are transacted with princes in the same manner according to the forms of the laws as among private persons. And this is truly the majesty of the prince, which is greater than the prince himself.

CHAPTER XXI

The Old Law Was Useful for Morals and for the Polity

§ 1. The matters which are usefully disputed by theologians concerning the old law do not contribute much to politics; accordingly, I shall conclude them in a few propositions and prepare myself for other matters.

Certain laws besides natural law were established by God even before the law of Moses was given: in Paradise, the law concerning not eating from the tree of the knowledge of good and evil; afterward, the law concerning clean and unclean animals.

§ 2. The law given to Moses was holy, given by the good God through angels into the hand of Moses the mediator. Its end was supernatural: that they might be led to virtue and consequently to eternal life;

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that it might prefigure for us Christ, to whom the law led; that it might establish the worship of God amid so many discordant ceremonies of idolatry; and that it might strengthen political order.

§ 3. It was given to the Jews alone, and it bound them alone and those who, having received circumcision, passed over into the colony of the Jews.

§ 4. The precepts were of three kinds: moral, ceremonial, and judicial. The moral precepts bind everyone and always; the ceremonial have been abrogated; and the judicial, through the death of Christ, were first dead and afterward death-bearing.

§ 5. These matters are disputed in many ways, learnedly and most usefully, but they do not greatly pertain to politics. There is one matter which has sometimes been proposed by learned men. Why do Christian states not use the judicial laws carried by God himself? Although those laws do not bind, why do they not decide controversies according to the laws of God rather than those of impious Caesars? This is all the more so because we all ought to judge those judgments just, whereas we may deservedly doubt the laws of the emperors, many of which were unjust. God inculcates this upon his judges in Deuteronomy 1:17: “And I commanded all the things which you ought to do.”

Why, therefore, are the things commanded in Exodus 21 concerning servitudes not observed? Why, if anyone has stolen an ox, is he not compelled to give five for one, but is hanged? And in verse 16, for fornication are only marriage with the woman and a dowry commanded? And in verse 26, pledges are commanded to be returned before night? Since eternal truth weighed these and similar things in a just balance, why do we now use other laws? Why does a brother not take his brother’s wife into his house?

But however many laws there are of this kind, since they are mutable, it is not necessary for a state to adopt them; nor on that account were they carried less prudently by God. For they were accommodated to the capacity and character of the Jews. But since the beginnings of cities had other laws, there was no cause for changing them. Next, God carried those laws only for that state which he foresaw would be changed. When times are changed, laws also must be changed. Theft is now rightly punished by death; for if stolen things had to be restored, since thieves are generally poor, they would be bound all the more strongly to thefts.

Third, how great an incitement to wickedness would it be if marriage to a rich girl should fall as a reward to her fornicator? I am not unaware that this is the custom when they are equals; but when there is a great difference, the laws establish otherwise. Yet at that time those laws were just among that people and under that discipline; now the subject matter has changed among many nations, so that the laws cannot pertain to it.

CHAPTER XXII

Antinomians Must Be Expelled from the State

§ 1. The Gospel was handed down to us by Christ, the Son of God; hence he who is also Redeemer is the author of the new law which we call evangelical. Of him Isaiah 33:22 says: “The Lord is our judge, the Lord is our lawgiver, the Lord is our king; he himself will save us.”

§ 2. Moral, sacramental, and faith-related precepts are contained in that law. Christ expounded the moral precepts more perfectly, and handed down wholly new sacramental precepts after the old ones had been abolished. He gave more explicit precepts of faith, for otherwise precepts concerning what must be believed were also given to the Jews and to the fathers before the Flood.

§ 3. Those precepts must be observed by us altogether, for all the precepts bind us, not only those of faith.

§ 4. In this matter there are heresies and errors which are most pernicious not only against piety but also in the state and in politics.

For first, the sectarians profess that the moral law can by no means be observed. Second, they profess that faith alone is accepted by God in place of the observance of all the precepts, as some say; or that faith alone is imputed for justice. They understand faith, of course, as confidence in justice and salvation. Third, they profess that no eternal penalties threaten believers for any commandment violated in any manner whatsoever.

Fourth, they profess that Christ is therefore not a legislator but only the promiser and giver of grace. Hence arose the Antinomians, who scorn every law, and the Müntzerians, who, employing Lutheran principles, rejected not only every law but even the magistracy. At the beginning I disputed against those who judge consciences to be altogether secure from obligation to human laws; I showed that they are pernicious to the state. Now these men indeed acknowledge that they sin by violating laws, but say that they do not fear punishment, because they have been freed from every active and passive curse; for God is neither angry with them nor punishes them, but in every crime fully justifies and beatifies them.

It belongs to theologians to dispute against their impiety; I shall discuss the disturbance of the state which this pestiferous sect contrives under the pretext of piety and Christian liberty.

But this must be noted especially: the very doctors of immeasurable license do not dare to assert in words the faith which they teach. For the Lutherans, although they gave the Antinomians their beginnings, pretend that they refute them; and the Calvinists pretend that they refute the Libertines, from whom they differ only in words. And indeed, those who profess to detest the Antinomians teach as follows.

§ 5. The Synod of Mansfeld: “The true understanding of the abrogation of the law consists in this: that at the beginning we know that the law in general has been removed by Christ in this manner, so that it cannot harm the sons of God by its curse, condemnation, and accusation, as is said in Galatians 3: ‘Christ redeemed us from the curse of the law, himself having been made a curse for us.’ This was done, namely, according to his office, concerning which the Holy Spirit had long before prophesied through Moses: ‘Cursed is everyone who hangs upon the tree.’ And from this Paul reasons that we who have been redeemed through Christ are now under grace and not under the law, Romans 6.”

Their error is that they say that, whatever they commit against God and their neighbor—even acts of arson, murders, and treasons—they are not only not cursed or condemned by God, but are not even accused. If this is to be taught concerning the law of God and natural law, how much more is the same thing to be taught concerning a political law carried about an indifferent matter? For how will a decree of the senate or an edict of the prince concerning the making

of an inventory of a testament bind, if the laws of the eternal Emperor do not bind to accusation, curse, and punishment?

Whatever they seem to teach rightly concerning the law comes down entirely to this: they say that it must be observed, but that no punishment is to be feared from its violation. Finally, they say that the law cannot be observed.

From this foundation the Antinomians argue as follows.

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Can we observe the Decalogue or moral law with respect to obedience? The Mansfeldians answer: we can, although in great weakness and imperfection. Nevertheless, things of this kind do not bring condemnation upon us, Romans 8, provided that we remain in Christ. Thus they speak more mildly, but they are condemned by others because they say that every good work is by its nature a mortal sin. But insofar as it is by nature a mortal sin, God's precept is not observed.

Yet they imagine for themselves a great distinction between the just and the impious; for they teach that the law was established for the unjust, but by no means for the just: "Because, as we said before, the law has not been removed for everyone, but only for those who are under grace and acknowledge and embrace the benefits of Christ through faith; indeed, it has been abrogated for the just, as Paul says in 1 Timothy 1. It follows from this that the unjust and those not yet converted, who do not acknowledge and apprehend the benefits of Christ through faith and who otherwise lead an evil and dishonorable life, are still under the law, and this during the whole time of their impiety, so that the law continually exercises its office upon them by showing sin, the wrath of God, and the consequent penalties; next also by showing our weakness and impossibility in observing the divine law for obtaining justice; and furthermore by terrifying, accusing, condemning, and mortifying, so that the unjust themselves feel and experience the tyranny and dominion of the law, its curse and condemnation. This is signified in 1 Timothy 1: 'The law is given to the unjust, the disobedient, the impious, sinners, the irreverent, and the violent'; and against sinners of this kind the law, as pedagogue, still takes punitive action, Galatians 3; and thus the law is our pedagogue until Christ."

They enumerate the following as the errors and false dogmas of the Antinomians.

The First Error

§ 6. "The law is not worthy to be called the word of God."

This indeed belongs to the Manichaeans, who proclaimed an evil God as the author of the law, against whom are the disputations of the holy Fathers, especially Augustine. For if that law, "You shall not kill," and so forth, is not worthy to be called the word of God, then idols, blasphemies, parricides, adulteries, and robberies are not prohibited by the word of God. Who, therefore, prohibits them, if so holy a law is unworthy of its author? How will human law possess reverence if there is no divine law from which it is derived? The Mansfeldians refute that error when they exclaim: "It is horrible to hear that the law is unworthy to be called the word of God. For Scripture says in Exodus 32 that God wrote the law or Decalogue with his own finger; why, therefore, shall we not call it the word of God?"

"In Deuteronomy 8 the Lord says that he will place his words in the mouth of the prophet, so that he may speak whatever he has commanded him. And so thereafter in all the prophets the law is called the law of the Lord, which fact is an argument that the law is truly the word of God. If it is truly the word of God, it certainly deserves also to be so called. But what Paul writes concerning the dignity of the law is to be sought from 2 Corinthians 3, which dignity of the law the Antinomians plainly scorn and deride. Augustine, in book 2 of *Questions on Moses*, question 166: 'Hence the law is called the work of God, because he himself ordained it; God wrote this law.' Likewise, in tractate 3 on John: 'He who gave the law also gave grace.'"

Yet that struggle is one of words. For a penalty is added to those laws, so that the soul of whoever transgresses them should be destroyed from his people; they deny that this pertains to them. But this too is the law of God: "Whoever

kills a human being shall surely die.” The sectarians hold otherwise: although we have killed thousands upon thousands, nevertheless we shall not die, because we are free from the law. The law is dead to us--the law, I say, which forbids killing, is dead to us.

The Second and Third Errors

§ 7. “If you are a prostitute, if an adulterer, or any other sinner whatsoever, only believe, and you are on the way of salvation.”

“When you are entirely fixed in the midst of sin, only believe, and you are in the midst of salvation.”

The Mansfeldians profess that they detest these errors.

“These two errors,” they say, “open the widest window to manifest crimes and shameful deeds, and despoil repentance of a certain great part of itself--namely, the good resolution to amend one’s life.”

Nevertheless, the shameless obstinacy of others remains: that in the midst of sins they are not only just by imputation, but also know this concerning themselves with certainty; and that David retained justice in adultery and homicide. What will citizens imbued with this opinion not dare? They deny that they are guilty of an offense against divine majesty; how will they revere human majesty? Deuteronomy 13: “If you hear in one of the cities which the Lord has given you to dwell in, persons saying, ‘Let us go and serve alien gods,’ killing you shall kill all who are in that city, and you shall burn it with fire, and it shall be without habitation forever, nor shall it be rebuilt.” What if someone believes himself just in this matter and denies that the penal law pertains to him?

What if the son of Clytemnestra, or Nero, should come to judgment,

For whose punishment there should not have been prepared

one ape, nor one serpent, nor one sack?

Would he not, if he lived in our age, commit some crime greater than parricide, proclaim himself most just in the midst of the crime, and say that by the new law he was free from the curse of the law? The Argives, therefore, were excessively scrupulous; of them the parricide’s sister complains:

ἔδοξε δ’ Ἀργεῖ τῷδε μήθ’ ἡμᾶς στέγαις

μητροκτονούντας· κυρία δ’ ἦδ’ ἡμέρα,

ἐν ἧ διοίσει ψῆφον Ἀργείων πόλις,

ἢ χρὴ θανεῖν νῶ λευσίμῳ πετρώματι,

ἢ φάσγανον θήζαντ’ ἐπ’ ἀνχένος βαλεῖν.

For it seemed good to the Argives not even to receive us matricides under a roof; but this is the decisive day on which the city of the Argives will deliver its judgment: for either we must die by a white stone, or the neck must be cut off with a sharpened sword.

But according to the prescription of the new Gospel, they are just, holy, and innocent if they believe themselves to be such. God is not angry with them, because they believe themselves to be sons; he does not punish them, because he does not impute sin. They say that they are on the way to heaven, on the way of salvation.

How much more will they ruin all civil laws? For why should solemnities and formulas bind those who trample upon all God’s commands without fraud? Will those who judge themselves fully just and truly beatified delay for the order and procedure of the praetor if they fill the tribunal with the praetor’s blood? Orestes, therefore, would be a fiducialist and would fear no vengeance from God.

The Fourth Error

§ 8. “The Decalogue pertains to the curia, not to the pulpit.”

What do they mean by these words? Evidently, that when conscience is at issue, when justice, eternal life, friendship, and spiritual conversation are at issue, no mention of the Decalogue is to be made. Indeed, not even the law of God is to be expounded to the people. For the Decalogue does not

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pertain to the preacher.

Therefore, in their judgment, knowledge or observance of the Decalogue does not pertain to living well or to salvation; much less, therefore, does observance of civil laws. But how does it pertain to the curia if it does not pertain to the pulpit?

The curia indeed punishes crimes and guards the tablets of the commandments; but why does the curia do this, when God is imagined to will that human beings not even be admonished concerning this matter? Next, has a command been given to the curia--that is, to the magistrate--that it should wish to guard the Decalogue? This, then, is a command of God. Is it therefore not to be spoken to them in an address? From where, then, will the magistrate learn it?

The Mansfeldians answer rightly, but by no means consistently with their opinion: “It is true that the Decalogue pertains in part to the court and the curia. For the civil magistrate ought to be the guardian of both tables of the law. Therefore in Deuteronomy 17 God commands that kings, sitting upon the throne or at the helm of the state, take care that a copy of the book of divine law be written out for them, so that they themselves may both perform the precepts of the Lord on their own part and take care that they are performed among the subjects of their kingdoms. Likewise, in Romans 13 it is written: ‘The magistrate is also the minister of God for your benefit; but if you do evil, you will fear him, for he does not bear the sword in vain.’ But that the Decalogue is therefore also to be removed from preaching is intolerable, for both spiritual and political magistrates ought to be guardians and promoters of the Decalogue. Likewise, if doctors of the word ought not to treat the Decalogue before the congregation, how would they lead human beings to acknowledgment of sins? How would they deter them from sins by fear of God’s wrath and punishments? How would they invite them to repentance and sorrows of the soul concerning sin? They would necessarily omit the principal part in the preaching of repentance.

“Finally, what would become of conversion? How could God render an account with us, according to the parable in Matthew 18, concerning the debt arising from violation of the divine will, if preaching of the law were to be banished from the churches? Finally, if preaching of the Decalogue perishes in the Church, at the same time the preaching of repentance falls, all discipline perishes, and no one is converted to salvation through the ordinary means.”

By this answer they condemn themselves. For by law they condemn the magistrate and absolve the subjects. For I ask whether the magistrate himself ought to fear the penalty of an offense if he neither reads God’s laws, nor takes care that they are observed, nor bears the sword for vengeance upon evildoers. For if he too, without offense against God, is not compelled by a most hateful work to offend his subjects; if the preacher ought not to admonish him concerning the guardianship of the laws as though a penalty were prepared for the negligent, then the law does not even pertain to the curia.

The Fifth Error

§ 9. “All those who have dealings with Moses proceed by the direct road to the Devil--indeed, to an evil end with Moses.”

The Mansfeldians answer: “All those who have dealings with Moses or the law in such a way that through it they wish to become just--that is, accepted before God--do indeed all proceed by the direct road to hell, nor does any one of them attain the blessedness of eternal life. For it is written in Romans 3 that by the works of the law no flesh is justified

before God; and in John 3 eternal life is promised to believers alone. In Romans 10 Paul says: ‘If you confess with your mouth that Jesus himself is Lord, and believe in your heart that God raised him from the dead, you will be saved.’

“But what dealings they have with Moses or the law we handed down above, according to the agreement of Scripture, in the doctrine concerning the law: what remains for us in it and how far we can still use it. These do not proceed toward the Devil, nor are they condemned, but experience the great and ample fruit and usefulness of the divine law.

“Neither Moses nor the law itself ought to be sent to an evil end, but for those who do not live according to the laws and precepts of the Decalogue the matter very often comes to an evil end or to the rope. The Antinomians themselves provide the occasion for this evil when they counsel their people to scorn the law and the Ten Commandments of God without concern and to omit them at pleasure. By these outcries, I say, they drive many to the evil cross and the torments of various punishments.”

But this is an impious confirmation of the blasphemous paradox, repeating the error in milder words. First, because elsewhere they teach that not even the commandments observed with the grace of God contribute to salvation, since all are mortal sins--even the best works done in the best manner. Therefore the Antinomians stand upon the foundation of the Mansfeldians and conclude irrefragably: every work of divine and human law done in the best manner is a sin worthy of eternal death; therefore it must not be done by us, lest with Moses we be thrust down to hell.

Next, they interpret “works of the law” most perversely, since the Apostle is speaking about those which are done without grace. Finally, others add that they say the law is dead, not because they observe it through grace, but because, when violated, it cannot harm those who believe themselves just amid its defilement--even though someone

has broken the aged throat of his parent.

When he has believed himself to be just, he will raise pure hands to heaven. Nor will he wait for a judge who is inquiring about the right of eavesdrip, boundaries, and windows. Indeed, he will not even dread the tribunal of God.

The Sixth Error

§ 10. “Human beings are not to be prepared for the Gospel through the preaching of the law; but it is necessary that God do this, whose proper work it is.”

That reasoning is without the law of truth and right. For if God leads people through the preaching of the law, why does the preacher not also do so, exhorting in the place of God? But the Mansfeldians speak much more absurdly: “Nor is there any better preparation for the Gospel than the preaching of the law itself. For it terrifies, distresses, and wounds human beings, so that afterward they may experience the magnitude of evangelical consolation, joy, and salvation so much more pleasantly. For he also contemns the magnitude of aid who does not acknowledge the magnitude of the danger. Moreover, through the preaching of the law as preparation for the Gospel, nothing is taken away from God. For nevertheless true acknowledgment of sin, salutary acknowledgment of God’s wrath and punishments, right fears, true contrition, and sorrows must be given by God.”

For all this preaching falls among the jests of the Lutherans and Calvinists. Unbelievers are not terrified by those threats of the law, because they judge the shades of the underworld and the torments of the impious to be fables. Believers are not terrified because they are most certain that they are free from the curse, accusation, and condemnation of the law. Julius spoke contemptuously: “Will you proceed to cite laws to me while I am armed?”

Nero at last feared the punishments of the laws when, upon hearing the enemy’s cavalry, he said:

ἵππων ὠκυπόδων ἀμφὶ κτύπος οὐατα βάλλει.

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The sound of swift-footed horses resounds about my ears.

Before that, as one greater than the laws, he used to sing this: “Let kings go by whatever road they please.” Yet even that impious man was terrified by the nocturnal specter of his murdered mother; but those who boast that they are just merely by believing, in their confidence violate the laws without fear, and will answer the magistrate with the freest indignation:

“We are not prepared for the Gospel and salvation even by the law of God; much less, therefore, by your law, which is neither from God nor concerns a matter which is good in itself, but concerns matters which can rightly be done otherwise.”

The Seventh Error

§ 11. “In the Gospel one ought not to treat of violation of the law, but of violation of the Son.”

An opinion unworthy of a human being, much less of a doctor. They do not think the Son of God is violated except by unbelief, although he is also violated by blasphemies, hatred, and contempt. Nevertheless, they do not lack a reason for so absurd a matter, drawn from the adversaries themselves. For if they are just by faith alone, if they are rendered unjust by no shameful deed except unbelief, what need is there to treat of things which can neither harm salvation nor promote it?

The Eighth Error

§ 12. “To hear the word of God and perceive it in the heart is the proper consequence of the Gospel.”

From this they concluded that it was enough to hear and perceive, even if they did not act, although the Lord condemns those who received the word in their heart but produced no fruit.

From this they reasoned further, according to the testimony of the Mansfeldians: “It is enough to hear and perceive; a work is not required. Accordingly, it is not a sin to be overthrown by a little prostitute.” What will the prince promise himself here concerning citizens of this kind? “We have heard the law and perceived it; it is not a sin if we act contrary to it.” In the morning hours they will wear away the thresholds of Socrates, in the afternoon those of Thaïs. Yet they learned all these things from Luther and the Lutherans, for those men teach that good works are not necessary for salvation. But if this is true, it is enough to hear and perceive the law--indeed, not even to hear it. For why should you batter the ears when there is no need of action? But so that it may appear where those preachers lead the citizens, I shall cite the things which the Mansfeldians assembled in their Synod:

“This proposition is papistic, devised by the pontiffs themselves and fashioned in this manner. For it is found nowhere in Scripture, nor is it readily found even in the books of the Fathers, especially with the understanding which the papists attach to it: that good works are partial efficient and meritorious causes of salvation. Even if this proposition is bent merely into another meaning by some gloss affixed to it, nevertheless this sense stands out above the others, which the context of the words represents. Nor do the papists, the first inventors of this proposition, permit a new meaning to be constructed for it contrary to the nature and proper meaning of their own words.

“The divine Luther attacked this proposition most sharply, as his books everywhere testify. For in the first German volume printed at Wittenberg he writes that this proposition, ‘Good works are necessary for salvation,’ confounds law and Gospel with such loss and detriment as human reason can neither comprehend nor understand. For through it the doctrine of grace is obscured, Christ is torn away with all his benefits, and the whole Gospel is overturned.

“In the same place he says: ‘It is a slippery and empty statement to pronounce thus: faith indeed ought not to rest upon works and merits, but nevertheless it is necessary to possess good works as necessary for salvation. This whole thing is nothing. For if they are necessary for salvation, salvation cannot come without them, and therefore we are not saved by faith alone. But this is false and dissents from Scripture.’ In the same place he writes that it was decreed in the Synod of Jerusalem that the works of the law are not necessary for salvation.

“In volume 4, page 550: ‘Unless three apostles had stood firm, the entire little assembly would have fallen back and decreed that the works of the law were necessary for salvation.’

“In volume 7, page 61: ‘Eighth, it must be carefully observed here and guarded with great zeal that faith alone, without any works, makes persons just, free, and saved.’

“Page 63: ‘From this it is clearly perceived how a Christian human being is free from all things and above all things, so that he has no need of works for justice and salvation, but faith supplies all things to him abundantly. And if he should be so insane as to hope to become just, free, saved, and a Christian through any good work, he loses faith with all its supports, like that dog which, when it carried a portion of meat in its mouth and gaped at the reflection in the water, lost both the meat and the reflection at the same time.’

“Page 65: ‘No work and no commandment is necessary for a Christian for salvation.’

“In the same place: ‘Although in this life a human being cannot be without works, nevertheless they are not necessary to him for justice and salvation.’

“Page 66: ‘Let a Christian human being be content with his faith, which is his life, justice, and salvation, and let him be persuaded that he requires nothing further for that matter than to believe that the matter truly stands so.’

“In a certain sermon on the Ascension published in the year 1523: ‘Beware that gloss or disguise of the philosophers or universities: “He who believes and has good works will be saved.” Christ does not speak thus, but only, “He who believes,” he says.’

“In the Household Sermons published at Nuremberg in the year 1545, page 41: ‘It falls to us to be saved only through the remission of sins.’

“In the Greater Postils, from Advent to Easter Sunday, page 102: ‘Christ saved us once in a twofold manner. First, he did all things whatsoever which it is necessary to do so that we may be saved; next, in baptism he communicated all his benefits to us.’

“The books of Luther are filled with these and similar passages, and we shall not commemorate more. But Luther cast down above all this proposition, ‘Good works are necessary for salvation,’ most forcefully in the disputation on the works of law and grace held at Wittenberg in 1537. In that disputation he altogether rejects the necessity of works for salvation and by no means wishes to tolerate it. If, therefore, anyone had intended to introduce this proposition again after Luther’s death and thus overthrow and rupture the peace and concord of the Church, these things ought at that time to have been disputed and decided with Luther himself.

“At other times also in our churches, throughout the whole time elapsed after Luther’s death, no one made mention of this pernicious proposition; rather, as something unaccustomed it was perpetually suppressed by silence. For everyone was very readily content with the doctrine of the Augsburg Confession: ‘It is necessary to act well’; and concerning this there was never any dispute.

“After Luther’s death this proposition emerged again,

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and once its authors have been shown it is very easy to judge; for their disputations in favor of this proposition are extant. Although various causes are alleged by which the defenders of this dogma affirm that they were moved, nevertheless these are of no importance in comparison with that immeasurable loss and detriment to the Christian religion which follows from it. And if afterward they had wished to abstain from this dogma, as by God’s beneficence has occurred, it would have been preferable never to have brought it back into the light, and many disputes could have been avoided in this manner. The papistic justiciaries would not have been confirmed in their impious dogma

concerning the necessity of good works for salvation, and the weaker Christians in our churches would not have been disturbed.”

§ 13. Experience has taught that the Antinomians were born from this; and we have as confessing culprits the adversaries of the Antinomians themselves. For since they could in no way avoid lawlessness and the confusion of all things if they condemned good works, many of the Lutherans themselves rejected such depraved teachings. The Mansfeldians narrate the matter thus in the controversy concerning good works:

“The following causes for restoring the proposition are brought forward: first, that the Antinomians manifestly teach that a human being, once regenerated, nevertheless retains grace and the Holy Spirit even if he rushes into sins against conscience, is an adulterer, drunkard, defrauder, or prodigal.

“Second, that there are said to have been some who jestingly and wittily declaimed that the salt of necessity had become putrid--or, as the proverb has greater charm in the vernacular language through the ambiguity of a word which signifies at one time necessity and at another seasoning: *Das Muss ist versalzen*.

“Fourth, that some were unwilling to bear the word ‘debt.’

“Fifth, that all human beings have long since been remiss, sluggish, and idle with respect to good works.

“Sixth, that some understood the particle ‘alone’ in such a way that it excludes not only the merit of good works but also their presence.”

Some of these causes are sufficiently honorable and suitable, and it is manifest that the Antinomians teach as has been stated; moreover, the idleness and languor of human beings with respect to good works is, alas, unknown to no one. The other causes are less known.

I now appeal to the conscience of all princes: whether they truly judge that a just and constant state governed by laws can be constituted from these human beings.

The Ninth Error

§ 14. “Peter did not understand Christian liberty; therefore he wished to observe the law by not eating unclean things.”

What wonder if the Antinomians say this, since their masters and the antagonists among the masters agree? For when they treat of good works, they say not only that human beings are saved without them, but also deny that they are a condition without which persons are not saved, page 208. Much less is Christ’s merit applied by good works. If, therefore, a magistrate cites Scripture, the ancestors, or any laws whatsoever, he will immediately hear: “You do not understand Christian liberty.”

The Tenth Error

§ 15. “Peter’s saying, ‘Make your vocation certain through good works,’ is useless.”

The Lutherans answer: “Nor does this saying from the first chapter of the second Epistle support the Antinomians who cry out about Peter’s ignorance, as if he had not sufficiently understood the doctrine of Christian liberty. For Peter’s exhortation that we make our vocation certain through good works sufficiently declares that he understood the rationale of evangelical liberty: that it is not similar to carnal liberty, nor is wickedness to be clothed with the appearance of liberty. Christian liberty is not then drawn toward the carnal if through good works we establish our vocation; that is, if by good works we testify that our vocation to the kingdom of Christ and eternal life is certain. For where evil works are exercised contrary to the will of God, there we cannot be certain concerning our vocation, but must doubt whether we have truly been called to the inheritance of the kingdom of Christ and eternal life. By weakening this certainty of vocation, because they neither care about evil works nor greatly demand good ones, the Antinomians sufficiently show that they possess no sound judgment concerning evangelical liberty. Next, this too is manifest from the immediately preceding errors: that the Antinomians are enemies of good works and provide human

beings occasions, with a certain horrible security, to do whatever has pleased their mind. And although they do not dare openly to profess that an evil life is good, nevertheless they diminish sins, so that they say we can be freed from them at a slight moment, provided only that we believe, while in the meantime omitting the resolution to reform the course of our former life for the better.”

But the poet deservedly sings in response to them:

Let the straight man mock the club-footed, the white man the Ethiopian.

For in their reply they embrace no less impious a doctrine. For Peter commands that vocation be made certain through works; without works, therefore, it is uncertain. They deny that those who practice evil works contrary to God’s will are certain, although the Calvinists affirm this. Yet if those people are uncertain, all alike are uncertain; for all perform evil works, and they say that all their good works are mortal sins, while vocation is not rendered certain through mortal crimes. Therefore they make good works of less account than the Antinomians do, because they openly profess that a good life is evil. Indeed, they highly praise these propositions: “It is possible to be saved without good works. All who have been saved were saved without good works. Good works are not necessary for salvation; they do not preserve salvation; they are not a condition without which one is not saved; they are by their nature worthy of eternal death. Evil works are effaced by faith alone. If you have committed every shameful deed, as soon as you have believed that you are just through Christ, you are just.” What greater security can there be for the wicked? But do you expect a person to submit to human judgment when he thinks that by one assertion of the mind he has escaped all crimes and their punishments?

The Eleventh Error

§ 16. “Whenever a thought of this kind occurs to you--that in this or that manner a matter ought to be conducted in the Church so that human beings may be good, honorable, modest, holy, and chaste--you have already wandered from the Gospel.”

If these things are true, it is certainly preferable to return to Judaism, or indeed to profess any religion whatsoever; for who is certain in a religion in which no account is taken of uprightness and there is no shame at wicked deeds? What else would the Ephesians, the Sybarites, or the Cyrenians say? We read that they were the most corrupt of nations; yet they did not condemn the cultivators of virtues, although they hated and exterminated them. If, therefore, the prince, mindful of his office, acts so that the citizens become good, modest, holy, honorable, and chaste, he wanders from the Gospel. If a parent thinks in this way concerning the education of his children, he ceases to be evangelical; for in this respect the rationale of prince and father is the same. **Οὐδὲν διαφέρει ἄρχων ἀγαθός, ἀγαθοῦ πατρός.** A good prince differs in nothing from a good father. He will never be a good citizen who judges that a magistrate solicitous concerning the life of the citizens wanders from the Gospel. Finally,

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since the state rules its citizens by both punishments and rewards, one who equally removes the causes of rewards and punishments cannot belong to the state.

Certainly, from even this single error there seems to me sufficient cause for all Germany to be dashed together in mutual conflicts, when the office committed by God to kings and princes--that they should be **τῶν νόμων φύλακες**, guardians of the laws--is assailed so shamelessly and insolently.

CHAPTER XXIII

The Written Divine Law Necessary to the State Is Rightly Understood and Observed by Catholics Alone

§ 1. The adversaries have long accused us gravely; but in the year 1617 writers as frivolous as they were abusive poured out upon the Catholics the venom of all preceding times. The principal accusation was that the written law of God had been rejected by us, interpolated, corrupted, and oppressed by a bad translation, interpretation, and additions of traditions. Although I answered concerning this matter in the *Conclusion of the Jubilees*, the necessity of many nevertheless requires a repeated answer here also.

I shall take my beginning from that in which they especially glory: the word of God, Scripture. They say that it is contemned by us and that our faith is overturned by it.

I do not remember that there is anyone among the Jubilarians who does not accuse us of that crime. The Heidelberg Academic Jubilee, page 24, has the following:

“8. The principle of the faith which is believed, ultimately terminating Christian faith, is divine Scripture, comprehended in the books of the prophets and apostles, and indeed Scripture alone.

“9. For all Scripture is divinely inspired and useful for doctrine, for reproof, for correction, and for instruction which is in justice, so that the man of God may be perfect, perfectly instructed for every good work.

“10. The Roman papacy long ago shook, and today continues to shake, this principle of the faith which is believed, not in one manner but variously.

“11. It teaches that nothing of divinity inheres in the sacred Scriptures except as much as Scripture receives from the Church.

“12. Nor does it hold the Scriptures as authentic except by the authority of the Church.

“13. Indeed, it does not believe God except on account of the Church.

“14. It suspends the divine authority of the Scriptures upon the judgment of the pope, because that authority resides in the pope as in the head of the whole Church.

“15. And because the pope alone, or with the prelates, is the Church, therefore the pope and prelates, if they believe the Scriptures, believe them on account of themselves; they wish the laity to believe the Scriptures on account of the pope and prelates.

“16. Thus the faith of pope, prelates, and laity concerning the Scriptures stands upon human testimony--that is, upon sand--and is nothing.

“17. It charges the Scriptures with such obscurity in matters which pertain to faith, worship, and morals that they can be understood by no one except from the interpretation of the pope.

“18. It makes the pope the supreme judge of all questions concerning faith, in whom our faith must ultimately come to rest, even in those matters which the evangelicals dispute with the pope.

“19. It accuses the Scriptures of imperfection, because they suffice neither for cultivating faith and piety nor for attaining salvation unless they are supplemented by traditions.

“20. Hence it calls its traditions the unwritten word of God, equally certain, infallible, canonical, necessary for salvation, and to be received with equal affection of piety and reverence as the written word of God.

“21. It blasphemes Scripture as a waxen nose, ambiguous, a dead letter, written in ink, made of paper, which needed the consensus of the Church for confirmation, like a sheath receiving any sword whatever--of steel, lead, wood, or bronze.”

Our Maximilian Sandaeus discussed these matters truly and learnedly in the *Secular Thesis*. More crudely, but more abusively, Jacob Martini, the dialectician of Wittenberg, treated the same matter in posted theses. Erhard Lauterbach, Sermon 2, says that the Romans neither read the Bible nor grammar, and that he believes no pontiff read through the Bible in his whole life. He says that Leo X, when Bembo brought forward a sentence from the Bible, said: “Why, Bembo, do you allege that fable to me?” And to Sadoletto, when he was writing commentaries on the Epistle to the Romans: “Omit those trifles; such follies do not become a serious man.” At these things Polycarp exclaims thus: “O you condemned Italian scoundrels, are your politics more serious than the word of God? Hear the most learned Leo and Bembo: if they esteemed Scripture as nothing, how would the unlearned esteem it?” Nearly all bishops, cardinals, and monks were of flour of this kind. Polycarp Leyser nevertheless writes that the Bible was not altogether lost, but hidden under a bench.

Christoph Schleupner, general superintendent and court stentor, when he wished to delight his people with pleasantries, made Catholic theology fivefold: canonical, scholastic, monastic, Interimistic, and Jesuitical, pages 8--11, Sermon 1. But he does this with such ignorance that he appears never to have seen any books of Catholics. I have named a few; all are engaged in the same cause, all labor to persuade the people that we condemn Scripture while they venerate and follow it, and therefore that we are governed by human law alone while they are governed by divine law. They especially call into odium our esteem for canons, councils, and pontiffs, as though we set those decrees before sacred Scripture. But let us explain the whole case.

§ 2. First, this is the common opinion and faith of Catholics: the sacred writings possess such depth, wisdom, and perfection that no writings of human beings can or ought to be equaled with them. For the law is the Creator’s.

Second, all hold by the same faith that sacred Scripture possesses infallible authority, divine truth mixed with no error, and the norm directing all things.

Third, whatever in the writings and sayings of others conflicts with even one sentence or one apex of the sacred writings is false.

Fourth, any Christian ought to die a thousand times rather than judge or say that even one saying of Scripture is false, or affirm that it can be false.

Fifth, whoever teaches or thinks the contrary concerning Scripture is not a Catholic; we say to him, Anathema, Maranatha. Therefore an injury, and indeed an extraordinary one, is inflicted upon us when we are accused of contemning Scripture, we who are prepared to pour out all our blood for its whole body and for each individual apex, as indeed we teach that it must be poured out. For it can happen that some Catholic experiences a spirit ready but flesh weak, desires to go to death and prison, but grows afraid at the voice of a maidservant and denies the Lord in his word. There is therefore no cause why they should depart from us in this respect,

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much less traduce us as violators of sacred Scripture and make two states from one.

Nor is this my judgment alone, but that of the whole Catholic world. The Council of Trent, session 5, chapter 1, seriously commands the prelates to take care that Scripture is diligently expounded, and affirms that this was cared for by synods and pontiffs. “The same sacred and holy synod, adhering to and embracing the pious constitutions of the supreme pontiffs and approved councils, and adding to them, lest that heavenly treasure of the sacred books which the Holy Spirit delivered to human beings with the greatest liberality should lie neglected, has established and decreed,” and so forth--namely, that it be expounded in cathedral churches, monasteries, convents of regulars, and public academies. Nor was this done for the first time then; examples of synods and supreme pontiffs preceded it.

And certainly there are many testimonies that Pope Leo held Scripture in the highest esteem, especially his constitution given at the Lateran Council in 1516, on the fourteenth day before the Kalends of January, where he not only cites Scripture and esteems it greatly, but also establishes excellent laws for its interpreters. Therefore what is invented about his having spoken into the ears of Bembo and Sadoletto was drawn from the same quiver from which myriads of calumnies came forth.

§ 3. We therefore follow Scripture as law, nor do we judge that it has been shown for a century that we have departed from its smallest particle. The sole reason, therefore, why the innovators departed from us is that they themselves utterly condemn the Scriptures which they cite and hurl about to the overturning of stomach and brain. I have already shown frequently that the matter stands thus. Weigh the matter: you will understand that they depart from the law of God.

For first, if among so many hundreds of those who departed from the Church there is one who rightly followed Scripture with an unerring footprint, let him be named, and I shall prove that the rest followed neither Scripture nor the Spirit of God, but their own sense, and set it before the truth of Scripture.

Second, when their leaders are pressed by Scripture, they turn to accusing it. When Vorstius had said that there were certain errors in Scripture, he defended his cause against the eternal truth of God by the authority of Calvin and Junius. I cited the passage elsewhere, but no one has answered me hitherto, and even now the importunity of the calumniators compels me to set forth the same things. “Finally, that especially is objected concerning the apostles and other writers of the New Testament: that they are said to have been able to err in slight matters or suffer a lapse of memory, and so forth. But does Calvin not have the same or similar things, when he writes not obscurely that the same writers of the New Testament sometimes hand down certain superfluous things, omit other things of great importance, disturb the order of time in a history, or cite certain things from the Old Testament less suitably, and so forth? In place of many examples let there be that one passage on 1 John 2:14, where he expressly says that those repetitions of the Apostle are superfluous, namely in these words, ‘I write to you, children,’ and so forth.

“But, to omit Calvin here, what seems to be the case concerning Francis Junius, who in his *Commonplaces*, recently printed here, book 1, chapter 19, does not fear to affirm that the writers of the New Testament sometimes knowingly and deliberately wrote certain things contrary to the truth of history? For he writes openly thus on pages 61 and 62: that they sometimes conceded something out of charity to a received error and, on account of public opinion, deviated from the truth of history, and even inserted certain things contrary to truth into the sacred text, and so forth. He confirms this by the particular example of Saint Luke, who, contrary to the truth of Mosaic history, placed the name Cainan in the genealogy of Christ, evidently so as not to offend those who had grown accustomed to the Greek version of the Old Testament, in which that name stood, and so forth.

“But if this assertion of Francis Junius can be excused--concerning which I now do not wish to deliver my opinion--why could not at least another similar hesitation or concession be excused? Certainly it is more serious knowingly and deliberately to write something contrary to the truth of history than to admit a *σφάλμα μνημονικόν*, a lapse of memory, in a slight matter. And again, it is something greater to assert the former certainly concerning someone than to grant the latter to an adversary by way of concession. But let these things now suffice. More examples of this kind from our doctors can be brought forward on another occasion, when there is need, at least so that it may appear that those suffer from great partiality who liberally excuse the same or similar sayings in one person which in another they traduce as heretical and impious.”

Calvin certainly, on Joshua 24:32, accuses Stephen in Acts 7:15 as if he had named Abraham for Jacob; nevertheless, among them the error indicated by Calvin remains. And in the *Harmony* on Matthew 20:26 he denies that the saying “Many are called, few are chosen” fits or is relevant; but it was Christ’s saying. If, therefore, one error is admitted into Scripture, all its credibility totters, for lying Scripture is not believed, and thus the foundation of all laws is weakened.

§ 4. Luther is no gentler in this respect; for he opposes Scripture to God, on Galatians 3, volume 5, folio 345: “I would prefer to hold in honor and believe Christ alone rather than be moved by all the passages which they could produce against the doctrine of faith for establishing the justice of works. Therefore one must answer them simply thus: here is Christ; there are the testimonies of Scripture concerning law and works. But Christ is Lord of Scripture and of all works.” And a little later: “I pay no heed to passages of Scripture, even if you produce six hundred for the justice of works against the justice of faith and cry out that Scripture is fighting against me. I possess the author and Lord of Scripture, on whose side I prefer to stand rather than believe you.” And after a few intervening words: “You urge the servant--that is, Scripture--and not the whole of it or its better part, but only some passages concerning works. I leave this servant to you. I urge the Lord, who is king of Scripture.”

If, therefore, they object to errors in Scripture, how do they object to us contempt for it? These things were derived from the most impure fountains of the Ebionites, Cerdonians, Gnostics, Marcionites, Tatianists, Severians, Elcesaites, Manichaeans, Bogomils, and Albigensians, and flowed into the most poisonous lake of the Antinomians and Libertines as into a sewer. They labor to make the world lawless.

§ 5. Third, they held the worst opinions concerning those who left the sacred writings to us and who are commended in them. Scripture depicts Abraham for us as the father of the faithful, justified by faith and pleasing to God; Calvin charges both him and his wife Sarah, contrary to the divine oracles, as guilty of the gravest crimes. In his commentary on Genesis 16:3, he accuses Abraham of excessive facility and Sarah of haste. He says that Abraham’s faith was shaken and that there was a middle pretext between fornication and marriage, cloaked with an honorable name. He says that they sinned in the manner or rationale of acting, not in substance, because they sought offspring outside God’s legitimate ordinance. But that manner altogether removed the substance of faith. For, if we believe Calvin, they sought the blessing through adulteries and procuring; for he affirms that Abraham acted thus lest he be deprived of the blessing. But it is certainly shameful to commit adultery in order to obtain a blessing. Concerning Sarah he says: “Since she knew that in the seed of Abraham there were to be blessed

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all nations, it is not wonderful if she was unwilling to be deprived of the honor of partnership, lest, cut away from the blessed body like a putrid member, she also be made a stranger to the promised salvation.” If these things are true, Sarah and Abraham were unbelievers. For to believe that she would be cut away from the blessed body unless she established a brothel in her own house, or that she would be a stranger to salvation unless she were her husband’s procuress and the one who brought forward her maidservant, is to be an unbeliever. Nor is he gentler toward Moses on Exodus 2:12 and 4:10 and Deuteronomy 34:10. He says that Moses contemned divine obedience, wished as it were to compel God to break off the work, and possessed a mind forgetful of all things. He treats David, Elijah, Daniel, and others in the same manner. Therefore it is not we who condemn Scripture and its authors, but those who accuse us of that matter. They therefore affirm that the divine law was most shamefully violated by the prophets.

§ 6. Nor is the accusation just, nor is there a legitimate cause for departing from us because we number among the sacred books Judith, Tobit, the Book of Wisdom, Ecclesiasticus, Baruch, chapters 13 and 14 of Daniel, the Song of the Three Boys added to Daniel 3, the books of Maccabees, and the things which follow Esther 3:10. The first reason is manifest. Neither the Lutherans nor the Calvinists condemn their patriarchs because they removed from the canon certain books which they now judge true and legitimate books of Scripture. Therefore they ought not to be more inequitable toward us, even if contrary to their opinion we admit certain books into the canon.

Luther in the prologue to this Epistle, Brenz in the Wittenberg Confession, Chemnitz in the examination of session 4 of the Council of Trent, and the Magdeburg writers in chapter 1 reject the Epistle of James; yet the Calvinists do not flee the Lutherans on that account. They also reject the Epistle of Jude, doubt concerning 2 Peter and 3 John, and Luther and the leading Calvinists expunged the Apocalypse from the canon. Graser, in the hypothesis of the royal plague, acknowledges that because of its difficulty the Apocalypse was not received by his teachers. Later Calvinists

received it; therefore it will be possible that at some time they will also receive into the canon these books which they now refuse to bear.

If, therefore, Zwingli and others diminished the Apocalypse at its head without crime and this is forgiven them by their successors, they ought not to be such inequitable judges toward us as to interpret our facility so gravely because we admit the books which the ancient Church judged canonical. The second reason is even more evident: we possess great cause to receive those books into the canon, or, to speak more properly, not rashly to expunge those received long ago. For although certain persons formerly doubted, nevertheless most admitted them; those who received them into the canon were both more numerous and more learned. Bellarmine proves this in book 1, chapters 7 and following of *On the Word*, as does Nicholas Serarius in the prefaces to the commentaries which he wrote upon most of those books.

The authority of Beza adds force to this argument among his own people. For after, against Erasmus and his own teachers, he had restored the Apocalypse to the canon, he answers thus to the argument of those who said that it did not appear to the most learned to be a canonical book because in it there was nothing of apostolic gravity: “Whoever at last those most learned men were, they deserve great reproach because they dared to assail with abuse a book which would certainly be very short if one removed from it the things transcribed word for word from the prophets. Basil, Gregory, Cyril, Epiphanius, Irenaeus, and Hippolytus, as Arethas testifies, acted far otherwise. They not only thought this book written by a holy man, as Dionysius of Alexandria did, but also openly claimed it for John the Apostle. They certainly would never have done this if they had observed no traces of apostolic gravity in it. Which shall we hold as the more learned: those whose singular piety and highest erudition are attested by very many monuments of their own, or rather those whose very names do not appear, while their arguments sufficiently indicate how deservedly they are called most learned?”

He speaks well indeed, but there are many more: Dionysius the Areopagite, Justin, Tertullian, Hilary, Athanasius, Origen, Cyprian, Damasus, Ambrose, Eusebius, Chrysostom, Jerome--who himself also thinks thus in the letter to Dardanus and affirms that this is the opinion of all the Latins--Augustine, Isidore, Gelasius, Innocent, Theophilus of Antioch in Eusebius, book 4, chapter 23, Apollonius in the same author, book 5, chapter 17, and Pamphilus. Next there are the Councils of Florence, Rome under Gelasius, Trent, Ancyra, Third Carthage, Fourth Toledo, and Second Nicaea. If we use for the books which we receive an argument similar to the one Beza uses against his own people in favor of the Apocalypse, I do not see why on that account we should be condemned as impious toward Scripture, when the ancient Church is under the same condemnation. Beza wishes thus concerning Erasmus: “And would that he had preferred to profit under these teachers rather than, relying upon confidence in himself, to make a name for himself.”

If Beza himself had followed this, he would neither have fallen into so many heresies nor now be opposed by all the Lutherans and the more moderate Calvinists. Now, if I cannot obtain peace or bring the adversaries to agree with antiquity, I demand only latitude and moderation: let them not calumniate us as betrayers of the divine utterances because, with so many and such firm arguments and with the consensus of the most learned and holy, we defend the canon. In that for which we deserve praise, let them grant pardon. Luther rejected many books--the Epistles of James and Jude and the Apocalypse--yet the Lutherans worship him. After he had very frequently asserted that he knew more certainly than certainty itself that the word of God stood on his side and that his doctrine was the doctrine of Christ, he denied the word of God, for he erased part of it from the canon. What do the Lutherans do here? They were ashamed of the error of Luther, Brenz, and Chemnitz, for in certain books they rubbed out those statements of Luther concerning the Apocalypse. Therefore Hunnius denies that he found any such thing in Luther. But our Gretser showed it to him, for the Nuremberg Bible of the year of the Lord 1527 has those words in its preface. I beseech you, do not employ such open *προσωποληψία*, partiality, that you first corrupt the writings of Luther rejecting the Apocalypse, then veil his error with a lie and deny that he wrote what you yourselves deleted from him, while you devote us to every curse because with the ancient Church, councils, and Fathers we retain certain books which displease you. Behold, it is still in question who keep the law.

§ 7. But if we weigh your arguments in the balance, we shall find them lighter than a feather. In this year 1618 John Sharp published at Geneva a theological course. His companions, in order to make him insane instead of foolish, call him Hercules returned to life. Gathering his errors into a bundle, he attacks the truth thus on page 11:

“All the canonical books of the Old Testament were written by prophets. But none of these books was written by a prophet. Therefore they are not canonical books.” The proposition is proved from

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2 Peter 1:19--21; Romans 1:2 and 16:26; Luke 1:70, 16:30, and 4:27; Ephesians 2:20; Hebrews 11; and the same can be proved by induction. But the assumption is confirmed by three arguments:

“1. By the confession of all the Jews, Malachi was the last prophet. Between him and John the Baptist no prophet intervened. But these books were written after Malachi, as is evident from the books of Ecclesiasticus and Maccabees. Therefore they were not written by a prophet.

“2. All books composed by prophets were written in the language which the prophets used--that is, Hebrew or Chaldean, then the vernacular and common language. But these books were written not in it, but in a foreign and unknown language, as the Fathers affirm, the matter itself proves, and the pontificians concede for the greatest part. Therefore, and so forth.

“3. If these books had been written by prophets, then Christ and the apostles would have used them as witnesses of their doctrine--for all prophetic Scriptures testify concerning Christ, and Christ and the apostles used them. But neither Christ nor the apostles used the testimony of these books. Therefore they were not written by prophets.

“II. The Church receives all the canonical books of the Old Testament. But it does not receive these books. Therefore they are not canonical. The proposition is proved: if that Church had rejected some part of canonical Scripture, it would have been guilty of the greatest crime in this, and Christ and the apostles would have reproved it under this name. For if Christ reproved them in Matthew 5 because they interpreted the Scriptures badly, he would have reproved them much more if they had rejected part of Scripture as noncanonical. But he did not reprove them for this cause. Next, in Romans 3:2 they are called *τὰ λόγια τοῦ Θεοῦ*, that is, the sacred Scriptures entrusted to the Jews. But Justin, *Address to the Greeks*; Augustine, book 1 of *On the Harmony of the Evangelists* and Letters 3 and 59, testify that the Jews diligently preserved the entire ancient canon. Finally, if the books were then canonical and were not received by the ancient Church, it follows that many canonical books were not received by the whole Church. But it is most absurd that the whole Church--in which were prophets and priests and afterward Christ himself and the apostles--rejected the will of God. Therefore. The assumption is proved by the consensus of all the Fathers and even of the pontificians themselves, and it will appear afterward. Therefore.

“III. A book is known to be canonical in only two ways: 1. By the testimony of some prophet or apostle. 2. Or by the testimony of those who lived at the time when that book was published, to whom it could be certainly established whether it was published by a prophet or apostle or not. But by neither of these ways do we know that the disputed books are canonical. Not by the first, because there are now no prophets or apostles. Not by the other, because so far is anyone from being able to testify that a prophet or apostle published or received these books that not even in the time of Jerome, by his own testimony, were they received into the canon. But if the apostles had received and acknowledged these books, as Bellarmine wishes in book 1, chapter 10 of *On the Word of God*, the ancients would have used the testimony of these books as they did the others. But they did not use them; therefore these books are not to be acknowledged as canonical.”

§ 8. Let us therefore examine these arguments by which the greater part of the Christian world is condemned. I do not labor greatly over the major premise; it is certain that the name “prophet” is not accepted in the same manner. Let us examine the proof of the minor, for it truly contains many errors and much ignorance--but bold ignorance, which opposes itself to the word of God and casts out the law of God.

Malachi was almost contemporary with Haggai and Zechariah, who prophesied about the twentieth year according to a probable chronology. Malachi followed them after a short interval. Sharp denies that there was a prophet throughout that entire period of more than four hundred years, until John.

Yet this conflicts with the Gospel, for Zechariah, the father of the Baptist, was a prophet, Luke 1:67; as was the elder Simeon, Luke 2:27; and in verse 36 Anna the prophetess, daughter of Phanuel, who was already at least eighty years old. Next, during the time of the Maccabees, when there were so many distinguished martyrs, who would doubt that there were also prophets? For although there was no ordinary office at the time when Judas died, 1 Maccabees 9:27, nevertheless afterward prophets were not lacking, who, just as they prophesied, could also write books. Nor is it an obstacle that they appointed Simon leader until a faithful prophet should arise, 1 Maccabees 14:41 and book 1, chapter 4:46. They awaited a prophet, but the one whom Moses foretold in Deuteronomy 18: “The Lord will raise up a prophet from your nation, like me.” Since, therefore, there were prophets who expounded the law, exhorted to martyrdoms, and consoled persons in the bitterest persecution, there were also prophets suitable for writing books. For why could God not give infallible authority to them also?

For although those who foretell future things are prophets in the most proper sense, prophecy is nevertheless also properly attributed to others who reveal hidden things. Thus the Samaritan woman, because Christ had disclosed to her the deeds of her own life, calls him a prophet; and this is a very customary account of prophecy in the Scriptures.

Second, workers of miracles are also accustomed to be reckoned under the name of prophets, for almost all the prophets were distinguished by miracles: Moses, Aaron, Joshua, Elijah, Elisha, and others. For the divinity procured authority for his servants through wonderful works; accordingly, since those who performed miracles were also endowed with the spirit of prophecy, it came to pass that **τὸ θαυματουργεῖν**, working miracles, was called “to prophesy.” Thus Ecclesiasticus 48:14: “Elijah’s body prophesied.” **Καὶ ἐν κοιμήσει ἐπροφήτευσεν τὸ σῶμα αὐτοῦ.** And chapter 49:18, concerning Joseph: “And his bones were visited, and after death they prophesied,” although that latter part is lacking in most Greek copies.

Saint Jerome on 1 Corinthians 14: “Prophets are those who explain the obscure things of the prophets and who exhort human beings, as he says elsewhere: ‘For he who prophesies speaks to human beings for edification, exhortation, and consolations.’”

Third, they extend the word “prophesying” even more broadly, so that those are said to prophesy who, by admonishing, reproving, teaching, and consoling, call persons away from vices, lead them to the pursuit of virtue, interpret the Scriptures, and expound questions of Christian doctrine. For this was the office of the prophets, by performing which they are intermediaries of the divine will. Thus in Exodus 4 and 7 Aaron is the prophet of Moses; thus in 1 Corinthians 14:5 the Apostle admonishes Christians to take greater care that they prophesy.

Fourth, those who, inspired by the Holy Spirit, sing psalms to God are sometimes called prophets. In 1 Chronicles 25:1--3 they are said to prophesy with lyres, psalteries, and cymbals; to prophesy with a lyre while standing above and praising the Lord. Although in verse 1 the Seventy read **ὑποφθεγγόμενους**, “those uttering forth,” for *nebí’im*, nevertheless in verse 3 they use the verb **προφητεύεσθαι**. Some wish this to mean “to sing prophecies”; but they sang the psalms which we possess. Now this is rightly called prophesying. In this signification

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they accept 1 Kings 10:7, where there is a band of prophets and Saul among the prophets. This signifies not singing God’s praises in any manner whatsoever, but by a singular impulse; for it is not to be denied that many were accustomed to sing God’s praises concerning whom there was nevertheless no such wonder, nor is it to be denied that many were accustomed to sing God’s praises concerning whom there was nevertheless no such wonder, nor is it to be denied that among these were some who were called prophets properly and in the first manner.

Fifth, “to prophesy” is taken in a bad sense, so that it is the same as to be agitated by a fanatical spirit in the manner of demoniacs. Thus 1 Kings 18:10: “But on the following day an evil spirit of the Lord invaded Saul, and he prophesied in the midst of his house.” For because the seers of the gentiles, with foaming mouth and savage heart, agitated by madness, drove the nations mad with tortuous oracles, it came to pass that for them to rage was to prophesy, when the seers reveled in the cave. For in a most dissimilar thing there is a certain similarity: just as the holy prophets were driven by a good spirit so that their deeds and sayings were composed according to his will, so the false prophets were dreadfully agitated by an evil spirit so that they did all their things at the spirits’ command. Thus Scripture calls the unformed cries, gestures, leaps, incisions, and little wounds made by the prophets of Baal--the whole action of their impious ceremonies--“to prophesy,” 3 Kings 18:29: “But after midday had passed, and while they were prophesying, the time came at which the sacrifice is customarily offered.” Nor is this wonderful or new, since the name “prophet” is frequently attributed to false prophets and impostors, as in Jeremiah 6:13; 26:7, 8, and 11; 27:7; 28:1; and 29:1; Zechariah 13:2; Ezekiel 22:25, in which place the Seventy rendered ἀφηγούμενοι, “leaders,” whereas in the previously cited passages they rendered ψευδοπροφήται, “false prophets.” We treat of prophets properly so called and deny that there was none during so great an interval.

To the second argument I answer: first, that certain of those books were written by prophets in the Hebrew or Chaldean language. Let Nicholas Serarius be heard concerning this matter, prologue 3 on Tobit: “In Letter 100, which is to the bishops Chromatius and Heliodorus, Saint Jerome relates that this book was written in the Chaldean language. There exists today a Greek version of the same book and two Hebrew versions, one of which, received from Constantinopolitans, this Germany of ours published more than forty years ago. Thus I greatly wonder what ignorance or impudence entered that Briton, enemy of the most learned Bellarmine--or rather of Catholic doctrine--the Calvinist Whitaker, when within this very decade he wrote, ‘Tobit is read only in Greek and Latin.’ For this is condemned as false even by other heretics themselves: Fagius, Münster, Vatablus--or rather Bedwell--of the Geneva edition, and Drusius. Indeed, a Syriac version is also found in certain libraries, as the most learned Andreas Masius relates concerning his own library in the dedicatory letter on Joshua to King Philip.”

Jerome himself translated Judith from Chaldean, as Letter 3 testifies. Mordecai was the primary author of Esther. Concerning Wisdom, Ecclesiasticus, and Maccabees, I judge that the first two were written in Hebrew and afterward translated into Greek; they certainly could have existed in the time of the prophets. The author of Maccabees, as it seems to me, wrote in the vernacular language--that is, Greek--in which most Jews living in the kingdom of the Greeks were skilled. For we readily gather that more Jews were ignorant of Hebrew than of Greek from the fact that they changed their ancestral Hebrew into Syriac, and next from the fact that Josephus, learned among the Jews, was ignorant of that language. Finally, there were colonies of Jews throughout all Asia and Greece; therefore the Greek language was not unknown to the Jews after the Maccabean wars. Otherwise, by that argument the entire New Covenant would be overturned, for it is certain that it was written in Greek. But the Hebrew language was no less foreign while a Latin prince ruled than while a Greek prince ruled. Certainly it is established that the Greek language was commonly known everywhere even to the Jerusalemites, both from many other things and from the fact that Acts 22:2 says: “But when they heard that he was speaking to them in the Hebrew language, they kept the greater silence.” They therefore thought that he would deliver his address in Greek. Both they would have awaited this in vain after making silence and Paul would have attempted it in vain, unless the raging crowd had also understood Greek.

The third proof can stir up disturbances and overturn many other books. For Christ and the apostles did not use the authority of all the books of the Old Testament. They did not mention Obadiah and Zephaniah, while from others only a few things occur here and there in their writings, so that, if we rest upon this argument, we must erase two prophets from the canon. Behold with what arguments ancient truth is attacked by the Jubilarian Hercules.

Sharp’s second argument is much weaker, column 12: “The ancient Church of the Old Testament did not receive these books and nevertheless was not reproved by the apostles, although rejecting any part of canonical Scripture is the greatest crime. Finally, the whole Church would not have received all the canonical books, which is most absurd.”

I answer that what he pronounces concerning the Church applies to the Lutheran and Calvinist church. By Sharp's testimony, the Lutheran church is guilty of the greatest crime because it rejects part of canonical Scripture, and the first Zwinglian church is guilty of no lesser crime, since it exterminated the Apocalypse. As concerns the ancient Church: although they were not in the first canon of the Hebrews, nevertheless the Church of Christ receives them, as Saint Isidore and Augustine, book 18, chapter 26 of *The City of God*, admonish. They were not in the first canon of the Jews; they were relegated to the second and were not accepted by everyone; afterward, nevertheless, they were judged canonical by the Christian Church. For it can happen that a book is doubtful for some time and is afterward held as canonical, as was said concerning the Apocalypse in the Calvinist assembly.

The third argument: it is established neither by the testimony of an apostle or prophet nor by that of anyone who lived at the time when they were written that they are canonical; therefore they are in no manner canonical.

I answer that we possess testimonies of Hebrews who had them in the second canon. The first canon was made in Ezra's time; they could not be in it because they were later. They were afterward in the other, as it is permissible to gather from Josephus, book 2 of *Against Apion*. For he cites those words of Ecclesiasticus 42:14, **κρείσσων πονηρία ἀνδρὸς, ἢ ἀγαθοποιὸς γυνή**--"Better is the wickedness of a man than a woman who does good"--in this manner: **γυνὴ δὲ χείρων, φησὶν, ἀνδρός, εἰς τὰ πάντα, καὶ ἡ πονηρία αὐτῆς ὑπὲρ ἀγαθοποιὸν γυναικός**--"A woman, he says, is worse than a man in all things, and her wickedness surpasses the good-doing of a woman." But the book from which he cites these things he calls **νόμον**, law, so that it plainly appears that he refers Ecclesiasticus to the law. Junilius Firmus says that the books of Maccabees possessed the same authority among the Jews as Chronicles, Job, and Ezra; why, therefore, should they not hold the same place among us? But if testimony is needed, what sort do you possess concerning the Apocalypse? You will say that you possess many, but not those of everyone; we too affirm the same concerning these books. Concerning the difficulties

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which they object from individual parts, I refrain from answering, because they have been explained sufficiently and more than sufficiently by the interpreters, and otherwise all books could be attacked by the same reasoning.

§ 9. "In only TWO ways," says Sharp, "is a book known to be canonical: first, by the testimony of some prophet or apostle; second, by the testimony of those who lived at the time when it was published, to whom it could be established whether it was published by a prophet or apostle or not." He denies that it can be known in the first manner, because there are now no prophets or apostles.

I deny that the Calvinists can know it in the second manner, because the testimony of any other person whatsoever, although he lived at that time, is human testimony, as they always boast; but faith cannot rest upon human testimony. For by this argument they attack the authority of the Church. If they truly do so, they no longer possess any Scripture which they believe, for there is now no apostle or prophet, as the British Alcides, Sharp, acknowledges, and the testimony of all others, even of the whole Church, is fallible and uncertain. By arguing thus, therefore, they bring it about that while they praise Scripture, they at the same time abolish it.

CHAPTER XXIV

We Are Unjustly Accused of a Corrupt Version and Interpretation of the Divine Law

§ 1. A manifold dispute is raised against us in this place: our version is rejected, our interpretation is attacked, and liberty of prophesying--that is, of interpreting--is sought. To this pertain conflicting versions, vernacular readings, the interpretations of the unlearned, the easiness of Scripture, and adulterations of divine law and right.

The accusations are various and come from various persons. John Gisenius, in *The Remembrance of the Reformation*, thesis 14: "The authentic edition in the Old Testament is the Hebrew, and in the New the Greek"; and thesis 18: "Scripture is clear, perspicuous, and manifest in the doctrines which it is necessary to know for salvation." So also thesis 22; and thesis 20: "The interpretation of Scripture is not to be brought in from elsewhere, but must be derived from Scripture itself." Yet John Salmuth claims for himself the palm of malicious speaking in this part, page 10 and the following pages. He says that the book of the law was as it were lost, partly through contempt, partly through corruption, and partly through burning; that a bad Latin version of the Bible was preferred to the Hebrew and Greek; that the Bible is doubtful, has no certain meaning that can be had from it, and is called the book of heretics, the mother of all heresies, a dead letter, a waxen nose, a Lesbian rule; that the Pope is said to have greater authority than the Sacred Writings; that the decrees of the Pontiffs are preferred to Scripture in many ways; that in sermons Saint Thomas and others were cited more frequently than Scripture, and that Scripture was rarely explained; that Paul's Epistles were held to be fables; and that power to act contrary to them is asserted for the Pontiff. Balthasar Meisner of Wittenberg calls the festival of their jubilees the festival of the Bibles' discovery. Wolfgang Franz, in his sermon, approves Luther's hyperbolical calumny, in which Luther writes to Johann Sylvius that there was no preacher of his time who could expound even a single chapter of Scripture, and he asserted this under oath. The same Meisner, in his sermon for the second day, says that Scripture is called by us the black Gospel, ink theology, and the express word of the devil unless it is understood according to the meaning of the Church.

Indeed, Pareus formerly imposed the same things upon us in the prologue to Hosea 3, question 1, page 13, and now repeats them in his thesis. Erhard Lauterbach does the same in his preparatory sermon and in the second sermon, in which he says that there had been no public preaching, but only preaching in the hearts of the pious. But Catholics judge most rightly in this matter, sectarians most badly. I explain the matter in the following propositions.

First proposition. It is not enough to acknowledge the authority of Scripture; it is also necessary to possess a certain and known exemplar which is authentic. Otherwise it will have no authority among the ignorant. For no one doubts that the word of God is of the highest truth and the highest authority, but one must know that this very thing is the word of God--a true and authentic exemplar. This is beyond controversy.

Proposition 2. The authentic exemplar of the divine law was deposited in the ark; from it various exemplars were copied. Then, as the number of sacred books increased, the prophets' autograph exemplars were without doubt preserved publicly, and many copies were made; these, however, I do not think were placed in the ark.

Proposition 3. Some think that the Bible wholly perished in the war of Nebuchadnezzar; Bellarmine, book 2, chapter 1 of *On the Word of God*, and Serarius, prolegomena, chapter 12, question 1, refute them well. Ezra therefore established the order and perhaps, admonished by the Spirit of God, added certain small portions on account of chronology, such as those concerning the death of Joshua and of Samuel. Nor do we dispute concerning this controversy. This alone must be noted: Ezra changed the ancient characters of the Jews into Chaldean ones, for ancient shekels exhibit different characters.

Proposition 4. The Old Testament, if one excepts a few things in Chaldean, was written in Hebrew, and certain things in Greek; the New Testament was written in Greek, although others contend that Matthew's Gospel and certain other

things were written in Hebrew. But however that matter may stand, the Hebrew editions now in circulation do not possess authority.

Proposition 5. The ancient Hebrew text was not wholly corrupted by the malice or negligence of the Jews--neither before Christ's advent nor afterward. Not before it, because there was no cause, and they were not accused of that matter by Christ or the apostles. Next, since they were variously dispersed, they could not agree upon one error. Third, Christ himself refers the Jews to the Scriptures, cites them, and explains them: John 5:39; Luke 4:17; Matthew 2:47.

Saint Jerome indeed says in his letter to Augustine that he translated the Bible in order that he might bring forth those testimonies which had been omitted or corrupted by the Jews. But he means the Jewish translators who translated it into Greek: Aquila and Symmachus.

Proposition 6. Nothing has been maliciously changed by the Jews during the last one thousand one hundred years; for the Masoretes counted all the verses, words, and letters, so that none could be removed. Rabbi Saadia counted them thus:

Aleph 42,377 Beth 38,218 Gimel is found 29,537 Daleth 32,530 He 47,554 Vau 76,922 Zain 22,867 Chet 23,447 Tet 11,052 Iod 66,420 Caph 48,253

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Lamed 41,517 Mem 77,778 Nun is found 41,696 Samec 13,580 Ain 20,175 Phe 22,725 Tsade 21,822 Koph 22,972 Resch 22,148 Schin 32,148 Tau 59,343 Total 8,211,081.

Proposition 6. In Jerome's time the Hebrew text had not been maliciously corrupted. Thus he says on Isaiah 6: "If some say that after the advent of the Lord and Savior and the preaching of the apostles the Hebrew books were falsified, I shall not be able to restrain my laughter: as though the Savior and the apostles had brought forth testimonies in such a way as the Jews were afterward going to falsify them."

Proposition 7. Nevertheless, afterward they changed certain things in those exemplars in which they were able to do so. Examples are found in Bellarmine, book 2, chapter 2 of *On the Word of God*, and in Serarius, chapter 12, question 2. Broughton on Daniel 9, page 45; Hunnius against Bellarmine, book 2, chapter 2; and Junius on Psalm 22, chapter 2, book 2, confess the same. Nothing is more tasteless than this reading which the Jews now defend, οὐδὲν ὄγιές, nothing sound; scarcely a word is complete, nor is there sense. Let Serarius be read in the place cited.

Proposition 8. Therefore, as Serarius rightly teaches in question 12, chapter 2, proposition 7, the Hebrew text which is commonly seen in present-day exemplars, if it is considered mathematically or physically, must be said to be corrupted absolutely; morally, however, it must be said to be corrupted not wholly but in a certain respect: namely, with respect not to all exemplars but to certain ones, or with respect only to certain passages. The former part is evident because, both from the human weakness of either carelessness or someone's lack of skill, it contains certain errors, and from the wickedness of the Jews it contains some corruptions, as was shown. Now, when the integrity and due perfection of any whole is in question, that is certainly said to be absent both mathematically and physically if even one part is missing or is distorted and corrupted. The latter part is proved because, morally, that author or text does not seem to be wholly corrupted and lost which either is sincere and complete in certain exemplars, or whose true and genuine reading is noted in other books and preserved by the memory and judgment of the learned.

From this, therefore, it is apparent that the source which they boast to be most pure is not so--not only because through the negligence of scribes and human weakness it happened that errors occurred, but because malice revealed itself here and there.

Proposition 9. Bibles as they are now generally published, with vowel points, are not authentic exemplars, for since the points themselves did not exist at the beginning but were added afterward, they are not part of sacred Scripture. Most authors teach this, and Nicholas Serarius does so most learnedly in the prolegomena to the Bible, chapter 3,

question 5. Münster says that they were invented at Tiberias, the one in Paphlagonia. But Serarius reports more correctly that it was done at Tiberias in Palestine, about the five-hundredth year of the Lord; even the innovators agree with him. Zwingli, in his preface to the *Explanation upon Isaiah*, says: “The letters of the Hebrews lacked vowel signs, which their Rabbis, with little civility, both devised and foisted in. This is gathered not only from the fact that Saint Jerome made no mention at all of them, but also from the fact that their most ancient codices, although they now possess those signs, nevertheless did not once possess them, as is detected both from the difference of the ink and from their position.” And a little afterward: “Therefore the reading of this kind was established by usage.” His disciple Pellican says: “Great men think that the Hebrews formerly lacked the signs of vowels and diphthongs; and one may even now find authentic books of the Jews, of venerable antiquity, written with the characters of consonants alone, not of vowels.” The Wittenberg and Tübingen defenders of Lutheran theology, in their book against Scherer, say: “At the beginning the Bible did not possess vowel points.” And a little afterward: “If at the time when the Latin translation which we use was made the Bible had possessed points, the Latin translator could not have changed anything among the vowels. And therefore the points ought not to occasion any difficulty for anyone when true knowledge is sought in the books of the Old Testament.”

The innovators, therefore, cannot appeal to pointed Bibles as authentic, since the points are the work of treacherous Jews. From these things I conclude thus: since the Hebrew text has been corrupted in certain things by human weakness, negligence, and wickedness; since half of it as it is read today does not pertain to the text but is an addition--namely, all the vowel points--one ought not to appeal to it as the purest and most inviolate source, nor to correct all other versions from it.

Proposition 10. Our Latin version is sincere and learned, partly from Saint Jerome as translator and partly from him as corrector. For all confess that he was most learned in the Hebrew, Greek, and Latin languages; Luther alone, in *Table Talk*, chapter 69, denies what the world concedes: *Wer Hieronymum für einen Hebreer schildt / der thut ihm gewalt und unrecht*. “He who calls Jerome a Hebraist does him an injustice.” But Luther is not a competent witness in so great a matter, since in the same table conversations he admits himself ignorant of the Hebrew and Greek language: *Ich kan weder Griechisch noch Hebräisch*; and then: *Ich bin kein Hebreer nach der Grammatica, dan ich lass mich nicht anbinden / sondern ich gehe frey hindurch*. “I know neither Greek nor Hebrew,” and so forth. “I am not a Hebraist according to grammar, for I do not allow myself to be bound, but pass through freely.” Cochlaeus much more correctly reports concerning Rabbi Elijah: “While I was staying at Rome and employed Elijah the German as my teacher in such rudiments of Hebrew as I possessed, he told me that if someone were to give him payment for his labor, he wished, with my assistance--for he himself was ignorant of the Latin language--to defend Jerome’s interpretation--which, as I read, I compared with his German interpretation from the Hebrew--against all its assailants, whether they were Jews or Christians, from the Hebrew in such a way that it could seem to be justly attacked by no one.”

To the highest skill he added a diligence more than human, concerning which he himself testifies and appeals to all persons skilled in the Hebrew language: the letter to Sophronius; book 2, letter 6 of the earlier *Apology*; Letter 65 to Pammachius; Letter 4 to Rusticus. Erasmus, in the preface to volume 4, describes him thus:

“In the best kind of theology,” he says, “Saint Jerome holds the first place--I speak of the Latins--and so holds the first place that he leaves all others far behind him. Indeed, we possess no one whom we could in any way compare with him, so that even learned Greece itself, among so innumerable theologians, scarcely possesses anyone who may equal our Jerome, if only you weigh not merely some one excellence but all his endowments together. In one man you will find so great a knowledge of secular letters, as they call them, so great a knowledge of all antiquity, so complete a knowledge of so many languages, so admirable an acquaintance with all places and histories, so uncommon an erudition in the mystical volumes, so great an inimitable eloquence, so exact a

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judgment indeed, so sacred an ardor of a divinely inspired breast, so well-arranged and ready a memory of such diverse matters, so felicitous and rich a mixture, and finally a severity seasoned with so great a charm, that, just as men eloquent in themselves, if compared with Cicero, immediately seem to become mute, so all the Doctors whom we admire without comparison, when compared with Jerome, scarcely seem to know, scarcely to speak, scarcely to live.” And David Chytraeus in the *Onomasticon*: “Jerome, pleasing in Hebrew, Greek, and Latin eloquence alike, an exemplar of morals and teacher of the world.”

Proposition 11. It received authority from the time of Saint Gregory the Great, until thereafter, by the approval of the Doctors alone, it began to be in use. Hugh of Saint Victor, question 9: “The Church of Christ throughout the whole Latin world established that this version alone was to be read and held in authority.” But this was not in use immediately from the time of Gregory.

Proposition 12. The Council of Trent approved this version, but wished its edition to be as emended as possible. And rightly so, for it is most ancient, is from the best author, is praised by many, and was approved by the Churches even of old.

Proposition 13. That at last I may repel so many calumnies in one word, I freely affirm that our Latin version is approved in such a way that nevertheless their own authority remains to the Greek and Hebrew sources. Reader, accept the opinion of Nicholas Serarius, my teacher, which is in the prolegomena, chapter 9, questions 11 and 12, and is worthy of being read in more than one codex.

How Great an Authority Was Attributed by the Council of Trent to Our Vulgate Version

The quantity or greatness of the authority which is attributed by the Synod of Trent to our Vulgate edition can be considered in two ways: 1. Absolutely. 2. Comparatively. For that phrase in the preamble of the decree, “from all the Latin editions,” signifies a comparison. And because the innovators press and demand this very strongly, it will be treated in the following little questions; for now, only the authority acquired for our edition without comparison will be treated.

§ 2. The authority which in that decree is attributed to our edition is contained within the class of version alone. To understand this, it must first be noted that a writing can be authentic and its version not authentic. Second, a version can be authentic and the writing not authentic. Third, both the writing and the version can be authentic. An example of the first class is found in so many heretical versions of the Bible. For the Bible is authentic; those men’s versions are not. An example of the second class would exist if someone faithfully translated a false letter, or a pseudepigraphical and mendacious book—for example, Origen’s books *περὶ ἀρχῶν*, *On First Principles*; or some papers and doctrines of Calvin or Luther, so that they might be examined in a Council. An example of the third class is found in the Bible and in our version of it. I say, however, that although both the Bible and our version of it are authentic, nevertheless in this decree the authority only of the version itself is sanctioned. First, because both the aim and the words of the decree show this. Second, because the authority of all the biblical books and parts had already been sanctioned by the earlier decree concerning the canonical Scriptures.

§ 3. How this authority of our version is to be understood is customarily explained in two ways. First, without limit and without any restriction. Second, definitely and restrictively. In the former manner the heretics of whom question 10 treats appear to understand and assail this decree; certain Catholics also sometimes appear to intimate this, such as Suárez in part 3, volume 1, question 7, disputation 21, and the declarations concerning session 4 of the Council of Trent recently printed at Frankfurt in this very year 1603. Many Catholics understand it in the latter manner.

For first, Driedo, book 2, chapter 1, frequently—as on folios 33 and 35, but especially in conclusion 3, folio 24—says that this edition is declared authentic not in every manner, but only in this: that, diligently collated, examined, and tested against the Scriptures in their source, it contains nothing deceitfully added or altered.

Second, Cano, book 2, chapter 13, conclusion 1, says that this edition must be retained in all those matters which concern faith and morals.

Third, Andrés de Vega, book 15, chapter 9, says that this version is authentic in such a way that the faithful may know certainly that no pernicious error can be derived from it, and that it can be read safely and without danger. And afterward: “The Synod wished it to be held authentic to this extent: that it should be certain to all that it is defiled by no error from which any pernicious dogma in faith and morals could be gathered.”

Fourth, Andradius, book 4, follows Driedo on folios 254--256 and Vega on folio 257.

Fifth, Sixtus of Siena, at the end of book 8, although conceding that errors and slight defects are found in the Vulgate edition, nevertheless wishes it to be authentic, “because it is certain,” he says, “that neither in the old nor in the new edition has anything ever been found which departed from the truth of the Christian faith; was false and mendacious or contrary to orthodox dogmas and rules; was added beyond the truth, changed contrary to the truth, or omitted to the prejudice of the truth; was so corrupted that it furnished occasion for pernicious error; supplied matter and fuel for heresies and depraved dogmas; or was translated so obscurely and ambiguously that it concealed the mysteries of our faith or failed to explain them sufficiently and as much as is enough for salvation.” And again a little afterward he says that those slight defects are indeed in the edition, but without any detriment to faith and morals.

Sixth, Bellarmine, book 2, chapter 11: “The Church wished to make us certain that, especially in matters which pertain to faith and morals, there are no errors of translators in this version.”

Seventh, Bellarmine’s own opponent, book 2, chapter 0, page 537, explains the authority of this edition in such a way that it everywhere attains the meaning of the Holy Spirit so far as doctrine and morals are concerned. There is a similar restriction on page 542: “so far as the dogmas of faith and morals are concerned”; and on page 565: “Did Saint Jerome err in those things which the Church approved as authentic and which pertain to dogmas of faith and morals?”

Eighth, Father John Sacrobosco, cited by the same author on page 541: “When we say that we possess Scripture authentic in the Latin language, we wish to say nothing other than that our translation is the true word of God, complete and incorrupt, from which Christ’s flock may be taught and questions concerning faith and morals may be defined without fear.”

Ninth, Alfonso Salmerón, prolegomenon 3, in question 2 concerning the Vulgate edition: “The Council of Trent leaves liberty to all who meditate more profoundly upon the Scriptures,” and so forth, “yet not so that they may condemn it as falsely interpreted, especially in matters concerning faith or good morals, or as containing an intolerable error.”

Two propositions.

I. The authority attributed by the Council of Trent to the Vulgate version must not be understood without limit, but definitely, with certain qualifications. This is evident:

1. Because the aim of the council and the cause of the decree are best preserved with qualifications of this kind.
2. Because so many and such competent authors think thus.
3. Because through just qualifications of this kind, as though by a certain bridle and bit, the unbridled and immoderate insolence and abusive speech of the heretics against this decree are restrained.
4. Because the grave and trustworthy theologian Andrés de Vega, cited in the place indicated, solemnly affirms that he frequently heard from the president of the council himself, the Cardinal of the Holy Cross,

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that the council's intention was that qualifications of this kind should be understood. He wrote this while that cardinal was still living and could be questioned about the whole matter. Indeed, this is the very man who afterward, in the year 1555, between sessions 16 and 17 of Trent, was called to be Supreme Pontiff Marcellus II.

5. Andradius recalls the same matter in book 4, folio 257: "That most learned man, Brother Andrés de Vega," he says, "who participated with the greatest praise in the Council of Trent under Paul III," is confirmed by many.

6. Vega proves the same matter not by authority alone but also by reason. He says that this was the mind of the Synod and that it wished to establish nothing further; you can gather this from the words themselves and from other customary approvals of the council.

7. The heretics cannot deny that it is just for sound qualifications to be employed in explaining this authority, because they either do the same regarding the authority of their own versions, or, whether they wish it or not, ought to do it. For:

1. Whitaker, controversy 1, question 2, chapter 8, says: "Although some of our interpretations differ in certain passages, nevertheless they do so neither in many nor dangerously." Behold a qualification and limitation in these last words.

2. They confess that they do not yet possess versions which are perfect and in which nothing ought to be changed. For this reason, first, they frequently alter and correct the versions they possess, as was stated in chapter 18, question 1, and as is apparent in Beza's version of the New Testament, in Letter 80, page 348, and in the Genevan correction and edition of the Bible in 1588. Second, for this reason the Dutch are still considering and preparing new versions, as John Drusius testifies in the preface to the book *On the Tetragrammaton, the Name of God*; and the English likewise do so, as Hugh Broughton often related to me. He had been invited and almost drawn to that work by the studies and letters of many persons and even by royal rewards, so that he had already applied his hand to both Testaments, but especially to the New, and had interpolated very many things, as I myself saw in the English Bible of the London edition of the Old Testament in 1578. And Robert Gentilis, in the year 1605, says in a prefatory little letter to John Howson, in his father's previously cited little book *On the Latinity of the Old Version of the Bible Wrongly Accused*: "You are now engaged with others, by the king's command, in preparing the English version"--in the year 1605.

Indeed, the pastors and professors of the Church of Geneva, as they call themselves, write in the preface to the previously mentioned Genevan correction: "Versions are perfected little by little, so that at last one may be possessed"--therefore one is not yet possessed among them--"which, if it is not altogether perfect, a thing rather to be wished than hoped for"--behold, they despair of a perfect translation--"may nevertheless be at least so pure that those who are not endowed with that knowledge by which they can hear the Lord speaking with his own mouth--that is, in the Hebrew and Greek language--in the prophets and apostles may be able to rest upon that version, or to establish and confirm themselves in it. Thus whatever should still appear to be lacking would be noted with great care by diligent pastors as they teach their flocks."

There is added the fact that, as was stated in chapter 11, question 2, these innovators do not think that the word of God is authentically contained in the versions themselves. It is therefore necessary, for the sake of all their own people, that they variously qualify and restrict the authority of the versions which they either read or set before the people to be read. Thus they cannot blame us when we attach sound explanations and qualifications to our version.

II. The qualifications with which the authority of our version must be understood are principally four. Of these, the first pertains to the subject of this assertion, "The Latin version is authentic"; the remaining three pertain to the predicate.

1. That this version be emended, or rather most emended.

2. That it contain nothing opposed to truth, faith, and good morals.

3. Likewise, that it contain nothing which may furnish anyone a just occasion for any harmful or useless opinion whatsoever.

4. That it be good within the very class of version--that is, that it translate the original text and render its meaning.

The several points are proved.

I. From the preceding question 10. But I have now added "or rather most emended," because the superlative by which the Synod of Trent commands this edition to be printed--the adverb "most emendedly"--shows that it speaks of the edition itself insofar as it is most emended, namely by paronymy and by an argument from conjugates. Therefore Andradius, book 4, folio 257, after exposing the cunning and malice of Chemnitz, who enumerates many errors which he contends were imposed upon us as divine oracles by the Fathers of Trent, adds: "For he could not have failed to read that part of the decree in which the sacred Synod established that henceforth sacred Scripture, especially this very old and Vulgate edition, should be printed as emendedly as possible, in order to demonstrate that it approved only that Vulgate edition which had been purged from all errors with the greatest diligence." And on folio 257: "When we have received from the Apostolic See the old Vulgate Latin edition as emended as possible, we shall be free from all concern and doubt."

2. From the concordant explanation of the many theologians who have been cited, almost all of whom indeed fight against the heretics; and, as was said, from the very aim and words of the decree.

3. From the same source.

4. From the nature of the very matter treated here. For to approve any version is nothing other than to judge that it renders well what had been written in another language. Thus it can happen, and indeed frequently does happen, that a book or letter written in some language is authentic while its translation is not; and conversely that a book or letter is not authentic while its version is. Gregory of Valencia, book 8 of the *Analysis*, chapter 5, says: "That any version is authentic means nothing other in this place than that it conforms altogether in meaning to the original writing."

Now it is evident that this explanation must be joined to the preceding ones, because otherwise the Synod would scarcely attribute anything more to our Vulgate version than a sound and accurate censure customarily attributes to the books of those whom Catholics judge. From this explanation, moreover, just as from Gregory of Valencia in the passage cited, it follows that the Council here declares the authority of our version to be divine, for the reason, namely, which was explained in chapter 11, question 2. But I always say "well" and "good" in the positive degree, because comparison will be treated in the following questions, as I said at the end of the preceding question.

Besides the things objected in the preceding little question, one thing occurs which can be objected. Declarations of the Council of Trent were recently published at Frankfurt in this year 1608. At their beginning, concerning session 4, it is read thus: "Vega, book 15, chapter 9 of *On Justification*, who spoke so boldly concerning this, must be sharply reproofed--"

But I answer: while revering, as is proper, the authority of declarations of this kind--whether they are judgments of judges, opinions of doctors, responses of wise men, or some other thing of this kind--it can be doubted whether they were published without corruption and error. For neither is the grammar sufficiently sound in the words immediately preceding, nor does Vega appear in that passage to affirm anything opposed to them. Next, the typesetters, the other workmen, and the master of these declarations were heretics. And in his own preface to the reader he intimates that something somewhere is corrupt, which he nevertheless ascribes to the intricate hand of the exemplar itself.

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I myself have seen the same declarations in manuscript, in which none of these things existed.

2. That declaration pertains to the words which precede the decree that we are treating, "with all their parts," and declares that the complete books of the Bible with all their parts are to be held sacred and canonical. For it adds: "Even

if it were only one period, one clause, one word, syllable, or iota which conflicted with the Vulgate Latin edition.” But not only we, but Vega himself, willingly confesses this whole matter concerning the emended or most emended version.

§ 4. I brought forward the grave accusations above. Sharp rubs anew the old falsehoods in controversy 6.

Eck is cited as though he said that Scripture is not authentic except by the authority of the Church. Next, a certain Hermann is produced by Pareus, Sharp, and others as though he said that the Scriptures are of no greater force than Aesop’s fables if the authority of the Church is absent. But Eck speaks of the Bible with respect to our knowledge; that Hermann is nowhere and never existed except in the brain of those who fashioned an enemy for themselves so that they might conquer him. And nevertheless a great part of the Jubilarians have covered their own inventions with this fable as though with snow. But so that they may perceive in this part also the true and stable faith of Catholics, I shall explain the matter in a few words.

First proposition. The authority of sacred Scripture is supreme: efficiently from God, and formally in itself on account of truth, which is the conformity of the utterance and the things, or of the sign and the things signified. In this matter the more cautious do not dissent from us, except that Calvin and certain others impute some false things and petty lies to it, as I taught a little above.

Second proposition. In order that any truth may be known and approved, it is not enough for it to be in itself ἀξίопιστον, to possess firmness from itself and to be worthy of belief; it is also necessary that it be taught through competent witnesses and instruction. There are three persons in the Godhead; the world was created in six days; man fell; the world was overwhelmed by the flood. These things are certain, but in order that they may be believed, it is not enough for them to be certain in themselves; it is necessary that their certainty be explained to the ignorant and the doubtful.

These things must also be applied to the Bible itself. For just as I believe that Moses led the people out of Egypt and promulgated the law on Mount Sinai, so too I believe that he wrote those books which are called the books of Moses. For with the same faith I embrace the truth of the books and of the history. Yet this is not established sufficiently from the Bible itself, because history is not known from the nature of the matter, nor is a thing heard believed unless there is some reason which persuades us of its truth. Robert Rollock, Calvin, Pareus, and the fervor of the Jubilarians therefore err when they deny that there is need of anything else by which we may discern the Scriptures, just as we know the sun, discern darkness from light, white from black, and sweet flavors from bitter.

For if someone relates Mosaic history to an ignorant person or reads it to him, will he not still doubt the truth of the history and consequently the credibility of the book in which it is contained? The Calvinists rejected the Apocalypse; now they approve it. Were the former men therefore blind, or did they not distinguish the sun from darkness? And if in a matter αὐτοπίστον, by its own nature most known and most clear and the cause of that light which is in the Church and in the hearts of human beings, they erred, why do they still retain authority among those who err?

Third proposition. With respect to human beings, God first gave the authority of Scripture to the person to whom he revealed it, so that he might know certainly that he possessed those things from God. Next he made them known to the people and confirmed them by miracles. Hence the Church which then existed received them and handed them down to posterity--the Church, that is, the assembly governed by the Spirit of God. Hence comes that saying of Augustine, book *Against the Fundamental Epistle*, chapter 5: “Indeed, I would not believe the Gospel unless the authority of the Catholic Church moved me.”

Fourth proposition. The authority of Scripture and of the Church is believed by us under this formal reason: because God revealed it. Besides that revelation there are motives of credibility which induce us so that it may be evident that the matter can prudently be believed. They are not, however, the reason of believing itself, but only motives, which can be proposed to someone concerning Scripture in such a way that he believes its authority although he does not

expressly think about the authority of the Church; nevertheless, the authority of the Church is implicitly believed even in this act.

Fifth proposition. The Church is not only a known object, or an object of faith believed, as it is in the Creed, “I believe the holy Catholic Church,” but also one of the motives. It is indeed older and better known than Scripture, and therefore its authority possesses very great weight in believing the Scriptures. Yet it would not be necessary if there were other arguments by which the authority of the Bible could be proved perspicuously and without suspicion of falsehood. But this cannot be done. For how can not only the West Indians, ignorant of reading, but also the Japanese and Chinese immediately read through all the books of the Bible and know their authority? Indeed, how can those who cannot pronounce Hebrew and Greek learn those languages?

Sixth proposition. The authority of Scripture in itself is absolutely greater than that of the Church, because the whole of it and all its apices are from the Holy Spirit. But in the definitions of the Church only the judgment which is defined is believed to be from the Holy Spirit; the preceding disputations and arguments are not of faith, and even the words can be unnecessary and superfluous. Next, Scripture was handed down by holy and most wise prophets; without the labor of meditating, studying, or disputing, they wrote entirely by heavenly instruction and confirmed their writings by miracles. Finally, all and each of the things in the Scriptures are most certain, whether they treat generally of faith and morals or of individual things, past or future. But only those definitions of the Church are believed by faith which have been sufficiently proposed, are general, and concern faith or morals.

Seventh proposition. When, therefore, the authority of councils, the Supreme Pontiff, or, in one word, the Church is equated by some with Scripture, this is to be understood only of the truth of their decrees. Thus the words of Saint Gregory, book 1, Letter 24, must be understood: “As I venerate and confess that I receive the four books of the holy Gospel, so I venerate and receive the four Councils.” Here the particle “as” is one of similarity, not equality, as Bellarmine and Serarius teach in the prolegomena, chapter 7, question 12. Nor ought anyone to be offended by this proposition, for Saint Athanasius rightly says in his letter to the African bishops: “The word of God, through the ecumenical Synod of Nicaea, remains forever.” For the Holy Spirit assists his Church and governs it forever. Nor ought it to seem wonderful to any human being that the authority of the Church is constantly true and never fallacious, when we see that those who spurn it attribute wholly to their own authority

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what they took away from the Church. For they profess themselves to be certain by private impulse. If any unlearned person possesses such great certainty in his own judgment, why do they deny it to the Church, since God himself testifies that the word of the Church is the word of God and that those who condemn it reject God himself? Matthew 16:18 and 18:17; Luke 22:32.

Eighth proposition. In some respect, with regard to certain human beings, the authority of the Church is greater than that of Scripture. No one who has observed something similar in every sect will wonder at this. First, the Church proposes Scripture as something to be believed, expounds it, and proves its authority in whatever manner it can to catechumens. They believe the Church which proposes it, and its authority is more evident than that of Scripture, many parts of which they do not know. The Lutherans value their own church more highly--the church which rejects the Epistles to the Hebrews and of James. Indeed, this is altogether necessary for them, as is established from the things said before. For since most do not possess Hebrew and Greek exemplars, scarcely anyone has examined all things according to the original languages, and no one at all has read the *αὐτόγραφα*, the autographs, they believe their churches. The Lutherans say that their own Bible is rightly translated and condemn the Zurich Bible; the Calvinists, conversely, condemn the Lutheran Bible and believe their own. Thus each person so claims the sacred law for himself that he denies it to others.

CHAPTER XXV

Sectarians Cannot Possess the True Law of God

§ 1. Certain persons cause harm by loving too much; hypocrites do so much more by an excessive pretense of love. For our ministers, by daily shouting “the pure word of God” and “the pure sources of the Hebrew, Chaldean, and Greek language,” have now come to this point: if the things which they say against us are true, they must be altogether without the Bible. My reasoning is this.

Whoever until now have read or heard no authentic Bible in their churches have not, according to their own judgment, possessed the word of God. For it belongs to the rationale or essence of the divine word to be τὸ ἀuthεντικὸν; indeed, in order also to profit souls, it must be known and loved as authentic and as the word of most immutable truth. But until now no one in the evangelical churches has possessed an authentic Bible which, according to their doctrine, they could believe as authentic. Therefore they have not possessed the Bible; indeed, while their opinion remains, they cannot possess it.

The major proposition is granted by consensus; I prove the minor.

First, they possess neither the Hebrew, the Greek, the Latin, nor any version in another language; therefore they have never possessed any Scripture which they can acknowledge as authentic. They do not possess the Hebrew, because they have not seen the first original exemplar published by Moses and the other writers; they have received only copies transmitted to us through a long succession. They cannot know certainly that these were copied by a faithful hand and an unerring pen. For they cannot establish this certainly from Scripture itself, since this is τὸ κρινόμενον, the very thing judged and drawn into controversy: whether Scripture, which calls itself divine, is truly such, and whether this exemplar was written correctly. Accordingly, they must do the same with the law of God as is done with a prince’s diploma.

Zwingli and others, to be sure, denied that the Apocalypse was divine. Those who repudiated the Apocalypse judged those words with which the prophecy begins--“The Apocalypse of Jesus Christ, which God gave him”--false and imposturous. Now they admit it, not because those words are placed at the head of the book, for they did not move the Calvinists and Luther, but for other causes--namely, so that they may speak evil of the Roman pontiff. But I am now speaking of the trustworthiness of notaries and copyists, and I ask by what argument they were led to persuade themselves that it was correctly copied. Not from Scripture, for nowhere does it testify that through two or three thousand years, amid the deceits and boastings of so many heresies, it came down to us unharmed and uncontaminated.

§ 2. Nor can this be known from a private impulse of the Spirit for the edification of the Church. The reason is manifest: although God can illuminate the mind and reveal his mysteries, nevertheless certainty concerning another person’s mind is not sealed by a hidden impulse. For why should I believe those who thrust their enthusiasms and impulses upon me? I seek the word of God.

Nor does the attestation of the primitive Church pertain to the matter, because it is human and fallacious testimony, as they maintain, and it could not judge concerning the copyists who followed.

But if they have cut off from themselves every path by which they could reach certainty concerning the original Scripture, much less are they certain about any version; and indeed they themselves confess this. Above I cited Luther’s words: *Ich kan weder Griechisch noch Hebräisch*. “I know neither Greek nor Hebrew.” If he speaks truly, he taught without the word of God, for his disciples and the Calvinists say that only the Hebrew Scripture and the Greek are authentic. Thus Sharp in controversy 2 concerning Scripture, and Cameron in his little book against James Suárez,

page 12, professes that he is unwilling to stand by any version of the Bible, but only by the native languages--Hebrew for the Old Testament and Greek for the New. Rightly, however, do they trust no version, for there is none which they do not possess in a most defective form. Thus the king of England at the Hampton Court Conference declared "that some uniform translation of the Bible must altogether be published, because he had hitherto seen no good English one and judged the Genevan the worst of all; and he considered its notes added in the margin partial, false, seditious, and too strongly redolent of the contrivances of a dangerous and most perverse mind. It was to be published in such a way that, after the labor of the two universities and after the review of the bishops and the more learned clerics, it should be offered to the Privy Council, finally receive authority from the king, and the whole English Church be compelled to embrace that one version."

§ 3. Since, therefore, they can stand by no version as authentic, mutually object to one another that their versions are erroneous, and cannot all have recourse to the source, they are destitute of every aid. For how few are so skilled in Hebrew that they draw from the pure source with certain knowledge? The remaining crowd is given drink from muddy streams poisoned by various heresies.

I do not grant this to those who confess that they have translated the Bible from the Hebrew, a thing which Beza in the preface to the New Testament denies to be the work of one man. For although they seem learned to themselves, since they are not Hebrews by birth and use glosses, lexicons, and the interpretations of the Rabbis, unless they think that they cannot err in memory and judgment they are the vainest of all human beings. After nearly twenty years Luther confessed that Sanctes, Münster, and he himself had frequently erred because they had trusted too much in the glosses of the Rabbis. Münster says that very many verses were omitted in Sanctes, just as in

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Luther's revision. Luther revised his version several times; the Zurich theologians received it with mockery; and in the Mansfeld Confession the Osiandrians say that passages of Scripture were interpreted by Luther with great falsehood and deceit.

They are not certain concerning their own version--that it is a version of Scripture--unless with the most insane arrogance they resolve their faith ultimately into their most exact knowledge of four languages: Hebrew, Chaldean, Greek, and Latin.

Second, we can validly turn and retort upon the heretics the arguments which are invalid against the old edition. Let us therefore suppose someone from any religion who is in great part ignorant of the languages I have named, but desirous of salvation and zealous for truth. Let us offer him a German Bible so that he may learn truth from the word of God. If it is Luther's or the Zurich theologians', Sharp will say, in controversy 2 concerning sacred Scripture, calumny 7: "If this version is authentic, it is so either because of the translator Luther, because of the Church's approval, or because it agrees with the Hebrew text. Not for the first reason, because not even Luther thought it authentic. Nor because of the Church's approval, because approval cannot make a noncanonical thing canonical. Much less because it agrees with the Greek or Hebrew, because that man cannot judge this but must believe some Lutheran minister who perhaps is himself neither a Hebrew nor a Greek." But what if he believes Matthesius, who disciplines Luther's version with rods in a departing sermon and says, "Learn better"?

§ 4. Consequently, until now we have possessed no Bible except the Hebrew and Greek alone. Therefore, according to the sectarians, there has been no Lutheran or Zwinglian church. For let them show me one person who understood the Hebrew and Greek Bible and belonged to their religion. What, then, will you do with this man? Will you send him away to the grammar schools of the Greeks, Latins, and Hebrews? This would certainly be in vain. Nevertheless, there is no authentic Scripture if the Greek version of the Seventy and the Latin version are rejected, for the Hebrew was understood by almost no Christians except a very few. But our adversaries judge that Scripture alone--the Hebrew alone for the Old Testament and the Greek for the New--is to be used. Although it is authentic, this nevertheless cannot be established for those who have never seen Hebrew codices. "It is false," says Sharp. "The Greek Church possessed

the Old Testament authentically in the Greek language.” Next he says: “The true Church ought to possess, and still possesses, men who understand these languages, although perhaps the Roman Church has none or few.” I shall see to the Roman Church elsewhere; now I examine those words.

§ 5. Ought the true Church to possess persons skilled in the Greek and Hebrew language? If it does not possess them, will it be a true Church? If you affirm that it will not, what will become of so many of your churches over which square preachers, tailors, and others whom the Arminians so often name in Belgium preside? If you concede that there will be a Church without preachers skilled in Greek and Hebrew, you must also establish that it will exist without Scripture. Since Scripture alone is the word of God, it will be a Church of God without the word of God, which is most absurd. But let it possess the German or British word. This does nothing for your imaginations. No German or British Scripture is authentic; every word of God is authentic; therefore no German or British Scripture is the word of God.

They therefore necessarily take away all faith from the unlearned, who are compelled to believe so many things of which they cannot be certain: first, that the books were written by prophets; 2. that they were copied correctly; 3. that they were translated well; 4. that these things are taught clearly from Scripture; 5. that they possess such an impulse as does not deceive. Each of these contains very many things: namely, that the translators were most learned in languages and most diligent, that their copyists were most faithful, and that, although many erred, their own men nevertheless did not err in their version. By translating the Bible, therefore, they overturn it, and bring it about that nothing is believed sincerely and that curiosity and contention exist in place of faith.

Beza noted this on Acts 10, in the digression: “For the matter has now come to such a point that not only do those who devise something from their own talent recoil from the customary and familiar words of Scripture as though they were obscure, tasteless, and obsolete, but now those who translate Scripture from Greek into Latin or some other language think that anything whatsoever is permitted to them in interpreting. If you reprove them, you immediately hear that the office of a translator is discharged not by one who translates word for word but by one who expresses the meaning. Thus it happens that, while each person prefers freely to follow his own judgment rather than religiously to act as translator of the Holy Spirit, he does not so much translate as pervert very many things. Unless this lust and audacity are opposed, assuredly either I am greatly mistaken or within a few years we shall gradually be driven even from possession of the things themselves.”

That lust is not opposed; rather, it is inflamed by glory, rewards, and infidelity. Therefore they have now been driven from possession of the things themselves.

From these things it is most manifest both that we possess a Church constituted by divine law and that they do not possess one.

Next, our state is most excellently constituted, since in it the supreme legislator is adored, his law is preserved, expounded, understood, and observed. These things concern the written law of God, from which comes the soundness and sanctity of all laws in the state.

§ 6. I have shown in various ways that the sectarians cannot defend the authority of the written divine law; now let us see what they wrote repeatedly in the year 1617. Sharp, column 6, enumerates four offices of the Church concerning Scripture. 1. It is a witness, guardian, and like a notary. 2. It is an avenger, because it discerns false writings from true, as a goldsmith discerns gold from copper, since it possesses the Spirit of God for this purpose. 3. It is a herald of Scripture. 4. It is an interpreter, but so that it interprets Scripture from Scripture, mixing in nothing of its own.

§ 7. He likewise gives four means of knowing Scripture. The first is the testimony of Scripture itself, or of God speaking in Scripture. The second is private impulse. The third is the substance of the doctrine, its quality, the form of teaching, events, miracles, Satan’s fury against it, and the punishment of enemies. The fourth is the testimony of the Church. He says that this pertains to those who are outside the Church, but the former testimonies by no means do; the

faithful know the authority of Scripture more certainly from the former testimonies, but principally from the testimony of the Holy Spirit.

I settle the matter concerning the offices with one syllogism. According to Sharp, the Church is a fallacious guardian, witness, avenger, and herald; therefore it does not possess the Spirit of God for judging genuine and authentic books from false and supposititious ones, just as the first Calvinist church did not judge rightly concerning the Apocalypse when it denied that it was the voice of Christ the bridegroom. Those offices, therefore, have not been established rightly. Consequently, the Church affords nothing certain from these things.

The means which are proposed utterly overturn belief in the Scriptures among them. He says that the first is the testimony of Scripture itself--that is, of God speaking in the Scriptures--through which the first motions are excited in hearts. This testimony is not distinct from the second,

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that is, the testimony of the Spirit; or if it is distinct, it effects nothing.

For if it excites a motion of believing, it must necessarily effect this by testifying. I shall speak afterward concerning this testimony; because it contains more, I shall defer it to the last place. There is nothing certain in the third means. For first, "the substance of the doctrine," Sharp says, "contained in the Scriptures surpasses every earthly capacity," 1 Corinthians 2:14. Therefore the authority of Scripture cannot be proved from the substance, because it is not yet understood by catechumens; next, many parts of it are not understood by the very learned; third, certain things are unknown even to the most learned. Therefore the authority of Scripture cannot be known certainly from the things contained in Scripture unless all the things in it are understood accurately. For although certain truths are perspicuous, many hidden ones nevertheless remain which cannot prove it while they are unknown.

That manner, therefore, is most difficult, requires the longest time, and, as I certainly judge, is *τὸ ἀδύνατον*, impossible, at this time. For how will anyone so resolve the whole of Scripture--that is, all its *ἐναντιοφανῇ*, apparent contradictions--amid so many thousands of conflicting interpreters that he remains stuck in no matter? Yet this must be done if the authority of Scripture depends upon the things contained in it. For if someone says concerning the book of Heraclitus or of other *σκοτεινῶν*, obscure writers, "The things which I have understood are excellent; I think that those which I have not understood are excellent also," I readily permit it. But those who gather the authority of sacred Scripture from their perfect understanding of it cannot speak thus concerning sacred Scripture.

§ 8. Sharp adds a proof "from purity, because it contains nothing defective." I believe most truly that it contains nothing defective; but in order that I may establish its authority from this, it is necessary that I possess not only a most thorough understanding of all its parts and members but also compare all things with the Hebrew, Chaldean, and Greek exemplars--and indeed with diverse exemplars. For, to say nothing of this major premise, "Every book which contains nothing defective is divine," no one will persuade himself of this minor premise without immense knowledge: "This book contains nothing defective." For it must be proved by induction: neither this part nor that part contains defect. It must be proved from the things contained in it, but in this manner no one will be able to prove it except one who labors over it with supreme talent, the longest life, the most tranquil leisure, and adamant labor.

I demonstrate this by the example which Sharp supplies to me. The Church proves and judges the Scriptures as a goldsmith does gold. But if a goldsmith must explore and test one hundred thousand gold coins contained in one vessel, from the very things contained in the vessel, without employing another's testimony, he must surely rub each one upon a Lydian stone. For he will not know that no gold coin is adulterated until he has perceived the *δοκίμια*, assays, of each.

This, I say, is necessary if it must be known from the things contained in the vessel that no gold coin is defective. Accordingly, those who preach these things lead even the most learned human beings to despair; they themselves believe nothing in the Scriptures and permit others to believe nothing. I am not ignorant that, from the fact that nothing

defective is shown in Scripture, it becomes credible that it is divine. But most persons, led by the testimony of the Church, judge that “nothing of this kind is shown” to be so; they do not place the foundation of faith in experience.

But Scripture carries one into admiration. So it does; but certain other things also carry one away when they are spoken gravely, simply, well, and truly.

He also affirms that the consonance of the things which are in the Scriptures is a means, but no one knows that consonance from his own experience unless he compares all things with all. Miracles, punishments, and the wrath of enemies against Scripture make it credible; they cannot make the sectarians most certain, because many Scriptures lack miracles and were not sanctioned by punishments of enemies.

But, these things at last being omitted, in which not even they place much protection, let us attack the citadel of all heresies and their hiding place. It is each person’s private impulse, which brings it about that each knows which Scripture is canonical and which is not, just as if you received or annulled the law of a prince by your own spirit.

But when this is established as the chief point of the matter, despair is cast into miserable souls and Scripture is overturned. For first, how does an unlearned person learn by his own impulse that this Scripture was well translated from Hebrew into French, when he has never seen Hebrew? Next, if that impulse suffices, what need is there of other criteria and arguments? Third, those who employ those impulses cannot even teach, for that impulse lies hidden in the inmost breast and does not come to the knowledge of others. Fourth, it differs: Castellio rejects the Song of Songs, others reject other books, each according as enthusiasm has granted. Fifth, impulse contains a circle: “Why do you believe Scripture? Because the Spirit testifies that it is true. How do you know that this is a true testimony? Because Scripture asserts it thus.” Sixth, it is blasphemy to prove the authority of the divine word from one’s own impulse in such a way that one ultimately resolves all things into one’s own judgment. For this reasoning supplied an opportunity and pretext to all heresies. Sharp also acknowledges that not all churches which possess the Spirit of God agree concerning Scripture.

Finally, by disputing they at last unwillingly slip down into our opinion and understand under the name of Scripture even unwritten doctrine. For Sharp, lest he be compelled to acknowledge that the Church is older than Scripture, since it is manifestly established that the first Church was content with tradition alone, writes thus in column 63: “In the prosyllogism there is a deception of homonymy in the name ‘Scripture.’ For the name ‘Scripture’ is sometimes taken for the substance of Scripture and the thing written--that is, the word of God--and then it is nothing other than **doctrina ἄγραφος**, unwritten doctrine; at another time it is taken for the accident of this doctrine, namely its writing and inscription in books. In the first sense Scripture is older than the Church, and thus the proposition is false. For Scripture, or the word of God, is the foundation of the Church, Ephesians 2:20. But a foundation is older than the building. Thus Scripture is the seed of the Church, Matthew 13:1; 1 Peter 1:23. But seed is older than that offspring of which it is the seed. Finally, this same word which is now written was then unwritten.”

Here he openly calls the unwritten word of God “Scripture.” When it was afterward written, it was not at once written in its entirety; nevertheless, it could have been retained unwritten by many. But there will be mention of this matter when traditions are treated.

CHAPTER XXVI

The Written Divine Law Is Truly Difficult

§ 1. The sectarians are accustomed to teach that Scripture is most clear. Jacob Gualterius, in the *Chronographic Tables*,

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century 1, chapter 4, reports that John Faye, minister of Aubenas, said in a sermon: “There is no craftsman who, provided that he knows how to read, does not understand the Gospel.” Jacob Martini, in the jubilee theses, thesis 91: “Refrain, therefore, you pontificians, and especially you Jesuits, from your most foul cuckooing, by which you not only cry out that the sacred Scriptures are obscure, difficult, and intricate, but also calumniate them as so ambiguous and tortuous that, flexible like a waxen nose, they furnish no certain, constant, and unmoved meaning; indeed, you blaspheme them as the hiding place of many errors, and those most grave.”

And thesis 92: “Admit the laity also to the reading of the sacred writings. Why do I say ‘admit’? Since they have not only been admitted by the Lord himself, but also invited to it and bound by certain commands, so that they cannot be kept from it except with the greatest sacrilege.”

It would be superfluous to enumerate the others. Of those who composed or assisted the jubilees in this year, Pareus and Sharp alone thought otherwise. In this year Pareus published his final work of abuse on the Apocalypse, for he called it his supreme sacred *χαριστήριον*, thank-offering. In it he acknowledges that the Apocalypse is difficult, first in the admonition: “That he leaves it to his sons as their private possession, especially because he perceived that he had not yet attained the height of its mysteries, and that he would not satisfy others when they had not satisfied him in many things; that he had sought out the judgments of interpreters more exactly.” He also asks pardon for things not investigated. He follows Clémanges, a man of suspect faith, falsely represented by the most suspect Luther. He treats obscurity in chapter 3 of the prolegomena. “Writing concerning the obscurity of the Apocalypse, Augustine says: ‘In this book, whose name is Apocalypse, many obscure things are said so that the reader’s mind may be exercised; and there are a few things in it from whose manifestation the rest may be investigated with labor, especially because it repeats the same things in many ways so as to appear to say different things, although upon investigation it is found to say these same things in different manners.’”

And Jerome: “In the Apocalypse a book sealed with seven seals is shown. If you give it to a man who knows letters so that he may read it, he will answer you: ‘I cannot; it is sealed.’” And afterward: “The Apocalypse of John has as many mysteries as words. I have said too little for the merit of the volume; all praise is inferior. Multiple meanings lie hidden in the individual words.”

It is certainly so. For both in all the rest of sacred Scripture and particularly in this one, the acuteness of the human mind, unless illuminated by the rays of the divine Spirit, is more blind in understanding it sufficiently than the eyes of owls are blind before the midday light. The causes of this obscurity, however, are not obscure.

First, the whole book is prophetic concerning future things. “Write,” says the angel, “the things which you have seen, the things which are, and the things which are to come.” Future things as future, because they do not yet exist in any sense, are either altogether unknown or, if foreknown, are conceived not so much by understanding as by hope.

Add that these future things are not announced in open words, nor defined by indications of times, places, and persons, but are revealed to Saint John to be written in direct enigmas of visions. There are indeed in the Scriptures many open visions presented to the eyes of the mind or body: how King Belshazzar saw a hand writing on the wall; Elisha saw fiery chariots around him; Moses saw the burning bush before him; Peter saw a sheet containing four-footed animals

let down to the earth; Paul saw the Lord standing above him at night, and so forth. These lacked great difficulty. But there are other visions more direct, when images signifying some mystery are read to have been presented to the minds of sleeping or waking persons. Unless their mysteries were revealed, they would possess an obscurity incapable of being investigated by human inquiry. Of this kind were the dreams presented to Pharaoh and Nebuchadnezzar, and likewise the visions of Ezekiel, Daniel, and Zechariah, to which we rightly refer the apocalyptic visions. God, by a singular benefit, not only revealed the mysteries of those dreams to the dreamers but also willed them to be written for the understanding of all. But although he also disclosed the mysteries of the visions to his servants the prophets, he nevertheless left them hidden from all others--evidently so that profane human beings would always disdain matters so obscure, while the pious would be excited all the more by the very obscurity to investigate the divine mysteries.

And on page 18: "Although we can penetrate the understanding of all the mysteries of this book only with difficulty and scarcely at all, the difficulty ought not nevertheless to deter us from investigation."

§ 2. Next, in chapter 4, when he treats of interpreters, he concludes that the Apocalypse has been understood by no one. His words on page 21 are: "Among our own men in the century just elapsed, no fewer theologians illustrious in learning applied their hand to this book. Yet in my judgment Henry Bullinger, the ecclesiastic of Zurich, surpassed them all; nearly following him were others: David Chytraeus, Alfonso Conrado of Mantua, Francis Lambert, Sebastian Meyer, Nicholas Collado, John Foxe, Benedict Aretius, Matthias Flacius Illyricus, Augustine Marlorat, Peter Artopoeus, Francis Junius, and Daniel Tossanus. And recently, in the new century: John Napier the Scot, Thomas Brightman the Englishman, Raphael Eglinus of Zürich, Conrad Graser the Frank, John Piscator, Matthias Hoë, Matthew Cottière the Frenchman, and others unknown to me.

"But to what end, you ask, so many of these? Evidently so that I may show what I undertook to show: that nothing of the authority of this book is diminished because it was objected that certain more distinguished theologians abstained from interpreting it.

"It would be too long to explain the manner of interpretation which each of them followed, and whether so many accomplished what they wished and ought to have accomplished; it would also be foreign to the present undertaking. Perhaps someone could affirm this one thing without injury to them all: that what Mark the Evangelist wrote concerning the woman in the Gospel subject to a flow of blood happened to this book--she suffered many things from physicians and was helped not at all but rather became worse; perhaps not so much through the physicians' lack of skill as through the obstinacy of an incurable evil, whose cure indeed was reserved for the illustration of Christ's glory.

"For while so many, each following the power and rationale of his own talent, brought forward such various things concerning these enigmatic visions--pious conjectures indeed, as I judge, but generally agreeing little with one another or corresponding little to the aim and mind of the Spirit--it happened that accumulated commentaries upon this book are extant, not one of which fails to promise a new light. Its obscurity, however, not only has been little diminished but in some places has been enveloped in denser darkness. For some accommodate the enigmas of Revelation to the history of the ancient people; others apply them in different ways to the continuous course of the new Church; others, searching in each particular as though for gold beneath every stone, as the saying is, fashioned mystical senses for themselves; others converted everything into tropologies and moral allegories; others, as though from the cave of Apollo, attempted by divinatory investigation to draw from it foreknowledge of future things even beyond what it is lawful for human beings to know. In so great a number you will scarcely see two or three agree--a thing commonly said of chronologists. This confusion surely indicates that the difficulty of the book has not yet been exhausted by so great a variety of interpreters, but rather increased and entangled--not so much through the culpable ignorance of the interpreters as through the unsearchable

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wisdom of the prophecy, whose full revelation has without doubt been reserved for the manifestation of Christ himself, the heavenly judge."

These things are said by the man who otherwise, in earlier writings, vauntingly proclaimed the facility and perspicuity of Scripture. Sharp also brought forward eight causes of difficulty in controversy 7, column 72: “We concede, however, that many things in Scripture are obscure with respect to us, because God wished this to occur for the following causes. First, so that he might excite us to diligent reading, meditation, searching, and comparison of Scripture, and lest we be sluggish in searching the mysteries of our salvation. 2. So that we may be assiduous in prayers, seeking God’s aid and the light of the Holy Spirit for understanding them. 3. So that he might remove weariness from us, because we more frequently weary of easy things. 4. So that truth may be held by us at a greater price, since τὰ καλὰ χαλεπά, noble things are difficult. 5. So that he might tame our arrogance and convict our ignorance, since we sometimes glory and triumph greatly concerning our knowledge and our very selves. 6. So that the holy mysteries might be so many gems for the holy and not be prostituted indiscriminately to swine. 7. So that he might accustom us to a certain inward holiness of thoughts; for those who bring impure minds to the reading of Scripture lose their oil and labor.”

§ 3. If the opinion of these προμάχων, champions among the Jubilarians, is upheld, the vote of the others, as though they merely went on foot, will be contemned, and their grandiloquence and trappings will fall before the people. For Sharp at last returns to the question whether Scripture is so perspicuous that the people can read it usefully and controversies can be decided from it. The same Sharp confesses that the things necessary for salvation are clear and that very many things not necessary are obscure. The same man in column 71 says: “The cause why certain things appear obscure to us is that we are not content with the things proposed in the Scriptures, but investigate certain things more curiously than is proper.” But I shall also explain this part in a few words.

First proposition. Sacred Scripture is most clear in many things and does not need exposition if it is considered absolutely and cursorily; in others it is most obscure, in whatever manner it is weighed. Its perspicuity is plain, as when it is said: “You will conceive in the womb and bear a son.” If you consider it cursorily, the meaning is clear; if you begin to dispute, you will entangle yourself in great difficulties. Concerning this difficulty of easy passages Luther says in *Table Talk*, chapter 1, folio 2: “In the Scriptures we scarcely know the A, B, C, and not yet rightly.” Folio 3: “The word of God is unsearchable; to search even a single word of sacred Scripture and draw it forth from the depth is altogether ἀδύνατον, impossible. I deny that the learned and theologians can do it, even if they wish it most greatly. For because they are words of the Holy Spirit, Christians newly born in Christ possess only first fruits, not tithes. I have sometimes wished to meditate upon the Decalogue, and when I considered those first words, ‘I am the Lord your God,’ I began to hesitate over that first pronoun, ‘I’; and I cannot yet rightly understand this ‘I.’”

But concerning Scripture universally, on 16 February 1546, as Aurifaber reports, he wrote those things which stop the mouths of all preachers:

1. “No one can understand Virgil in the *Eclogues* unless he has been a shepherd for five years.
2. “No one can understand Virgil in the *Georgics* unless he has been a farmer for five years.
3. “No one understands Cicero completely in the *Letters*--so I declare--unless he has been engaged for twenty years in some distinguished state.
4. “Let no one suppose that he has sufficiently tasted the sacred Scriptures unless for a hundred years he has governed churches with the prophets, such as Elijah and Elisha, John the Baptist, and the apostles.

Attempt not this divine Aeneid;

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But bowed down, adore its footprints.”

Scripture is therefore difficult.

Second proposition. Scripture, even in those things which are necessary for salvation, both needs interpretation and is obscure in many things. I do not speak of obscurity which exists by nature, but of that which pertains to us, for something is said to be obscure to someone not absolutely but comparatively. There is no need of proof. The whole world, even that part of the world which glories in the perspicuity and understanding of Scripture, experiences it as difficult. Therefore all draw it into such various senses, and from it so many heresies are forged--not through a defect of Scripture, but through the ignorance and malice of human beings. For, with a very few exceptions, all heresiarchs have been accustomed to cloak their errors in the words of Scripture. Those who glory in their understanding of its clarity strike against the articles of faith, against the foundation, and overturn Scripture. Accordingly, the wretched people are ensnared in endless polemics when no certain form of exposition is handed down, and when there are such contrary senses concerning the meaning of Scripture, whose words all sound forth: senses concerning the person of Christ, concerning God, justice, the sacraments, and election, all of which are necessary for salvation.

Next, in the Church there is the gift of interpretation and the office of teaching in schools and the church, not only for expounding abstruse questions which are not necessary for salvation, but especially for those which are required for salvation. Thus Sibrandus, book 4 of *On the Principles of Christian Dogmas*; the disputants at Regensburg and others acknowledge that these offices are necessary.

Third, a thing concerning which there are the greatest and most pernicious controversies, even among learned human beings, is not by its nature most clear in its own light. But concerning the meaning of Scripture, which contains dogmas of faith necessary for salvation, there are almost as many controversies as heads. Therefore that meaning is not by nature most clear. Indeed, this one matter weakens the authority of the sacred writings among most people, for when they seek not the words but the true and genuine meaning of the sacred writings, they fall into conflicting opinions and can obtain the authentic meaning by no reasoning. For all sectarians, without exception, flee to this: they say that they are certain concerning the meaning from private impulse. If that impulse were one and concordant in all, perhaps they would persuade; but now, since it is most diverse, it cannot happen that all except one do not err and deceive.

They object: "The word is neither hidden nor remote from us, but is in our mouth and heart," Romans 10:8. "It is a lamp to the feet," Psalm 118, and so forth; "a shining lamp," 2 Peter 1:19. It is clear, not hidden, 2 Corinthians 4:2. We are commanded to search it, John 5:39 and elsewhere. The Fathers use the Scriptures; the primitive Church understood them without commentaries. If the Holy Spirit wrote obscurely, he wrote in vain.

Indeed, the faithful understand all things necessary for salvation, John 10:17. These things are scattered through the jubilees, and Sharp gathered them into one in column 74. But the error common to all sectarians is that they understand Scripture simply and without the sense of the Church and the interpretation of the Doctors. The word of God is not hidden because certain parts of it need no exposition, while others are explained to us by the Church, so that if one wishes to learn, it is not hidden. It is a lamp, but

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when it is lit--that is, when it diffuses the rays of the true meaning. We are commanded to search the Scriptures because their profundity is not everywhere obvious. The Fathers use the Scriptures to establish sacred dogmas, and they expound them or set them forth as explained by more ancient persons. Did the primitive Church understand the Scriptures without exposition? Indeed, not even the apostles, already faithful and familiar with Christ, did so; for Christ expounded them to them. So far were they from understanding that they did not know that Christ had to suffer and so enter into his glory, Luke 24:25.

Next, when the apostles expounded the Scriptures and refuted the Jews, did they not expound the faith and those things which were necessary for salvation? And Apollos, Acts 18:24, was mighty in the Scriptures, but was taught the way of the Lord more diligently by Aquila and Priscilla. Nor did he understand all things by himself, but learned from others that there was another baptism besides John's baptism, which was given in water alone. But if the primitive Church

understood the Scriptures without an interpreter, and the Church which followed afterward did so as well, there was no need of so many interpreters--indeed, there would not be even now--although the whole world today groans beneath the commentaries of the innovators. Concerning the single article of justification there are twenty conflicting opinions, and Sharp resolves this by nothing other than a manifest lie when he says: "Among the Reformed there is great agreement concerning this article, as concerning the others."

From these things I conclude that the true meaning of Scripture must be sought from Scripture and from the true interpretation of the Church. Certainly it was thus formerly in the Israelite Church. For since the ancient Hebrews wrote without vowel points, they learned from their teachers with great labor the method of reading and of understanding the things which depended upon it. A perpetual tradition therefore accompanied Scripture, in which pronunciation and the substitution of vowels were contained. Accordingly, just as no point was to be supplied unless it agreed with the mind of the Holy Spirit, so now no interpretation is to be admitted unless it is from him.

§ 4. Finally, no end of controversies and no concord can ever be hoped for when interpretation is relegated to each person's private spirit. For how will enemies be convinced or the doubtful instructed if nothing other is cried out from the chairs than certainty concerning the meaning of Scripture from a private impulse of the Holy Spirit?

CHAPTER XXVII

Reading the Divine Law Is Not Prohibited by Us

§ 1. Nearly all who make mention of the Bible in their jubilees have this one complaint. One of the cruder stentors relates that Luther was accustomed to read the Bible but was prohibited by the brothers and sent to clean bedrooms and upper chambers with brooms. Chemnitz long ago preceded all the others in his *Examination of the Council of Trent*, session 4, when he said that we persecute vernacular editions with iron and flame. Several sermons dwell most odiously upon this one matter. But I ask that the reader, setting accusations aside for a little while, deign to give ears and mind to the truth.

First proposition. It is not commanded to all persons that they privately read the sacred Scriptures translated into the German or another language. The reason is manifest, because such a law is found nowhere in sacred Scripture, canon law, or civil law. Next, among all nations the greatest part of the faithful has hitherto not known how to read; and although many in the more cultivated towns now learn letters, the crowd in the country, which is the greatest, is for the most part ignorant of reading and writing. Therefore there is no law which commands reading, since there is none which commands the knowledge of letters. And certainly, if there were one which commanded that knowledge to the people generally, I would judge that it should immediately be abolished. For there is now so great an abundance of scurrilous, frivolous, abusive, lustful, and magical books that it is preferable not to know letters than to fall upon writings so pestilential.

Third, it was not the custom of the Church for the Scriptures to be read in the vernacular language; therefore no law concerning that matter was divinely enacted. For although from Moses to the Babylonian captivity, while the Hebrew language remained intact, the Bible could be read by all the Jews, nevertheless a most particular instruction and tradition was necessary on account of the vowel points. From this it is apparent that reading was customary among few and that great practice was necessary even for those to whom the Bible was vernacular. After the captivity the Jews had passed into the language of the Chaldeans just as into their dominion. The remnants which afterward returned to their homeland mixed this language with Syrian, and it could in no way be brought about that ancient Hebrew was vernacular.

Nevertheless, a certain translation into the Chaldean language was made by Onkelos, whom some think to be Aquila, who likewise translated into Greek; Serarius treats of him in the prolegomena, chapter 14, question 4. If he was Aquila, he therefore lived in the time of Hadrian. If he was more ancient, the Church nevertheless could not use his version, since he acted as a paraphrast, omitted many things, and perverted many things, so that this paraphrase can in no manner be called the word of God. All the monuments of the ancients show that Aquila was a heretic, but I cannot be induced to believe that Onkelos and Aquila were the same person, for in the more obscure passages of Scripture those two versions differ exceedingly. The Targum of Onkelos and the fragments of the Greek version cited from Aquila do not appear to have been the work of a cautious man who would bring forward most diverse interpretations when, with less labor, he could have prepared authority for himself by agreeing with himself. The former wrote the Pentateuch. About the birth of our Lord Jonathan translated the Former and Latter Prophets. Afterward, in the year of the Lord 400, Joseph the Blind translated the Hagiographa. That there was nothing sincere in these is taught both from the fact that the latter two were unbelievers--and perhaps Onkelos also--and especially because there is no chapter in which they do not depart from the original and mix in dreams and trifles. Accordingly, from the Babylonian captivity until Christ, the Church possessed no vernacular Scripture; nor was Ezra, Nehemiah, Malachi, Zechariah, Haggai, Onias, the Maccabees, and other most holy men concerned to translate it. Therefore they possessed no command.

§ 2. Nor in the times of the apostolic Church and those which followed did any churches except a few--that is, the Greek and Latin--possess versions in their native languages; neither the apostles nor their successors translated the

Bible into various languages. There were multiple Greek versions. The first was before the monarchy of the Greeks. The second, at the beginning of that monarchy. The third, that of the Seventy interpreters. The fourth, the Herodian. The fifth, Aquila's. The sixth, Symmachus's. The seventh, Theodotion's. The eighth, the Jericho version. The ninth, the Nicopolitan. The Origenian,

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Lucianic, and Hesychian are also named, but they received their names from the correction of errors which had crept into the version of the Seventy interpreters and ought not to be called new versions. The tenth, therefore, is derived from Jerome's, for the Greeks translated the Bible from Saint Jerome's Latin version into their own language.

But the peoples to whom the Gospel was preached were of various languages. Acts 2:7 and following: "All were astonished and wondered, saying: 'Behold, are not all these who speak Galileans? And how have we each heard our own language in which we were born? Parthians and Medes and Elamites and those who inhabit Mesopotamia, Judaea and Cappadocia, Pontus and Asia, Phrygia and Pamphylia, Egypt and the parts of Libya which are around Cyrene, and Roman visitors, Jews also and proselytes, Cretans and Arabs--we have heard them speaking in our languages the great things of God.' But all were astonished and wondered, saying to one another, 'What does this mean?' But others, mocking, said: 'These men are full of new wine.'" If anyone says that all those peoples knew Greek or Latin, he does nothing other than become insane with reason.

§ 3. Second proposition. Hence it is also established that neither a version nor that reading was necessary. For why would the Church of the Jews for so many centuries and afterward that of the apostles neglect a matter so necessary? Why would they not do what all the innovators have done and translate the Scriptures into all languages, a thing most easy at that time, since all the apostles and many others spoke in various languages? Therefore, when they reprove us for the omission of vernacular versions and odiously exaggerate the fact that not all read the Bible, do they not under our name speak evil of the apostles, who neglected a translation of the Bible so easy to make and which they could have made authentic in each language by placing their own names before it? But the apostles judged that sufficient provision had been made for the churches if they instructed each nation and left teachers and bishops who would explain the faith and Scripture to them.

§ 4. Third proposition. To translate the Bible into the vernacular language for a good end, and to read it, is at times good and is absolutely prohibited by no law. For no law of this kind exists, and it was permitted in the Church to use versions and by reading them to incite minds to piety.

Whitaker teaches that this is the opinion of Catholics, controversy 1, question, chapter 13: "The first opinion," he says, "is that of those who deny altogether that the Scriptures ought to be translated into vernacular languages. The second and contrary opinion is that of those who establish that sacred Scripture must altogether be translated into all the common languages of peoples. The third is that of those who neither condemn vernacular versions of Scripture absolutely nor permit them absolutely, but in this matter wish a certain exception and account of times, places, and persons to be maintained."

The last opinion is the position of the papists and the decree of Trent. Next, the Council of Oxford established against Wycliffe that the editions of Wycliffe or others should not be read unless approved by the diocesan bishop; therefore there was no question then concerning approved editions. Next, many read them usefully, as formerly among the Hebrews when they were vernacular. Third, the Fathers frequently exhort persons to read the Scriptures, as my teacher Serarius shows in the prolegomena, chapter 20, question 3.

§ 5. Fourth proposition. Although, therefore, the translation and reading of the Bible are not absolutely forbidden, it can nevertheless happen that they are useless or even harmful.

First, on account of versions which are not good, or certainly are not of tested goodness. Thus I showed above that the most serene James, king of Great Britain, approves no edition; that the Genevan Bible is the worst; and that its notes

are false, seditious, and too strongly redolent of the dangerous and most perverse contrivances of a mind. But since it is better not to read the Bible than, under the name of the Bible and of the word of God, to read the word of the devil, who does not see that a reading which does not edify but destroys is harmful? And certainly there are now many versions: Italian, Spanish, French, the Genevan and another by Castellio, the Zurich, Belgian, English, and Lutheran; most are various, as their editions are various. There are also Bibles published at Hamburg in various languages, even in Saxon and Slavonic. There are Bibles of Eber, Neander, Caspar Carolus, and a Hungarian Bible. The Calvinists condemn all Bibles made by Lutherans and receive them with mockery, as is established from Stoltz in his defense of Luther. The Osiandrians and Bucer judge the same. The Lutherans establish the same concerning the Calvinist versions, and the most serene king of Great Britain concerning all. Therefore they do not read the true word of God, or certainly cannot be certain that they read it. For how, I address you, rustic Lutheran, were you certain by faith that Luther's Bible is authentic when all Catholics, Calvinists, Anabaptists, and Osiandrians protested, when Matthesius chastised it, and Luther himself acknowledged errors?

Second, reading the Bible is harmful to very many who at this time are not Catholics, because when they judge it most easy they immediately undertake to interpret it, lest they become objects of ridicule if they deny that they understand a most evident matter. Luther said in his book *On the Bondage of the Will* that there is no difficulty in the sacred writings and that no passage can be brought forward to him which he himself cannot easily interpret. Therefore they judge that they can understand what they suppose to be open and clear, and consequently they interpret it. But an ignorant person who supposes a difficult matter easy falls into paradoxes and ridiculous opinions.

Third, reading the Bible also inflicts injury upon many when it raises them into pride and causes them to disdain being taught, on which occasion they necessarily fall into heresies. Luther himself experienced this, for he says that the Anabaptists and Sacramentarians, if they have read even one book, think that they know all things, *Table Talk* 1, folio 5. And next: "Luther once said that the nobility, citizens, peasants, and almost persons of every highest and lowest condition knew the Gospel better than Doctor Luther himself knew it, or even Saint Paul himself, as at least they appeared to themselves; for they considered themselves to be wise and more learned than all parish priests." He adds that they contemned not the parish priests but the Lord. Such also were the Hussites, as Cochlaeus recalls in books 1 and 4 of the history; such were the Wycliffites, as Waldensis states in book 2, chapters 70 and 73; such were the people of Orlamünde in Luther's time. This appears to be the reason why Luther, in the history which occurred at Staßfurt in 1536, calls the Bible "the book of heretics."

Fourth, from these things it is established that very many heresies arise and that many things are perverted by the unlearned. Indeed, nearly every person now possesses preconceived judgments and draws Scripture toward them. Calvin certainly sufficiently indicates in book 4 of the *Institutes*, chapter 8, §11, that the interpretation of Scripture is promised to individuals.

§ 6. Fifth proposition. In the Catholic, Apostolic, Roman Church, versions and readings

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of the Bible are not forbidden but permitted under a fixed law, and this rightly and deservedly. The foundation of the adversaries is therefore calumnious and their disparagement wholly malevolent.

§ 7. Here, above all, it admonishes that reading not be permitted without discrimination, and adds the cause: because through the temerity of human beings more detriment than utility arises from it. The Lutherans and Calvinists judge this to be so, since every day they are divided into more sects. Hence they too prohibit books of diverse sects. For the books of Zwingli, while he was still living, were forbidden in Saxony and Hesse, as Zwingli states in the *Exegesis of the Eucharistic Matter*; thereafter they always did this, as Lavater, Micronius, Utenhovius, Danaeus, and others testify. Yet the Calvinists do not cease to do the same concerning the Lutherans to the present day. Thus Schlussemburg, book 3 of *Calvinistic Theology*, article 4: "From this it appears that the Sacramentarians apply themselves especially to this: that their blasphemous books alone be read by all, while our writings are utterly rooted out from the nature of things as

unworthy of public circulation and reading.” Nor did they do only this, but also what Luther writes in volume 7, Letter 2 to Linck, folio 272: “The peasants of Orlamünde wipe their buttocks with my little book.” Calvin, Letter 1, says “that magistrates who not only permit bad books to be published but approve all the worst ones by their vote provide most badly for the state by their immoderate facility.”

And Schlusselfburg says in book 3 of *Calvinistic Theology*, article 4: “We do not deny that our magistrates in certain places forbid booksellers indiscriminately to sell to anyone the books of heretics, pontificians, Anabaptists, Calvinists, and fanatical human beings of that kind. But, account being taken of the persons who buy, let them take care not to communicate poisonous and erroneous writings to the unlearned and inexperienced, who, not yet confirmed in the foundations of Christian doctrine, could easily be seduced by reading them without any judgment.”

Among the sectarians, therefore, there are a great many catalogues of prohibited books, among which are also versions of the Bible.

But you will say: “We prohibit not sacred Scripture but bad books.” Nor do I say this; rather, I admonish that, since there are many very bad versions of the Bible--as all testify, even the adversaries--and since there is none which is approved by the most serene king of Britain, it is rightly prohibited that they be permitted indiscriminately to the unlearned and inexperienced.

For if this is done, how easily among so many versions will the rustic fall upon an Anabaptist, Socinian, or Arian version? For it cannot happen that he judges which version agrees with the Hebrew or Greek. Therefore a choice ought not to be permitted to one who cannot distinguish between a salutary medicine and poison. He will incline the law toward his own vices.

But if the version is approved by the bishop, account of times, places, and persons must be maintained in granting permission. For if someone is eager for novelties, puffed up, lustful, restless, and an admirer of himself, if you give him the Bible he will do the things of which Luther complains concerning his own people. Tell me, Lutherans: did not reading the Bible make the Calvinists sevenfold worse than the papists? Luther said that they were such and Jacob Andreae confirmed it in the Herzberg Colloquy.

If anyone with a good mind and a desire to advance wishes to read the Bible, he will never perceive it to be denied him; it is necessary only that he approach his pastor concerning the matter. But when Bibles are permitted to be published, sold, and bought publicly, it is judged that a general faculty of reading has been granted, which certain persons without doubt abuse. Yet all scandals cannot be guarded against. Accordingly, a thing to whose permission a condition is added is not prohibited. Thus, when a prince forbids arms to be carried without his permission, he does not absolutely wish no one to be armed, but wishes to strip the furious, turbulent, and irascible of instruments of malice and to have the strong and just armed with defenses of the state.

So too, if a bishop sees an atheistic man, lacking the Spirit of God, walking along the whitewashed ways of the age, and seeking fuel for his vices from the polygamy of Abraham and David, he will rightly keep him from reading the Bible, which is understood only by the Spirit of God that this man lacks; he will instruct him himself and command him to hear pastors. For Calvin himself is witness that a certain instruction truly ought to precede. For in the preface to the *Institutes* in 1559 he thrusts the reading of his own *Institutes* upon readers as a certain *εἰσαγωγήν*, introduction to reading the divine books: “This was proposed to me in this labor: so to prepare and instruct candidates of sacred theology for the reading of the divine word that they may both possess an easy approach to it and be able to proceed in it with an unoffending step.”

If, therefore, Calvin judges that candidates of theology must be prepared for reading the divine word, why should a Catholic bishop not first prepare an unlearned person before handing him the Bible? Certainly, candidates of theology are more apt than the unlearned. If Calvin instructs them through such long *Institutes*, why does an unlearned person have less need of instruction? If without Calvin’s *Institutes* candidates of theology do not possess an easy approach to

reading the divine word, why is it charged as a crime against Pius IV that he grants access through bishops, parish priests, and confessors, yet only if they have been so instructed that they can obtain from that reading not injury but an increase of piety and faith? If Calvin's *Institutes* carry a light before candidates of theology so that they can proceed with an unoffending step in the reading of Scripture, why should a Catholic bishop not also fortify his subjects beforehand so that they do not stumble? And if candidates of theology need those *Institutes* lest they stumble, therefore without them they could stumble; therefore someone can also stumble in the Catholic Church; therefore reading the Bible is rightly denied to him until he is so instructed that he can proceed in that reading with an unoffending step.

I end this part concerning Scripture and protest before God and human beings that we are assailed with the greatest and unheard-of calumnies. Formerly calumny placed its summit in the Arians against Athanasius; now our Jubilarians have surpassed all the calumnies of the ancients. And certainly, if they learned anything from the ancients, they imbibed the art of calumniating so exactly that nothing is now safe. They can accomplish nothing by truth; they trust in shouting and falsehood.

We permit the law of God to be read, but prohibit harmful reading and an interpretation which corrupts the law--the thing which we said the magistrate does in civil laws.

CHAPTER XXVIII

The Law Handed Down by Tradition Is Joined to the Written Law

§ 1. No one of all the Jubilarians, so far as I know, omitted this part. Therefore there is no need to name them all. The Heidelberg Evangelical Academic does so in theses 19 and 20. But in this matter scarcely anyone lies more bitterly than Erhard Lauterbach, who endeavors to show that the papists act

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contrary to the word of God and follow their own traditions. And in sermon 1, part 1, he concludes: *alles wider die H. Schrift, also dass es der Teuffel auss der Hellen nicht wol köndte ärger machen*--“all things are contrary to Holy Scripture, so that the devil from hell could scarcely do worse.” Polycarp Leyser does so in sermon 1. Baldwin Frederick, on page 7 of his preparatory sermon, defames all Catholic states because they make much of human laws after abandoning the word of God, and because in their churches they do nothing but kill souls: *Es werde mit falscher Lehr vnd verbotenen Gottesdienst nur eitel Seelmordt begangen*--“through false doctrine and forbidden worship, nothing but murder of souls is committed by Catholics in their churches.” Paul Laurentius, in his second sermon, page 24, affirms that the cause of all evils is that human traditions have prevailed against the divine word: *Dass auss dess verfluchten Bapsts Gebott und Tyranny alles in Abgötterey sey verwandelt worden, da man an statt dess reinen Wort Gottes dess Bapsts Lügen und Menschen Satzungen wil getrieben haben*--“Through the command and tyranny of the accursed pope all things have been transformed into idolatry, because the pope’s lies and human ordinances have taken the place of the pure word of God.”

Nor only in churches before the people do they fill ears with lies; poets also do so in the assemblies of ministers. It is pleasing to hear one of these, because his malevolence is clearer in it. It is Albert Otto Bilgenius, court tutor of Solms:

How great once was the darkness of the former age,

>

How great its deceptions, how great the deceit in the world;

>

Into how great a darkness of errors, and how great a Charybdis,

>

The ancient ages of our fathers fell--

>

Not even if I had tasted all the waters of Aganippe

>

Could I signify it in my verses.

>

The light of the Gospel in the age of our ancestors was more obscure

>

And feebler than winter light.

>
The voice of the Gospel, immersed in dense darkness,
>
Once lay buried in Cimmerian night.
>
The Bible, oppressed by the trifles and filth of the pontiffs,
>
Lost, resounded in no places.
>
No one was seen to unroll the books of the prophets;
>
No one dared to turn the apostolic books.
>
For if any read the sacred Bible with impartial minds,
>
They believed themselves struck by the pontiff's thunderbolt.
>
Hence they taught that sacred Scripture--a great impiety--
>
Was imperfect, flexible, mutilated;
>
And that very many things were required for a salutary life
>
Which you would see to be foreign to the holy book;
>
Indeed, that one who sought the matter of salvation from it profited nothing,
>
And that it was by no means a good norm in religion.
>
Sleep securely, Dorbellus; and come with me,
>
Durandus, Biel and Holkot, and Ockham, Brikot.
>

Peter Lombard, Scotus, Thomas Aquinas

>

Gave laws to the churches and gave laws to the schools.

>

What aid, I ask, could bubble forth for the wretched

>

From the writings of these men? Tell me, I ask, O man.

These are his words. We shall explain the whole matter briefly in these propositions.

§ 2. First proposition. The Church has always used the unwritten word of God--that is, tradition. For before Moses, and indeed before the flood, there was a Church of God, yet there was no written word of God. Sharp acknowledges this in controversy 6, response to the first objection: "In the prosyllogism there is a deception of homonymy in the name 'Scripture,' for the substance of Scripture and the thing written--that is, the word of God. And then it is nothing other than *doctrina ἄγραφος*, unwritten doctrine. At another time it is taken for the accident of this doctrine, namely its writing and inscription in books. In the first sense Scripture is older than the Church, and thus the proposition is false. For Scripture, or the word of God, is the foundation of the Church, Ephesians 2:20. But a foundation is older than the building. Thus Scripture is the seed of the Church, Matthew 13:1; 1 Peter 1:23. But seed is older than that offspring of which it is the seed. Finally, this same word which is now written was then unwritten."

But if the matter is dealt with sincerely between us, and "Scripture" signifies a written thing or a doctrine *θεόπνευστον*, divinely inspired, we now possess agreement. For when we say that certain unwritten things must be believed, we do not affirm that any doctrine not *θεόπνευστον*--that is, not revealed by God--is to be received as though it were revealed by God.

Next, after the coming of Moses it was written, but not all the heads of things necessary to be believed were immediately explained. There were therefore other things comprehended in the unwritten word, for it was not Moses' purpose to write a catechism.

Third, this very word which Moses wrote could neither be read nor understood without tradition, as I showed above, on account of the omission of the points. Fourth, nowhere does God profess that he bound his doctrine only to ink and parchments. Therefore the laws of God are twofold, *ἄγραφοι καὶ ἔγγραφοι*, unwritten and written.

Fifth, there are many things which the adversaries are even now compelled to believe from the unwritten word: namely, that the word of God which was written has come down to us inviolate, and that the Apocalypse is the word of God. Indeed, the adversaries acknowledge, as Sharp does in column 123, that from Adam to Moses there was Scripture, but not the written word; for writing was not necessary except upon a hypothesis. Finally, many nations possessed no Scriptures for a long time.

§ 3. Second proposition. Sacred Scripture as it is now possessed is not sufficient to decide all controversies, nor was it formerly sufficient. For at the beginning they possessed only the Pentateuch, but it is not sufficient for all dogmas to be declared most openly from it. Likewise, even now the entire body of the canon does not suffice, for nowhere in it is it said that this whole body, and no other book outside it, is canonical; and yet we believe this. Accordingly, those who reject every tradition also cut down the canon of Scripture. This is so true that Sharp this year cast shame upon everyone. For in controversy 9, column 143, he proposed to himself objection 5: "It is not enough to know that Scripture is divine, but it is necessary to know which Scripture it is. But this cannot be known from the Scriptures. Therefore. The assumption is proved: how do we gather from Scripture that the Gospels of Luke and Mark are true, but those of Thomas and Bartholomew false, when reason dictates that a book bearing the title of an apostle ought to

be believed more than one bearing the title of one who is not an apostle? And whence shall I gather that the Epistle to the Romans is truly Paul's, but the Epistle to the Laodiceans is not Paul's, when in Colossians 4 he says that he wrote to the Laodiceans, but nowhere says that he wrote to the Romans? Therefore."

He answers himself in this manner: "The proposition is distinguished. It is indeed necessary to know this, but not absolutely necessary for salvation and in the same manner for all, because formerly many doubted concerning various canonical books, at least for a time, whom for that reason we shall not exclude from salvation. Next, those who possess the Holy Spirit, through whom we recognize the canonical books, do not possess him in the same measure. The same must be established concerning the other operations of the Spirit."

If, therefore, it is not necessary for salvation to

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believe that these are divine books, then, according to the opinion of the Jubilarians, neither is it necessary to believe that what is contained in them is divine. For this alone must be believed which is in divine books. Just as, if someone says that he must do only what is commanded by a royal diploma, if he is not bound to believe that the diploma offered is royal, he is excused from executing those things. A little afterward Sharp likewise answers: "It is not necessary to know that this or that book was written by this or that author, provided that I admit the writing itself as divine." But he is bound more tightly by this. For if I do not know the author--if, for example, the author of the Apocalypse is unknown--whence shall we know, that is, from what Scripture shall we know, that it is divine? This is not established from Scripture; they have nothing else whence they may know it.

§ 4. A dreadful confusion followed contempt for the unwritten word of God in the Church--but in the church of the malignant. For first, when they said that they relied upon Scripture alone and all scattered into contrary parties, they published the Augsburg Confession as though it were a symbol of concord. After that had been changed and deserted, they composed the Book of Concord; but from it the greatest discord deprived all Lutheranism of life.

And certainly in this part also they overthrow all faith in Scripture and altogether deny Scripture. Libavius has these things in his book against Gretser:

I. The written word of God is not that description by characters.

II. Sacred Scripture and the written word are not that word of God concerning which Catholics and Lutherans dispute, but some other thing. For the written word can be changed and indeed burned. But the word of God remains forever, Isaiah 40.

III. If writing, or sacred Scripture, were the word of God, then it would be the word of God not only with respect to human beings but also with respect to angels. But sacred Scripture is not the word of God with respect to angels. Therefore neither is it the word of God with respect to human beings.

IV. If Scripture truly were the word of God, then it would be the power of God unto salvation for everyone who believes. But it is not the power of God unto salvation for everyone who believes. Therefore this Scripture is not truly the word of God.

V. If sacred Scripture truly were the word, it would be the wisdom and truth of God. But it is not the wisdom and truth of God. Therefore sacred Scripture is not truly the word of God.

VI. If the written word truly were the word of God, then it would be a light shining in darkness. But it is not a light shining in darkness. Therefore the written word is not truly the word of God.

VII. "Finally," he says, "when I had come to this point, that from the word of God I had learned that the word of the Lord is living, that it is eternal, that it does not perish when the world perishes, that it will judge on the last day, that it is truth--which possesses such kinship with Christ that hence the Son of God is also called the Word and the Truth, and

so also the Holy Spirit is Truth, just as the word of Christ is Spirit, John 6--I immediately saw that the written word, or Scripture comprehended in the volumes of the Bible, is not the word of God but something else. For Scripture, insofar as it is Scripture, does not live, is not life, is not truth, and does not remain forever.”

§ 5. If, therefore, Scripture is not the word of God, or it is not necessary to believe that it is the word of God, and yet it is the principle of faith, it follows that faith is uncertain. For that whose principles are uncertain is itself also uncertain; neither is a conclusion more certain, nor assent to that which follows from a principle firmer, than the principle itself upon which alone it depends. But knowledge of Scripture is not certain, because it is neither certain by faith nor certain by natural light. Therefore it is certain in no manner.

But so that the reader may see how great an injury they inflict upon us, and what they themselves say among themselves when they are alone, I shall append the propositions which Adolphus Venator Tectander promises in his *Apology against the Dordrecht Men*, pages 174, 175, and 176, that he will prove concerning the Counter-Remonstrants:

1. The right, best, safest, and perfect rule, square, and Lydian stone, not only of doctrine in the Reformed Church among the Belgians, but also of the whole Christian faith, is the Belgic Confession and the Heidelberg Catechism.
2. In the Confession and Catechism it is commanded that sects must be reviled and those who differ from us in even a little word in the confession must be condemned.
3. Without insults, sects and errors cannot be refuted.
4. The office of preachers is to indulge in abuse and insults.
5. If anyone does not understand that Scripture is imperfect and that, besides it, human traditions and formulas are necessary, he makes diversity of religion of little account.
6. Purity of doctrine cannot be preserved, sects cannot be averted, nor heresies refuted, without human constitutions and formulas.
7. The word of God by itself suffices neither for salvation nor for the good condition of the Church.
8. Scripture alone, without the statutes and decrees of the Church, is the chaos of all religions, the refuge of all heresies, and the way--if you insist upon it alone--to introduce every liberty into the Christian state.
9. Scripture is obscure and can be understood in various ways, and therefore it has need of the decrees and doctrines of the Church.
10. The Confession and Catechism alone are manifest, but Scripture is not; and these formulas cannot be explained in two or diverse ways.
11. The authors of the Confession and Catechism were wiser and more prudent, indeed more faithful to the Church and truth, and left better and more perfect writings to the Church, than the Evangelists and apostles themselves.
12. Pure doctrine cannot be known certainly from the word of God, but only from the Confession and Catechism.
13. The prophets and apostles left behind imperfect and doubtful writings, which cannot benefit even themselves, as writings from which we cannot recognize the way of truth certainly unless they are strengthened and illuminated by the additions and decrees of a particular church.
14. Scripture by no means comprehends all that must be believed absolutely for someone to be saved or to be a member of the Church.
15. Scripture has twofold meanings and is uncertain and imperfect.

16. Human traditions, decrees of councils, words, and explanations of matters of faith invented long after the times of the apostles must necessarily be believed for attaining salvation.
17. The word of God is not so necessary and useful to Christians as the Confession and Catechism are.
18. We can lack the word of God, provided that we preserve the Confession and Catechism.
19. It is not necessary to convince heretics and erring persons by Scripture or the word of God, or to refute their errors, but only by the Confession and Catechism.

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20. It is not necessary to prove the Confession and Catechism by the word of God.
21. The authority of the Church surpasses the authority of Scripture.
22. Certainty of pure doctrine must not be sought from the word of God, but from the traditions and formulas of those human beings who followed long after the times of the apostles.
23. Scripture is not a suitable judge of controversies concerning religion.
24. No one possesses the right faith, nor is a Christian or a member of the Church, who does not receive the Confession and Catechism.
25. One must adhere to the Confession and Catechism further than insofar as they accord with the word of God.
26. The Confession and Catechism ought to be the norm of the meaning of Scripture, and human formulas ought to set the measure for explaining the word of God. But the word of God ought not to establish limits for understanding the writings of human beings.
27. No Christian is free to bind himself to the word of God alone, and one who presumes to do this shows that he departs from the true Christian religion.
28. Although the apostles themselves had made a creed or faith, nevertheless it would not be Scripture.
29. The Christian religion does not consist in a pious life but in much knowledge--not in how far each person lives, but in how far each person understands.
30. The doctrine concerning love of God and neighbor pertains to the law alone, not to the Gospel, and Jesus was a teacher of the law.
31. Those who are gathered to hear divine and spiritual things and who profess God and Christ are not the Church, likewise if they wish to adhere to the words of Christ and the apostles alone and not also to receive the decrees of councils and traditions of human beings.
32. Although some follow Scripture absolutely in all things, they are nevertheless heretics and cannot be the Church of God.
33. Papists and heretics are not Christians.
34. What the first planters of the Reformation confessed, and the martyrs of this land also sealed with their blood--namely, that in matters of faith Scripture alone must be adhered to and human institutions must not be received--is an invention for recalling all heresies from the abyss of hell.
35. One who understands that the word of God alone must be insisted upon proposes a means through which no peace can be possessed with God.
40. Neither Moses and the prophets nor the Evangelists and apostles of the New Testament can be understood in any manner, or be the foundation of doctrine or the square of the doctrine of the Old Testament.

63. Jeremiah, Paul, the Evangelists, and the angel Gabriel are Socinians and heretics.

65. To confess or say something which heretics also say is heretical and erroneous; and thus the prophets and apostles are all heretics.

68. The Evangelist and the angel Gabriel think nothing better concerning Christ than the Turks do.

The same Venator has the following on page 74:

“The Dordrecht brothers are not content with Scripture, but dare to speak of it so contemptuously that they say: ‘If Scripture alone had to be adhered to, everyone in Christianity would dare to say and do whatever he wished; and the Bible would become the manifest hiding place of all heresies, Libertines, and all others.’”

Add to these also the things which our Maximilian Sandaeus most truly reports concerning the preaching synagogue in his secular theme, and Heidelberg theme 11: “It teaches that sacred Scripture, which, insofar as it is the word of God, is the norm, rule, square, and gnomon of believing and living well, is not truly the word of God: 1. because it is not the power of God unto salvation for everyone who believes; 2. because it is not the wisdom and truth of God; 3. because it is not a light shining in darkness; 4. because it does not remain forever. 12. It asserts that knowledge for distinguishing divine Scripture from nondivine is not necessary for salvation. 13. It denies that it must necessarily be believed with saving faith that the Scriptures which we possess are divine, or that the Gospel of Matthew which is read in the Church is divine and belongs to Matthew the apostle. 14. It contends that sacred Scripture is not certain of itself, nor free from error or falsehood. 15. It affirms that the writers of the New Testament sometimes knowingly and deliberately wrote contrary to the truth of history. 16. At times they conceded something from charity to a received and common error. 17. On account of public opinion they departed from the truth of history.”

CHAPTER XXIX

The Study of Law Commended to Princes and Private Persons

§ 1. Jurisprudence is knowledge of divine and human affairs, the science of the just and the unjust. Thus the emperor defines it in book 1 of the *Institutes*, title 1, law 1. And not undeservedly, for law is twofold, divine and human, and both must be known by one skilled in law. Therefore the definition has not been taken too broadly; for that science is in truth most broad and truly public. Moreover, in the affairs in which prudence is engaged, jurisprudence consists much more fully.

§ 2. It befits princes, chief men, and nobles to devote effort to jurisprudence; indeed, it is necessary.

The primary reason is valid. Just as there can be no state without laws, so there can be none without the soul of the laws--that is, their true meaning and true use, which is rather the indicator and guardian of justice and equity than the words of the legislator are. But princes and chief men themselves ought to possess the meaning. Πᾶσα πόλις ἀπολις ἂν γένοιτο, says Plato in book 6 of the *Laws*, ἐν ᾗ δικαστήρια μὴ καθεστῶτα εἴη κατὰ τρόπον. “Every state ceases to be a state in which tribunals have not been constituted in right order.” But they cannot be constituted rightly if princes are ignorant of their manner. The primary office of a prince is to pronounce law. How will one ignorant of law pronounce law justly, consistently, and certainly?

Jurisprudence is therefore rightly called ἐπιστήμη βασιλική καὶ τῶν βασιλέων, “royal science and the science of kings,” for it is both worthy of kings and necessary for kings. For this reason, in certain universities, as in the most celebrated University of Würzburg, we see that in solemn acts the professors and doctors use purple insignia, which is the royal color.

It is established that kings formerly pronounced law. Romulus and the other kings sanctioned laws and ended controversies. The consuls followed the kings and devoted effort to conducting trials. In Varro an attendant cries thus: “All Quirites involved in lawsuits, come here to the judges.” Augustus was wholly occupied in pronouncing law. Severus was intent upon civil business above other affairs. Vespasian heard cases to the point of wonder; reclining, he heard embassies, which were generally those of the oppressed, and when his bowels were loosened, while he strained and rose, he died amid the hands of those supporting him. Trajan approached a dangerous popularity; Pliny describes it, unless perhaps he granted something to his ears: “Freedom

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is available, when the prince goes through public places, to stop, meet him, accompany him, and pass him. You walk among us as though you could be touched, and you make access to yourself available, not so that you may charge it against us. Whoever approaches remains at your side, and each person’s own modesty, not your pride, makes an end of his conversation.”

Lampridius writes thus concerning Alexander: “He commanded that business and cases first be treated and put in order by the chiefs of the bureaus and by the most learned jurists faithful to himself, of whom Ulpian was then the first, and thus be reported to him. He sanctioned moderate and innumerable laws concerning the right of the people and of the fisc; and he consecrated no constitution without twenty jurists and most learned and wise men, and finally no fewer than fifty most eloquent men, so that there might be no fewer opinions in his council than would constitute a decree of the senate. And this was done in such a way that the opinions of individuals were taken and what each had said was written down, yet with time given for investigating and thinking before they spoke, lest they be compelled to speak without thought concerning immense matters. Moreover, it was his custom that, if he treated of law or business, he summoned only learned and eloquent men; but if of a military matter, veteran soldiers who were sound, deserving, and

skilled in places, wars, and camps, and all men of letters, especially those who knew history. He inquired what, in recorded cases like those under deliberation, the ancient emperors, either Roman or of foreign nations, had done.”

Since, therefore, it is necessary for them to judge, necessity compels them to be skilled in justice. The greatest care of judging lies even upon the most just and equitable judge, because frequently, although he has done all things according to the laws, he nevertheless condemns and kills an innocent person. How much more is this so if he himself is ignorant of laws and rights? The conduct of trials is wretched medicine, but nevertheless necessary for a state. Augustine, book 19, chapter 6 of *The City of God*: “What of the judgments of human beings concerning human beings, which cannot be absent even from cities remaining in however great a peace? What do we judge them to be--how wretched, how lamentable--since those judge who cannot discern the consciences of those concerning whom they judge? Hence they are often compelled to seek the truth by torturing innocent witnesses in a matter pertaining to another person’s case.

“What when someone is tortured in his own case, and when it is sought whether he is guilty, he is tormented, and the innocent man suffers most certain punishments for an uncertain crime--not because he is discovered to have committed it, but because he is not known not to have committed it? And thus the ignorance of the judge is very often the calamity of the innocent. And what is more intolerable and more to be lamented, and, if it could be done, watered with fountains of tears: when the judge tortures the accused for this reason, lest he unknowingly kill an innocent person, it happens through the wretchedness of ignorance that he kills a tortured and innocent person whom he had tortured lest he kill him innocent.

“For if, according to the wisdom of these men, he chooses to flee from this life rather than endure those torments longer, he says that he committed what he did not commit. After he has been condemned and killed, the judge still does not know whether he killed a guilty or an innocent person--the one whom he tortured lest he unknowingly kill him innocent. And thus he tortured an innocent person in order that he might know, and while he did not know, killed him. Amid this darkness of social life, will that wise judge sit, or will he not sit? He will certainly sit. For human society binds him and draws him to this office, which he judges it wicked to desert.

“For he does not judge this wicked: that innocent witnesses are tortured in the cases of others; that those who are accused, generally overcome by the force of pain and falsely confessing concerning themselves, are punished while innocent, when they had already been tortured while innocent; that even if they are not punished with death, they very often die in the tortures themselves or from them. What of the fact that sometimes even the accusers themselves, desiring perhaps to benefit human society lest crimes remain unpunished, are condemned by an ignorant judge when the witnesses lie and the accused himself withstands the tortures savagely and does not confess, and they are unable to prove the things which they charge, although they charged true things? He does not reckon these so many and so great evils to be sins, for the wise judge does not do these things by a will to harm but by the necessity of not knowing; and yet, because human society compels him, also by the necessity of judging.

“This, therefore, is what we call certainly the wretchedness of a human being, even if it is not the malice of the wise man. Or does he torture the innocent and punish the innocent from the necessity of not knowing and judging, and is it too little for him that he is not guilty unless he is also blessed? How much more considerately and worthily of a human being does he acknowledge wretchedness in that necessity, accept it in himself, and, if he is wise, cry to God: ‘Deliver me from my necessities.’”

§ 3. These matters are entrusted unsafely and dangerously to the counsellors of princes and others unless the prince attends diligently and zealously. For very many things are transacted through favor, money, and hatred, and the prince’s ignorance falls to the profit of rapacious human beings. The *agentes in rebus* know how to seize, not to receive, says Julius Capitolinus. And Cyprian, Letter 2: “Although laws have been engraved upon the Twelve Tables and prescribed rights have been affixed upon public bronze, transgression is committed amid the very laws and sin amid the rights; innocence is not preserved even there where it is defended. The fury of those at discord rages mutually, and, peace having been broken among the togas, the forum roars with mad lawsuits. For them the spear,

sword, and executioner are ready, the claw which digs out, the rack which stretches, the fire which burns; for the body of a human being, more punishments live than there are limbs. Who among these things will bring aid to truth? An advocate? But he prevaricates and deceives. A judge? But he sells his sentence. He who sits to avenge crimes commits them, and so that an innocent defendant may perish, the judge becomes guilty.”

These things are committed especially if the prince is farther away or casts all care of justice upon those whom he trusts. Since afterward they are generally dismissed either with ill favor or even punished capitally, it is sufficiently apparent to what purpose they turned the excessively simple credulity of their prince. Nor can the prince be secure when others sin through his negligence. But a prudent and learned prince is the greatest bridle upon unjust judges. The prince’s inexperience makes the judges themselves negligent through security; learning and study make them cautious and diligent.

Ignorance of law and laws--that is, of the state over which he presides--also greatly diminishes authority. Many will deceive one whom they can deceive, but they condemn him. Next, although at times such rulers can judge truly, they cannot judge consistently; wherefore it is necessary that judgments frequently destroy judgments. This is not only ignominious but also dangerous for the prince, when in a similar case some prevail and others are defeated. Crafty and cunning architects of lawsuits will raise their horns and toss justice about. And the name “virtue” will be given to abominable crime.

§ 4. Finally, the laws assist those who are awake, not those who sleep. Therefore let the guardian of law keep watch, for on both sides the matter is conducted with the greatest industry--indeed, with fraud, falsehood, and perjury--so that each may make the judge his own. Those skilled in law also approach, who always leave an occasion for litigation, as inept craftsmen do for correction. Nevertheless, the prince must not yield, but must venture against it. The evil is continuous, always arising anew, and continuous medicine must be applied to it. Seneca speaks excellently in a similar case, book 2 of *On Anger*, chapter 11: “Surely the man whose ship takes in much water because its joints have loosened on every side is not angry with the sailors and the ship itself. Rather, he meets the danger, excludes one wave and bails out another, closes the manifest holes,

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and by continual labor resists those which lie hidden and draw bilge-water secretly. Nor does he therefore desist because as much arises as has been exhausted. A slow remedy is needed against continuous and fertile evils--not so that they cease, but so that they do not conquer.”

Perseverance is needed here. I affirm boldly that there is need of a hundred eyes, or, if it could be done, that the prince be an Argus--that is, wholly made of eyes--with which he may discern frauds and punish those discerned.

Therefore let the prince be skilled in law and equity, and after the prince the counts, barons, and nobles. He will easily attain this if he appoints no judge or governor unless he is well skilled. This was certainly the intention of Justinian in the proem of the *Institutes*, §7: “Therefore receive these laws of ours with the greatest effort and eager study, and show yourselves so instructed that the most beautiful hope may foster us that, when the whole work of law has been completed, our state can also be governed by you in the parts to be entrusted to you.”

But because he himself was ignorant of letters and law, it came about that, by altering the laws so often, great but avaricious jurists fixed and refixed them according to their own advantages. Poor men, forgive me: I speak in a public cause and speak concerning what is accustomed to happen frequently; I would not wish poor men to devote effort to law and plead cases. For amid an excessive occasion of sin, poverty and squalor are the worst counsellor and impeller. One whose condition is cheap sells justice cheaply; one who, by studying in want, sought through long patience an occasion of profit sells judgments dearly. I am not ignorant that among the poor there are good, just, and holy persons and that God chose the poor. But I now speak of those poor persons who studied law for the sake of riches and honors,

and bring a long hunger and dry throats to suck out the marrow of the litigating parties. They wish to become rich, and to become rich quickly.

Meanwhile they magnify the dignity of their station and dress splendidly, lest they appear to have been poor; and when law does not supply enough, riches are sought through injustice. When the crowd of these has prevailed, they turn all things upside down and hold their own prince for sale. Base avarice can indeed rage in high birth; but generally, when such persons take account of their family and dignity and are opulent, with a loftier spirit they do not pursue such abject spoils. Nevertheless, let the prince apply care to these also.

The condition of our law has never been so happy that its very sanctuaries did not beget injustices. Consider Justinian the legislator himself: how the forensic harpies surrounded him with their arts. Evagrius writes thus: “But in Justinian there was so insatiable a desire for money, and so shameful and indeed absurd an appetite for the property of others, that for love of gold he sold all the goods of his subjects to those who administered magistracies, those who collected tribute, and those who wished to lay snares for human beings without any cause. But very many--indeed, innumerable--persons who possessed many good things he deprived of all their fortunes after a false and fictitious charge had been fashioned. And if any prostitute, casting the eyes of cupidity upon someone’s goods, feigned that she had possessed some familiarity or union with him, immediately all rights and laws lay turned away for her sake, provided that she made Justinian a partner in shameful profit; and the possessions of the man who was falsely charged were transferred into her house.”

§ 5. Law cannot stand unless there is one skilled in it through whom it can be preserved; otherwise it will waste away like a corpse. There must be an interpreter of the laws even when the words appear clear, for at times one must depart from them. Charondas, while holding to the words too impiously, killed himself.

True jurisprudence can never be praised sufficiently; the jurisprudence which sows lawsuits can never be punished sufficiently. Jurisconsults hear evil things on account of petty lawyers and, as Besold says in book 2 of the *Politics*, chapter 2, because most are now occupied with lawsuits and procedures and neither wish nor know how to benefit the state by any other matter, their art, or their knowledge. Hence it is said among the Italians: “A mere legist is a pure and utter ass.” He adds: “Procedures are generally nothing other than the refuge and hiding place of guilty and criminal human beings, but the weariness and affliction of the innocent.” Thus he affirms that methods of shortening lawsuits must be sought diligently.

I set his following words before the prince to be weighed: “The form of judgments and the judicial order which we use in certain places appears to be neither order nor procedure, but rather confusion and a labyrinth. We do not proceed; we wander. The altercation over ceremonies and writings, outside every cognition of the case, is calumnious. Hence formulists, who handle the secrets of procedure, and masters of cautions are held in greater value than artificers of equity. Indeed, the peremptory terms of instances have now been abolished by a most evil custom. Certainly there is now everywhere so great a multitude of laws and rights, and such confusion born from it, that there has been no age from the beginning of the world, nor is there even today any other kingdom or state, in which under the appearance of law error is committed more dangerously, justice is more oppressed, and execution of adjudged matters is more impeded than is now accustomed to happen after we imagine that law has been reborn and, as it were, fallen down to us from heaven--than is accustomed to happen in those places where the rationale and science of law are proclaimed to be more flourishing and more vigorous.”

The same Besold also complains concerning Roman law in book 1, dissertation 14: that it abounds in subtleties and fictions which, after so many years, emperors--or rather the ill-employed interpreters of law--invented.