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**THE RELATION OF THE JURIDICAL AND SACRAMENTAL
IN MATRIMONY**

ACCORDING TO THOMAS AQUINAS

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Abbreviations of Frequently Cited Works

Works by Saint Thomas Aquinas

<i>In IV Sent.</i>	<i>Scriptum super Sententiis, Liber IV</i>
<i>SCG</i>	<i>Summa Contra Gentiles</i>
<i>ST</i>	<i>Summa Theologiae</i>
<i>In I Cor.</i>	<i>Commentary on I Corinthians</i>
<i>In Ephes</i>	<i>Commentary on Ephesians</i>

Table of Contents

<i>Abbreviations of Frequently Cited Works</i>	<i>i</i>
INTRODUCTION	1
<i>The Current Climate</i>	<i>1</i>
<i>The Aims of the Present Work</i>	<i>5</i>
CHAPTER I: THE ESSENCE OF MARRIAGE	9
1. The Causes of Marriage	11
<i>A. The Centrality of Consent to Sacrament and Contract</i>	<i>13</i>
<i>B. Marriage has its cause in us</i>	<i>17</i>
2. The Ends of Marriage.....	20
<i>A. The Two Ends of Marriage and the Common Good</i>	<i>24</i>
<i>B. Parents naturally lay up treasure for their children</i>	<i>27</i>
CHAPTER II: THE MARITAL ACT	33
1. The Marital Act as Remedy for Concupiscence	34
<i>A. Three definitions of concupiscence</i>	<i>35</i>
<i>B. Concupiscence as sensual pleasure</i>	<i>36</i>
<i>C. Concupiscence as disordering</i>	<i>41</i>
<i>D. The Remedy for Concupiscence is Grace</i>	<i>47</i>
2. The Marital Act as Debt.....	52
<i>A. The Origins of the Debt</i>	<i>53</i>
<i>B. Justice and the Conjugal Act</i>	<i>57</i>
<i>C. The Marital Debt as a Path of Sanctification</i>	<i>58</i>
3. The Marital Act and Original Sin.....	62
CHAPTER III: LOVE IN MARRIAGE	64
1. Marriage as greatest friendship	65
<i>A. Friendship and Justice</i>	<i>66</i>
<i>B. The Shared Good at the Heart of the Greatest Friendship</i>	<i>68</i>
2. Charity in Marriage	70
<i>A. Marriage in the order of charity</i>	<i>70</i>
<i>B. The union of the spouses</i>	<i>75</i>
CHAPTER IV: MARRIAGE AND LAW	80
1. Slavery in contrast with Law.....	81
2. Law is true freedom	85
<i>A. Aquinas's Account of Marriage Seen from a Juridical Perspective</i>	<i>86</i>
3. Marriage and law.....	92
<i>A. Marriage as the intersection of procreation and law</i>	<i>92</i>
<i>B. Marriage and the common good</i>	<i>93</i>
<i>C. The Common Good of the Universe</i>	<i>94</i>
CONCLUSION	97
<i>Marriage, Law, and Human Nature</i>	<i>97</i>
<i>Marriage, Law, and Divinity</i>	<i>100</i>

APPENDIX: TRANSLATION OF <i>IN SENT. IV</i>, 26-42.....	103
Preface to the translation of Aquinas's Treatise on Marriage	103
<i>A. On Saint Thomas's Use of Language.....</i>	<i>104</i>
<i>B. Situating Saint Thomas's Treatise on Marriage Historically</i>	<i>120</i>
COMMENTARY ON THE SENTENCES IV	129
BIBLIOGRAPHY	319
<i>Primary Sources.....</i>	<i>319</i>
<i>Secondary Sources</i>	<i>321</i>

INTRODUCTION

The Current Climate

In 1950, Rev. James P. Lyons, described Thomas Aquinas's importance in the study of marriage as follows:

Saint Thomas and his school have perhaps done more than any other theologians to clarify the structure of marriage and to indicate its place in the divine order of things . . . But beyond this, Thomism has a special value in a study of marriage, and especially in a study of the philosophical note of the essential structure of marriage. For Thomism is, par excellence, [quoting Gilson] 'the theology of the natural.'¹

Lyons also quotes L. Misserey who commented on the French translation of the *Supplement* to the *Summa Theologiae*, "Without any exaggeration one can say that Saint Thomas has laid out for future generations the diagram of Christian marriage."² In fact, it would not be inaccurate to say that until the 1960s, Saint Thomas's doctrine of marriage was considered synonymous with official Catholic teaching.

The Dismissal of Thomistic Marriage Theology

However, since mid-century the prevalent social tumult has largely conduced to the rejection of Saint Thomas's treatment of marriage. The same forces that militated against the Church's perennial teaching singled out Saint Thomas in particular. In his 1993 article, "Le remedium concupiscentiae comme fin du mariage," Theo Belmans, O. Praem., catalogues numerous scholars and theologians spanning the 20th century who criticized Saint Thomas's teaching on matrimony.³ Belmans's more extensive work, *Le sens objectif de l'agir humain: pour relire la morale conjugale de Saint Thomas*, appearing as it did

¹ J.P. Lyons, *The Essential Structure of Marriage: A Study of the Thomistic Teaching on the Natural Institution*, Catholic University of America Press, (Washington D.C.) 1950.

² L. Misserey, *Le Mariage*, (French translation of the *Summa Theologica, Supplement*), t.1., 6. Desclee, Paris, 1931.

³ Belmans, "Le remedium concupiscentiae comme fin de mariage." *Revue Thomiste*, XCIII (1993), pp.289-303. Among the authors Belmans cites as directly rejecting or contradicting Aquinas's teaching are H. Doms, J. Fuchs, Bernhard Haering, J.-M. Aubert, B. Krempel, L. Janssens, Richard McCormick, John Noonan, M. Mueller, D. M. Pruemmer, to name only a few; Belmans traces the roots of this movement to the 19th century work of F. X. Linsenmann.

toward the end of the period of greatest tumult and confusion, contains an even more exhaustive list of opponents of Saint Thomas on this subject.⁴

Undoubtedly part of the reason for this antagonism was the very fact that Saint Thomas was identified with Church teaching. The comprehensiveness that made him universally praised and consulted up until that time brought him under attack afterward. Certainly his very emphasis on order and law provoked much of the opposition.

At the same time, especially in the 1970s and 1980s, a concurrent problem arose. Thinkers who claimed to support or agree with Aquinas often ended by misinterpreting or misconstruing his teaching, as we shall see in the case of Guy de Broglie in chapter 1, and John Milhaven in chapter 2. Even those scholars who do not adopt a stance of dissidence with respect to the Church may be unaware how easily the categories of modern philosophy can insinuate themselves into one's reading of Saint Thomas.

Belmans summarizes the impact of this dismissal and confusion thus:

Le manque de familiarité avec la doctrine de saint Augustin et saint Thomas, avalisée depuis bien des siècles par l'Eglise—sinon son rejet formel qui n'est que trop fréquent—nous a valu la situation que nous vivons actuellement en Occident.⁵

Time for a Renewed Interest

The last twenty years has seen a renaissance in marriage theology, inspired, fueled and enriched by John Paul II's "Theology of the Body". One aspect of genius in John Paul II's masterwork is his use of marriage as prism through which a catechesis of the entire faith may be given. In a parallel trend, scholars have been returning to Thomas Aquinas in recent years with new vigor and an appreciation for *ressourcement*.

Yet these two trends rarely converge. Despite new interest in both the area of marriage studies and of Thomistic law theory, recent studies of Saint Thomas's marriage theology have been relatively sparse. In the realm of marriage studies, Aquinas's account is viewed as outdated because of its emphasis on the juridical.⁶ The contractual terms in

⁴ Belmans, T. G. *Le sens objectif de l'agir humain: pour relire la morale conjugale de Saint Thomas*; Libreria Editrice Vaticana, Citta del Vaticano, 1980.

⁵ Theo Belmans, "Le 'remedium concupiscentiae' comme fin du mariage," p. 289.

⁶ For example, in describing changes in the approach to marriage found in Vatican II documents, Tracey Rowland claims a general sense of relief in the Church's abandonment of "the Stoic categories for analysing the sacrament of marriage. Marriage manuals no longer speak of marital dues and rights and reduce the whole reality of marital fidelity to parental responsibilities." (Tracey Rowland, *Ratzinger's Faith: The Theology of Pope Benedict XVI*. Oxford: Oxford University Press, 2008, p. 40). Rowland describes the writings of the popes since Vatican II as tacitly in contrast with the Thomistic tradition, moving toward "an overtly scriptural presentation of the meaning of human sexuality with reference to a fundamentally personalist ontology, not narrowly focused on any particular faculty of soul but on the entire person . . . rather than with reference to the principles of contract law." (Ibid., p 40-41). Meanwhile, canon lawyer Ladislav Orsy complains that there is not enough theology in the new Code of Canon Law: "Inevitably, there is a lack of harmony and cohesion; at times the new and the old coexist in an uneasy and precarious balance. For instance, after the initial emphasis on marriage as a covenant, the canons revert to the contractual terminology; no less than forty times they speak of the marital contract or of contracting marriage!" (Ladislav Orsy, *Marriage in Canon Law: Texts and Comments, reflections and questions*. Wilmington, DE: Michael Glazier, 1986, p. 47.) Paul Palmer's

which he discusses the sacrament, the vocabulary of duty that he applies to marital intimacy, and the account of procreation as the couple's duty to the human race mystify enthusiasts of the poetic, humanistic account drawn from the late Holy Father. Significantly, John Paul II did more to bring about the current richness in marriage theology than any other person, yet he did not dismiss Saint Thomas. As Michael Waldstein shows, the Theology of the Body advances nothing contrary to Thomas's account, though several of its themes represent developments and translations of Aquinas's teaching.⁷

Meanwhile, Aquinas's theories of law and government continue to provoke lively interest in the fields of political philosophy and jurisprudence. While some of this research addresses various aspects of marriage, these references tend to be tangential or at least conclusions deduced from Saint Thomas's principles. Scholars like John Finnis and Jean Porter, for example, champion a revival of Aquinas's natural law theory; yet when they discuss marriage, it is to employ his teaching to advance their own positions rather than investigating seriously Thomas's own teaching on marriage.⁸ In the case of Porter, this leads to a position directly opposed to Aquinas's doctrine. Very rarely does current scholarship study Aquinas's own account of marriage in order to find what contributions it can make to theology in light of present developments.

Certainly in some quarters, it is assumed that since Aquinas furnished the model for marriage theology for nearly 700 years, his teaching has therefore been thoroughly mined for all that it can contribute to the current conversation. However, this assumption not only neglects the new considerations that have opened up in the theology of marriage lately. It also underestimates the discoveries made in the last century in every area of theology, by returning to the actual texts of Saint Thomas in *ressourcement*.

A Methodological Obstacle

However, the richness that has arisen from increased *ressourcement* brings to light one possible factor in the sparse attention that has been paid to Aquinas's marriage theology lately. Saint Thomas of course never finished his *Summa Theologiae*, so his only

arguments against the construal of marriage as a contract will be examined in Chapter 1, but Orsy's astonishment that marriage should be discussed as a contract in the Code of Canon Law itself seems nothing short of absurd. One of the aims of this paper will be to show that Aquinas's approach to marriage is very much "focused on the entire person" and deeply theological—not in spite of his language of "dues and rights" or "principles of contract law," but precisely in and through the meaning of the juridical.

⁷See Waldstein, "John Paul II and Saint Thomas on Love and the Trinity." First part: *Anthropotes*, 18/1 (2002), pp. 113-138; and second part: *Anthropotes*, 18 (2002), pp. 269-286.

⁸ See Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids, Mich: William B. Eerdmans Pub. Co, 2010), in which Porter argues that Aquinas's jurisprudence would allow for homosexual marriages; Kevin Flannery points out the errors in this interpretation in his response: "Marriage, Thomas Aquinas, and Jean Porter," (*Journal of Catholic Social Thought*, Vol 8(2011):2, pp. 277-289). John Finnis uses Aquinas's natural law theory to argue against homosexual marriage, but he also fails to grasp some essential elements of Thomas's theory of law. His approach will be discussed very briefly in Chapter 4.

substantial treatise on marriage is found in his student work, the *Commentary on the Sentences* of Peter Lombard. Thus, in the Providence of God, Aquinas left no lengthy discussions of marriage after his earliest analysis, though marriage does receive two much shorter considerations in the *Summa Contra Gentiles*. These texts, along with a few brief references in the Scripture commentaries, Aquinas's conference on the sacraments, and similar smaller texts, are all that we have of Saint Thomas's marriage theology.

One result of this fact is that for the most part we will never know what developments occurred in Saint Thomas's thinking with regard to this subject from the time he was a student at the University of Paris until the end of his career.⁹ Another consideration that students of Thomas must keep in mind is that in his most extensive account of marriage, Thomas was compelled to follow the organizational structure of themes in Peter Lombard's *Sentences*. This fact in itself is no insurmountable obstacle, for Thomas's commentary is sufficiently indicative of his own unique vision.

That Aquinas's teaching on marriage changed very little over the course of the rest of his career is witnessed to by the fact that his students, commonly believed to be under the direction or inspiration of Thomas's socius Reginald of Piperno,¹⁰ transferred his text from the *Commentary on the Sentences* directly to the *Supplementum* virtually without change. Over the last forty years, scholarship has increasingly relied on the treatise on marriage in the *Supplementum* alone, since it is commonly considered to be a faithful summary of the text in the *Commentary on the Sentences*. Nevertheless, this is a text that Thomas did not compose. While universally accepted as containing the substance of the treatise on marriage in the *Commentary on the Sentences*, the portion of the *Supplementum* that deals with marriage does omit portions of Thomas's original treatment of marriage. It seems impossible that such an abbreviation of the text could occur without its losing at the very least some nuances that the original text possessed. Since one of the criticisms laid at Aquinas's door is a certain heavy-handedness, a lack of delicacy in approaching the complex nature of marital relations, it seems especially important to attend to these very nuances as much as possible. Nevertheless, recent scholarship almost unanimously relies on the *Supplementum* rather than the *Commentary on the Sentences* when considering Saint Thomas's teaching on marriage.¹¹

It is therefore as a small attempt to help remedy this lack that we include our own translation of Saint Thomas's treatise on marriage (*In Sent. IV*, Distinctiones 26-42) as

⁹ An important exception to this statement is the subtle but exciting development traced by Frère Leblanc, which will be discussed in Chapter 3 (Leblanc, M. "Amour et procreation dans la théologie de saint Thomas," *Revue Thomiste*, XCII, (1992) 433-459). Frère Leblanc's discovery is a testament to us of how rewarding and fruitful it can prove to meditate on Aquinas's own words in a spirit of docility without importing the categories of subsequent commentators. Through his careful and humble study, Frère Leblanc uncovered a subtle shift over the course of Saint Thomas's career and through the medium of his study of Scripture which affected Saint Thomas's manner of viewing marriage.

¹⁰ Recent editors of Thomas's works, including the Leonine editors, reject with considerable indignation the attribution of the Supplement to Reginald (*De Textu Critico Leonino Summae Theologiae*, Torino: Marietti, 1948, pp. xii). See part II of this work for a brief discussion of the authorship of the Supplement.

¹¹ Two notable exceptions are the article of Kevin Flannery, OP, "Marriage, Thomas Aquinas, and Jean Porter," and that of Frère Marie Leblanc, mentioned in footnote 9.

Appendix A.¹² It is a substantial text which was accessible only with great difficulty until recent technology made the Latin text of the Parma edition available online. Nevertheless, the decline in its use as a source over the last forty years coincides with the decline in fluency in Latin reading. This translation will make available to current researchers Aquinas's most extensive and thorough treatment of marriage in English.

The broader availability and accessibility of this lengthier text may facilitate deeper readings of Aquinas's account of marriage which will reveal the inner coherency of his approach as well as its relation to the most important themes of theology.

The Aims of the Present Work

The purpose of this thesis is not primarily to defend Saint Thomas's treatment of marriage against the critics of the last 40 years. Rather, it is to discover the beauty and richness of his teaching by delving into his writings themselves. Therefore, we will limit our consideration of the complaints against Thomas to a more general treatment. Rather than trying to disprove each writer's argument in detail, we will address a few discrete works that in some way exemplify current attitudes and misconceptions concerning Aquinas's marriage theology. The broader attitude of dismissal that unfortunately greets Saint Thomas in much of current academia can be conveyed more precisely by the following summaries of the charges laid against him.

The criticisms of Saint Thomas's approach to marriage include but are not limited to the following:

- Aquinas treats marriage too much as a legal contract, and not enough as a sacrament or covenant.
- He overemphasizes the physical aspect of marriage and while not giving enough attention to the "unitive end" of marriage or the spiritual benefits marriage offers to the spouses.
- His emphasis on procreation is a base portrayal that is either too physical, too animal, or too juridical.
- He views marriage as a means to the numerical increase of the human race.
- He describes the marital act not as a mutual self-giving but as a marital "debt."
- He considers pleasure in the marital act sinful. In fact, he teaches that marital intercourse for any other reason than proper *solam procreationem* would be a sin.
- In general, his ubiquitous use of legal terminology strips the beauty from what should be the paramount relationship of love among humans.

¹² The translation is of the Parma edition of the *Commentary on the Sentences* as found at corpusthomisticum.org, since the more recent Paris edition extends only to Book IV, Distinction 22. Irregularities in the text have been cross-referenced with the Piana edition, and noted.

One of the most pervasive complaints about Aquinas's treatment of marriage today is that Thomas focuses overwhelmingly on the juridical aspects of marriage, while undervaluing the saving power of the sacrament. Ironically, until the 1960s historical accounts of the sacrament credited Saint Thomas with defending marriage soteriologically in contrast to theologians before him. Nevertheless, Thomas's firm teaching that marriage does confer grace seems faint praise to modern sensibilities, since his assertion of the grace of marriage is hardly balanced against legal aspects of consent, the language of rights and duties (particularly in regard to the marital act), and the role of marriage as a remedy for concupiscence.

However, a broader understanding of Aquinas's entire work will show that he is fully aware of the beauty and grace-giving power of marriage. Though his style is pithy, each word is weighted with meaning and draws upon numerous other topics that he discusses. Indeed, all of Thomas's theology is so intimately connected that a thorough knowledge of his entire teaching is necessary to understanding any given part. Therefore, a fruitful understanding of his writing on marriage will require an explanation of several other subjects he treats, such as the interaction of grace and nature, the definition of slavery, the nature of the common good, the meaning of concupiscence, the structure of virtue, and, above all, the nature of law for Saint Thomas. By referring to these varied and rich subjects, it will become clear that Thomas's juridical approach to marriage is not only deliberate, but it partakes in a vision of theology that spans time and the universe.

The Plan of the Present Work

The thesis of this dissertation is that Saint Thomas's account of marriage has something to contribute to the current conversation on marriage, not in spite of his extremely juridical approach, but precisely because of it. For Aquinas, marriage serves as a microcosm for the relationship of nature and grace. But more particularly, the juridical in marriage—the legal underpinnings of the sacrament, the aspect of “debt” in the conjugal act, the elements of justice integral to marital love, and matrimony's relation to the community—illustrates to us the centrality of the juridical to the entire economy of salvation. As John Paul II uses marriage as the springboard to catechise about the entire faith, Aquinas sees the loving Providence of God through the lens of law. Law is the theme by which Saint Thomas integrates nature and grace; it is the legal underpinning of marriage that elevates marriage above the biological and the animal, and links it essentially with the most eschatological aspects of human life. Nor should this importance of law be understood according to the limited perspective of the forensic model of justification, but rather law for Aquinas is the staircase that God offers to man in order to bring him into the highest active participation in his own salvation.

Accordingly, we will consider a few of the many aspects of the juridical as they pertain to matrimony. In chapter one a general discussion of the elements of marriage as Thomas describes them will reveal the dependence of the sacrament on legal categories. We will see that the reason for Aquinas's constant attention to the legal requirements of

marriage lies not in a tendency to reduce this sacrament to a commercial contract. On the contrary, according to Saint Thomas, law is the medium that allows for an astonishing level of human cooperation with divine grace in matrimony.

The consideration of the essence of marriage will continue with the most important of the four causes, the final cause. Aquinas's much-derided teaching that procreation is the primary end of marriage is not in itself open to debate, as it is the perennial teaching of the Church. Yet we will see in Guy de Broglie's attempt to interpret this teaching for contemporary readers that the assumptions of modern philosophy can obscure the true meaning of Saint Thomas's theology even for apologists, like deBroglie, who may be very familiar with him. DeBroglie's misconstruals will also give us an initial indication of the importance of understanding the common good in Aquinas, if we are to understand well his teaching about marriage.

Chapter Two will undertake a consideration of the conjugal act in Aquinas. Saint Thomas is accused of grudgingly admitting other ends to marital intercourse only under the collective title "remedium concupiscentiae," which, for thinkers like Milhaven, translates into the condemnation of any pleasure the married couple might enjoy in the physical expressions of love. Notwithstanding the numerous authors¹³ who have shown its groundlessness, the myth of Aquinas's opposition to marital pleasure persists.¹⁴ In chapter two we will add our own explanation to the list of those debunking this enduring error; we will look at Aquinas's attitude toward pleasure in the larger context of the remedium concupiscentiae and its indispensable role in marital love. Secondly this chapter will explore Saint Thomas's general use of the term "marital debt," which evokes a certain spirit of forced labor for modern minds. The notion of debt or duty that seems so alien to a contemporary idea of spontaneous love and gift of self actually corresponds to the quintessential act of the virtue of justice. In chapter two we will see in an initial way how justice and love work in symbiosis in the contracting of this debt and its fulfillment.

The theme of the interconnection between justice and charity continues in chapter three, which deals with the love between the spouses. Both at the natural level—friendship—and at the supernatural level—charity—love depends upon a priority of justice. Chapter three will consider Saint Thomas's dramatic statement that "marriage is the greatest friendship," by first exploring the definition of friendship. This exposition will show that for Saint Thomas, justice furnishes the skeletal structure that allows friendship to exist. An investigation into the shared good that makes marriage the greatest friendship will adumbrate the themes of the fourth chapter. So too will the study of spousal charity that forms the second half of chapter three. Justice is not only an integral part of natural

¹³Cf. for example, Cornelius Williams, "The Hedonism of Aquinas," *The Thomist*, 38 (1974): 257-90.; John Finnis, "Marriage: A Basic and Exigent Good," *The Monist* 91.3 (2008): 388; Theo Belmans, "Le remedium concupiscentiae comme fin du mariage" in *Revue Thomiste* 93:289-303 (1993).

¹⁴ John Finnis laments in footnote 10 to the above article that the "massive, fundamental misreadings and misrepresentation of Aquinas in John T. Noonan, *Contraception: A History of Its Treatment by Catholic Theologians and Canonists* (Cambridge, Mass: Harvard University Press, 1965 and 1986) . . . have had their baleful influence everywhere; they wreck, for instance, the treatment of sex in marriage in the early modern era in Margaret R. Sommerville, *Sex and Subjection: Attitudes to Women in Early-Modern Society* (London: Arnold; New York: Saint Martin's Press, 1995)."

friendship between the spouses: it is also essential for their supernatural charity. Aquinas's discussion of the order of charity already introduces the idea that a just ordering is necessary to this highest love. His particular ranking of spousal love within that order reveals an even greater fusion of these two virtues at work in the spousal relationship.

Chapter four focuses on the relation of the spouses and of marriage to the good of the community. It begins with an examination of what law represents for Saint Thomas: a governing authority's formulation of reason ordering practical matters to the common good. As a preliminary to understanding this definition, we will briefly glance at what law is not—that is, a kind of bondage. Even scholars, like John Finnis, who do not understand law as coercive, still fail to recognize the role of the juridical in salvation, because their reading of Aquinas's legal theory neglects its divine telos. Lastly, we will look at the essential relationship of law to the common good, which is ultimately God. Just as law includes an order to the common good as part of its essence, so too does procreation; these two powerful means by which man participates in the work of the Divinity are united in marriage.

Part II offers an introduction to the translation of Book IV of the *Commentary on the Sentences*, Distinctions 26-42, which follows as Appendix A. This introduction will address mainly the difficulties that the text poses to modern readers of Saint Thomas at the level of language. It will begin with a brief historical situating of the marital themes that Aquinas was dealing with. Following will be a more detailed analysis of certain words whose meaning or nuance may cause trouble to today's student of theology. Lastly it will address the most fundamental historical difference in which the text is couched: the process of choosing a spouse, which today often springs from the affections of the couple, but for thousands of years has been a matter of deliberation and the decision of others.

The lesson that Saint Thomas has to teach us in his treatment of marriage is that law is something integral to love and something that develops love to its fullest character. Justice is necessary to charity as an incipient phase in its development; meanwhile, charity is the fulfillment and flowering that justice was destined for: "for love is the fulfillment of the law" (Romans 13:10). Our understanding of marriage only stands to benefit from a deeper understanding of the underlying juridical elements that enrich it.

CHAPTER I: THE ESSENCE OF MARRIAGE

Marriage has always posed and continues to pose delicate challenges to theology because of its many peculiarities as a sacrament. Unlike other sacraments, marriage existed before the fall of man in the state of unfallen nature; it also existed before the coming of Christ in the old dispensation. Natural marriages, those contracted between unbaptized persons, are still recognized as valid marriages by the Church. Even within the realm of sacraments, marriage poses difficulties. It is the only sacrament whose liturgical celebration is a juridical act, the exchange of consent.¹⁵ The sacramental minister is commonly considered to be not an ordained minister but the spouses themselves.¹⁶ The form and the matter of the sacrament are not self-evident, and the matter remains difficult to define to this day. Moreover, and most challenging to Saint Thomas, the sacrament of marriage does not bring about what it signifies—the union of Christ and his Church.

This list does not exhaust the theological problems that Saint Thomas faced in dealing with marriage. Among his contemporaries, these abnormalities conduced to the conclusion that marriage was not a sacrament, or did not confer grace.¹⁷ Through his lapidary use of distinctions, Aquinas was able to defend the sacramentality and the efficacious power of matrimony while still recognizing the role of marriage at the level of nature. At the time, Saint Thomas was battling an attitude reluctant to see marriage as an efficacious sign of grace because of its roots in the material, animal side of human nature. Today, however,

¹⁵ C. J. Errazuriz. “Contratto e sacramento: il matrimonio, un sacramento che è un contratto. Riflessioni attorno ad alcuni testi dei San Tommaso d'Aquino,” in AA.VV., *Matrimonio e sacramento*, Libreria Editrice Vaticana, Città del Vaticano 2004, p. 4.

¹⁶ Of course, this is not the position of the Eastern Churches. As Father Benoit-Dominique de la Soujeole reminds us, it is also not the teaching of the Roman Rite church, but rather it is a prevalent opinion (Benoit-Dominique de La Soujeole, “The Minister in Marriage: Ecumenical Considerations.” *Theology Digest* 49:2002; 121-127). Saint Thomas deliberately and conspicuously refrains from ever defining a minister for this sacrament. In the article addressing whether a secret marriage is valid (*In IV Sent.*, D. 28, q. 1, art. 3), Aquinas answers the objection that, just as “the sacrament of penance is not perfected except by mediating ministers of the Church, who are the ones who dispense the sacraments. Therefore, neither can marriage be completed in secret without the priestly blessing” (“sacramentum poenitentiae non perficitur nisi mediantibus Ecclesiae ministris, qui sunt sacramentorum dispensatores. Ergo nec matrimonium potest perfici in occulto absque sacerdotali benedictione”). In response to this objection, Saint Thomas distinguishes that “in marriage our act is the sufficient cause for bringing about the proximate effect, which is obligation: for anyone of his own right may oblige himself to another: and thus the blessing of the priest is not required for marriage as of the essence of the sacrament” (“in matrimonio actus nostri sunt causa sufficiens ad inducendum proximum effectum, qui est obligatio: quia quicumque est sui juris, potest se alteri obligare: et ideo sacerdotis benedictio non requiritur in matrimonio quasi de essentia sacramenti.”), which leads the reader to assume that the priest is not the minister of the sacrament, but the spouses are. Nevertheless, the fact that Aquinas never expressly designates a minister for this sacrament, (and in omitting to do so, he departs from his pattern in discussing sacraments) should be the strongest argument for leaving this question open.

¹⁷ Seamus Heaney states that “St. Albert is the first author . . . who considers the *res tantum* of marriage to be grace, taken in the strict sense of a positive and interior effect.” Heaney, “The Development of the Sacramentality of Marriage from Anselm of Laon to Thomas Aquinas” (Dissertatio doctoralis: Studies in Sacred Theology. 2d. ser., 134: Catholic University of America Press, Washington, 1963) XVI, p. 183.

Aquinas's thoughts are dismissed as not attributing enough spiritual power or beauty to this sacrament.

In his treatment of the other sacraments, Aquinas systematically identifies the minister, form, matter, and effect of each sacrament, a structure that corresponds loosely to Aristotle's four causes. However, because of its many unique characteristics, marriage resists strict confinement to this schema. Rather than force marriage into categories that do not suit it, Aquinas discusses it according to Augustine's three goods, or by using the sacramental distinctions *res tantum*, *sacramentum et res*, and *sacramentum tantum*. Through these distinctions and many others, Saint Thomas was able to navigate the peculiarities of marriage, recognizing its potential and its limitations at both the natural and supernatural levels. The concept that he used to knit the two levels together was the concept of law.

Rather than approaching marriage from the point of view of matter, form, and minister—though he does refer to these at least obliquely—Saint Thomas approaches marriage according to its essence, cause, and effects. The essence of marriage, he states, is a union or con-joining (*coniunctio*) of a man and a woman.¹⁸ The cause is the consent of the spouses,¹⁹ and the effect is alternately designated as children,²⁰ or a shared life in domestic matters.²¹ Accordingly, this chapter will first consider the essence and causes of marriage in section 1, and the relationship between marriage's two ends in section 2.

¹⁸ *In IV Sent.*, D. 27, q. 1, a. 1, qc. 1 and 2. Cf. also *Summa Contra Gentiles*, lib. IV, cap. 78, paragraph 2. References to the *Commentary on the Sentences* and the *Summa Theologiae* will always be referring to the body of the article unless expressly noted otherwise.

¹⁹ *In IV Sent.*, D. 27, q. 1, art. 2.

²⁰ *In IV Sent.*, D. 27, q. 1, a. 1, qc. 2.

²¹ *In IV Sent.*, D. 27, q. 1, a. 1, qc. 3.

1. THE CAUSES OF MARRIAGE

Saint Thomas's careful distinctions and attention to the technicalities of the legal contract are some of the qualities of his marriage theology that attracted criticism in the 20th century. For example, Paul Palmer, S.J. argued in his article "Christian Marriage: Contract or Covenant," that the juridical approach to marriage was a scholastic imposition on marriage pacts that had for centuries been seen as religious covenants rather than legal agreements.²² According to Palmer, a covenant is an agreement that effects a relationship of trust, with God ("or the gods") as guarantor. By contrast, a contract is a product of human law which governs the exchange of things or services. Yet this reading of Aquinas ignores the transcendent ramifications that law holds for him. On the contrary, law proves the medium of integrating nature and grace in the marriage compact.

Early in his treatment of marriage, Aquinas sorts marriage according to the various contributions that were made to its structure by the various kinds of law that have governed it:

And thus marriage, according as it is ordained to the procreation of offspring, which was necessary also when sin did not exist, was instituted before sin. But according as it is a remedy provided against the wound of sin, it was instituted after sin in the time of the law of nature. But according to the determination of persons, it had its institution under the law of Moses. Yet according as it represents the mystery of the union of Christ and the Church, it had its institution under the New Law; and according to this it is a sacrament of the New Law. But as to the other benefits which are consequent upon marriage, like friendship and the mutual service devoted to each other by the spouses, it has its institution in civil law. But since it is of the *ratio* of the sacrament that it be a sign and a remedy, thus the middle institutions have to do with it under the *ratio* of a sacrament; but as to the first institution, it has

Et ideo matrimonium, secundum quod ordinatur ad procreationem prolis, quae erat necessaria etiam peccato non existente, institutum fuit ante peccatum: secundum autem quod remedium praebet contra vulnus peccati, institutum fuit post peccatum tempore legis naturae; secundum autem determinationem personarum, institutionem habuit in lege Moysi; sed secundum quod repraesentat mysterium conjunctionis Christi et Ecclesiae, institutionem habuit in nova lege; et secundum hoc est sacramentum novae legis. Quantum autem ad alias utilitates quae ex matrimonio consequuntur, sicut est amicitia et mutuum obsequium sibi a conjugibus impensum, habet institutionem in lege civili. Sed quia de ratione sacramenti est quod sit signum et remedium; ideo quantum ad medias institutiones competit ei ratio sacramenti; sed quantum ad primam institutionem

²² Paul F. Palmer, S.J. "Christian Marriage: Contract or Covenant?" *Theological Studies* 33 (1972): 617-665.

to do with what it is in the office of nature; as to the last, what it is in the office of civic life.

competit ei quod sit in officium naturae; quantum vero ad ultimam quod sit in officium civilitatis.²³

This delineation of the various institutions of marriage shows how closely interwoven nature and grace are through law. Marriage's role after the Fall of Man, the stricter specifications that were introduced under the Mosaic Code, as well as matrimony's institution in the new dispensation all pertain to its sacramentality. Even considered as a sacrament strictly speaking, marriage is deeply rooted in law, since Aquinas designates the life of the Church as the New Law, following Saint Paul.

At every turn, Saint Thomas emphasizes the interdependence of contract and sacrament, showing the interconnection of nature and grace.

In all sacraments there is some spiritual operation by the mediation of a material operation which signifies it; . . . wherefore, since in marriage there is a certain spiritual union, inasmuch as marriage is a sacrament, and another material one according as it is in the office of nature and civil life; it is fitting that by the mediation of matter a spiritual thing is done by divine power; wherefore, since the unions of material contracts happen by mutual consent, it is fitting that the matrimonial union is also done in this manner.

In omnibus sacramentis est aliqua spiritualis operatio mediante materiali operatione quae eam significat . . . unde, cum in matrimonio sit quaedam spiritualis conjunctio, inquantum matrimonium est sacramentum, et aliqua materialis, secundum quod est in officium naturae et civilis vitae; oportet quod mediante materiali fiat spiritualis virtute divina; unde, cum conjunctiones materialium contractuum fiant per mutuum consensum, oportet quod hoc modo etiam fiat matrimonialis conjunctio.²⁴

Complaints against Saint Thomas's juridical language in the treatment of marriage fail to take into account the fact that marriage is unique among the sacraments in that the heart of the sacrament is a legal agreement. Aquinas's treatment of marriage must differ from the pattern of the other sacraments because in marriage the validity of the sacrament depends on the validity of the legal contract. Accordingly every reference to the typical elements of sacramental theology—form, matter, minister, and effect—must take into consideration the juridical requirements underlying the contract.

But the relationship goes both ways. If the sacrament of marriage depends upon the legal contract in some way, marriage as a natural juridical act is always ordered toward the spiritual. In defining marriage in its essence, Saint Thomas not only views it as a union or "con-joining" (*conjunctio*), but he states that in the genus of *conjunctio*, marriage is the greatest union, "for the union of man and woman is the greatest since it is a union of both

²³ *In IV Sent.*, Distinctio 26, question 2, article 2. Where quotations are taken from the *Commentary on the Sentences*, they will be shown beside their English translation. Where citations are taken from a text that already exists in English, I have used that translation.

²⁴ *In IV Sent.*, Distinctio 27, q. 1, art. 2, qc. 1.

souls and bodies.”²⁵ Even a natural marriage is a spiritual union, involving the soul of each party. The reason for this is rooted in the nature of the human being as rational animal. In his reflections on the relationship between contract and sacrament, Carlos Errazuriz argues that the contract cannot be separated from the sacrament precisely because human nature is, in itself, ordered to the spiritual:

Se invece il contratto decade a mero interscambio di prestazioni, modellato dalla volontà dei contraenti, e chiuso in un rapporto egoistico puramente orizzontale, bisogna constatare che purtroppo non c'è più un vero contratto matrimoniale secondo l'essere naturale della persona umana nella dualità uomo-donna, e manca pertanto il presupposto essenziale perché esso possa essere sacramento. Per superare la resistenza a legare contratto e sacramento, la via maestra passa attraverso la riscoperta del valore trascendente delle nozze e del vincolo coniugale, che non sono realtà profane, estranee alla trascendenza.²⁶

Though he does not use the language of the Theology of the Body, Saint Thomas identifies this intrinsic relation of human nature to transcendence in his attention to man as a rational animal. One manifestation of this emphasis on man's rational nature, and thus his spiritual nature, is evident in Aquinas's treatment of marital consent. Consent is the cause not only of the marriage contract but also of the sacrament, for it brings about “the perfect signification of marriage, which consists in the union of minds that happens through the consent.”²⁷

A. The Centrality of Consent to Sacrament and Contract

Aquinas's account of the conditions for consent emphasizes again the interpenetration of the legal and the sacramental in marriage. In the article on whether consent must be expressed in words, Saint Thomas gives parallel reasons: first from the necessity of a sensible sign for the sacrament, second from the need for “an expression of words, by which men oblige themselves to each other” in any legal contract.²⁸

The consent is called the efficient cause of matrimony because it is the cause of the contract.²⁹ But it is, in a certain way, the efficient cause of the sacrament as well, by the fact that “the words by which matrimonial consent is expressed are the form of this

²⁵ *In IV Sent*, Distinction 27, Question 1, Article 1, qc. 2, ad 3: “conjunctio viri ad mulierem per matrimonium est maxima, cum sit et animarum et corporum.”

²⁶ C. J. Errazuriz. “Contratto e sacramento: il matrimonio, un sacramento che è un contratto. Riflessioni attorno ad alcuni testi dei San Tommaso d'Aquino,” in AA.VV., *Matrimonio e sacramento*, Libreria Editrice Vaticana, Città del Vaticano 2004, p. 49.

²⁷ *In IV Sent*, Distinctio 27, Question 3, Article 1, qc. 1, ad 3, “perfectam significationem matrimonii, quae quidem consistit in conjunctione animorum, quae fit per consensum, et in conjunctionem corporum ...”

²⁸ *In IV Sent*, Distinction 27, Question 1, Article 2, qc. 2, sed contras « in quolibet contractu oportet esse expressionem verborum, quibus se mutuo homines obligent.. »

²⁹ *In IV Sent*, Distinction 27, Question 1, Article 2, qc. 2.

sacrament.”³⁰ However, the words of consent not only account for the form of the sacrament; they also figure into the matter of the sacrament for Saint Thomas.

The matter of the sacrament of marriage is only obliquely referred to in Aquinas’s treatise on matrimony, and it remains elusive to define to this day. In one of only three articles where Saint Thomas explicitly refers to the matter of the sacrament, he argues that “in a secret marriage, the due matter is preserved, for there are persons legally capable of contracting.”³¹ He reinforces this later in the same article where he says, “Clandestine marriages are not prohibited as being against the essential components of marriage, as marriages are prohibited between persons legally ineligible, who are improper matter for this sacrament ...”³²

Elsewhere he seems to specify that the matter is not actually the persons of the contractants themselves, but rather the matter consists in the “act of the one who avails himself (*utitur*) of this sacrament.”³³ While the verb *utitur* would suggest that the act Aquinas alludes to is the *usus matrimonii*—the conjugal act—Aquinas explicitly rejects this notion, which was prevalent among many of his contemporaries.³⁴ Saint Thomas argues in addressing “Whether carnal commingling is of the integrity of the sacrament” that the “use of marriage” is not essential to the sign because only the signification of a *res contenta* is essential to a sacramental sign.³⁵ By the conjugal act, on the other hand, is symbolized Christ’s “union with the Church by his assumption of human nature in the unity of his person.”³⁶ This is obviously not something that can be effected by the sacrament or contained in it. Therefore, the conjugal act cannot be the sacramental matter, which would be a constituent part of its sign.

However, elsewhere Aquinas states that “the expression of words is related to matrimony as the exterior washing is related to baptism,”³⁷ a comparison that connects the expression of consent with the matter of the sacrament. Fr. Seamus Heaney interprets the statement thus:

But if the words expressing consent are identical in extent with the *sacramentum tantum*, they are also identical with the acts which constitute the matter of the sacrament. Therefore the external acts which constitute the matter are in some way contained in the words expressing consent, for there

³⁰ *In IV Sent.*, Distinction 26, Question 2, art. 1, ad 1 “verba quibus consensus matrimonialis exprimitur, sunt forma huius sacramenti.”

³¹ *In IV Sent.*, Distinction 28, question 1, article 3, sed contra. “in occulto matrimonio servatur debita materia, quia sunt personae legitimae ad contrahendum.”

³² *In IV Sent.*, Distinction 28, question 1, article 3, ad 4. “non sunt prohibita clandestina matrimonia quasi contra essentialia matrimonii existentia sicut sunt prohibita matrimonia illegitimarum personarum, quae sunt materia indebita huic sacramento.”

³³ *In IV Sent.*, Distinction 26, Question 2, art. 1, ad 2 “sacramentum matrimonii perficitur per actum ejus qui sacramento illo utitur, sicut poenitentia; et ideo, sicut poenitentia non habet aliam materiam nisi ipsos actus sensui subjectos, qui sunt loco materialis elementi, ita est de matrimonio.”

³⁴ Edward Schillebeeckx, *Marriage: Human Reality and Saving Mystery* (New York: Sheed and Ward, 1966), p. 319.

³⁵ *In IV Sent.*, Distinction 26, Question 2, art. 4, ad 2.

³⁶ *In IV Sent.*, Distinction 27, Question 1, art. 3, qc. 2, ad 1 “sed per carnalem copulam significat conjunctionem ad Ecclesiam quantum ad assumptionem humanae naturae in unitatem personae.”

³⁷ *In IV Sent.*, Distinction 27, Question 1, art. 2, qc. 2 “expressio verborum se habeat ad matrimonium sicut ablutio exterior ad Baptismum.”

are no other external acts which enter the essence of marriage. Saint Thomas does not explain how the *verba* contain the matter and the form of marriage, but it seems to us that as in the case of Saint Albert there is some suggestion that the *verba* constitute a mutual *datio* and a mutual *acceptio* which are the matter and form respectively of the sacrament of marriage.³⁸

Nevertheless, Saint Thomas does not explicitly construe the matter and form this way, though he was undoubtedly aware of Saint Albert's explanation. Aquinas's general definition of the matter of the sacrament as the "act of the one who avails himself of marriage" opens the possibility of understanding the matter of the sacrament in a broader way as many or all acts of the spouses living out their married life.

Yet this brings us to an important distinction that Saint Thomas never lost sight of. The expression "form" can be used many ways, even within the context of the seven sacraments. When we speak of the form of the sacrament, we are speaking of the formal principle of the efficient cause of marriage. The form of the sacrament and its matter come together in the sign to cause the sacrament to come into being. The form of the sacrament is not the same as the formal cause of matrimony—that which makes it to be what it is. If the marital consent were the formal cause of marriage, then the marriage would cease when consent was revoked. Rather, the formal cause of marriage is the marital bond (*vinculum*).³⁹ The bond is what is caused by the consent, and what acts dispositively as the cause of grace.

Though we might interpret the matter of the sacrament in a loose way as the actions of the spouses throughout their life together, this is not the action that contributes to the sign that brings marriage into being. This distinction between bringing about the sacrament and living out the sacrament came later to be referred to as marriage *in fieri* and marriage *factum esse*. When Saint Thomas elucidates these complicated relationships, he uses the terms *sacramentum tantum*, *res et sacramentum*, and *res tantum*. The sign, composed of the form and matter of the sacrament, is the *sacramentum tantum*, which causes the *res et sacramentum*. The *res et sacramentum* is the bond, which is caused by the sign, and which is itself dispositively the cause of grace (*res tantum*).

In this respect the bond resembles the character (*quasi character*) in those sacraments that bestow a character. Like the character in baptism, the bond that is caused by consent acts as a dispositive cause of grace in the spouses:

<p>Just as neither the water of baptism nor the form of words bring about grace immediately, but rather a character; so the external acts and the words expressing consent directly effect a certain bond of obligation, which is the sacrament of marriage. And a bond like this operates dispositively for grace by</p>	<p>sicut aqua Baptismi vel forma verborum non operatur ad gratiam immediate, sed ad characterem; ita actus exteriores et verba exprimentia consensum directe faciunt nexum quemdam, qui est sacramentum matrimonii; et hujusmodi nexus ex virtute divinae institutionis dispositive operatur ad</p>
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³⁸ Heaney, *The Development of the Sacramentality of Marriage from Anselm of Laon to Thomas Aquinas*, (Washington, D.C.: Catholic University of America Press), p. 68.

³⁹ *In IV Sent.*, Distinction 27, Question 1, art. 1, qc. 1, ad 1.

the power of divine institution. gratiam.⁴⁰

Incidentally, Saint Thomas refers to the *res et sacramentum* of marriage in two different ways. He states that the *coniunctio* itself is the *res et sacramentum* when discussing how the bond is caused by sensible signs.⁴¹ But when comparing marriage to those sacraments that imprint a character, he states that the *res et sacramentum* is the “obligation which a man has toward a woman by such acts.”⁴² Clearly *coniunctio* and *obligatio* represent here two aspects of the same effective reality; one looks back to the consent that caused it, while the other looks forward to the effects of marriage, which we will discuss in section 2 of this chapter. *Coniunctio* focuses on the being of the bond, while *obligatio* focuses on the operation that arises from it, for operation follows from essence. In this sense *obligatio* is related to *coniunctio* as natural law is related to nature.

Monsignor Peter Eliot comments on the connection:

Saint Thomas, as an acute observer of human experience, was already moving beyond the third good, the “sacrament,” as the “bond” or as Saint Augustine’s “indissolubility” to the “*res tantum*,” the graced life of the spouses, the elevation and redemption of sexual love.

His broader view, from the bond to the graced life of the spouses, is evident when he explains that, as a good of Marriage, the “sacrament” is not only indissolubility, but all those things which come from the Christ-Church signification. Going further, he gently corrects Peter Lombard’s Augustinian definition of “sacrament” as the good of indissolubility. Marriage, in its own right, is a “natural undertaking” before it is a sacrament, and the sacramental aspect is a condition added to it from which it derives its goodness. This broader meaning he even describes as “sacramentality”: “Therefore, its sacramentality (*sacramentalitas*), if I may use the word, is reckoned among the goods which justify Marriage; accordingly, this third good of Marriage, the sacrament, denotes not only its indissolubility, but also all the things which pertain to its signification.”⁴³

Monsignor Elliott’s description of sacramentality as “a condition added” to marriage should not be misunderstood. One of the most remarkable aspects of marriage as a sacrament, which will be discussed further in the next section, is that nothing is added to the natural undertaking to transform it into a sacrament; as Errazuriz points out, the intentions of the contractants are no different in causing the sacrament than in causing the contract.⁴⁴ The only difference lies in the baptismal character imprinted on each of their souls.

This fact brings up the importance of the individual contractants to the constitution of the sacrament. In discussing clandestine marriages, Saint Thomas states that such marriages are “not prohibited as being against the essential components of marriage, as marriages are prohibited between persons legally ineligible, who are improper matter for

⁴⁰ *In IV Sent.*, Distinctio 26, q. 2, art. 3, ad 2.

⁴¹ *In IV Sent.*, Distinctio 27, q. 1, art. 1, qc. 1, ad 2.

⁴² *In IV Sent.*, Distinctio 26, q. 2, art. 1, ad 5.

⁴³ Peter J. Elliott, *What God Has Joined: The Sacramentality of Marriage* (New York: Alba House, 1990), pp. 97-98.

⁴⁴ Errazuriz, p. 50.

this sacrament.”⁴⁵ Here the very persons contracting are referred to as the matter of the sacrament. Their role in effecting the sacrament is another reason for the extensive study of legal impediments to marriage.

The many factors contributing to consent form a critical intersection-point of law and sacrament in marriage; Aquinas, like any scholar of his age, had to consider extensively what could vitiate consent from a legal standpoint because the legal consent is also the sign in the sacrament. Nor would Saint Thomas consider it degrading to the spirituality of marriage that it depends upon a juridical entity. A careful reading of his explanations of the legal aspects of the marital compact shows that it is marriage’s juridical character itself that makes it the perfect microcosm of the interaction of grace and nature.

B. Marriage has its cause in us

The uniqueness in marriage that Saint Thomas refers to repeatedly is the degree to which God has left it in our hands. Not only at the level of nature, but also as a sacrament, the spouses cause the contract. They produce or are themselves the matter and the form.

The nearest similarity to this kind of human causality among the sacraments, as Aquinas points out, is in the sacrament of penance, where the acts of the penitent constitute the matter of the sacrament. But even then, whereas in penance our act is essential but insufficient for the sacrament, “in marriage our acts are the cause sufficient to bring about the proximate effect.”⁴⁶

Marriage is remarkable in the level of human agency that it depends upon. In explaining why so many impediments must be listed for this sacrament, Saint Thomas gives the remarkable explanation that “*Matrimonium habet in nobis causam, sed alia quaedam sacramenta solum in Deo.*”⁴⁷ The shocking power of this statement led the English Dominicans to soften its effect in their translation of the *Supplementum*: “Marriage has its cause in us and in God, while some of the other sacraments have their cause in God alone.”⁴⁸ Even without employing such a conservative translation, we can be certain that Saint Thomas recognized human and divine agency as necessary to each of the sacraments.⁴⁹ But marriage is set apart in requiring human contribution to an exceptional degree. This uniqueness derives from the sacrament’s resting on a legal contract.

⁴⁵ *In Sent. IV*, Dist 28, Q. 1, art. 3, ad 4: “quasi contra essentialia matrimonii existentia, sicut sunt prohibita matrimonia illegitimarum personarum, quae sunt materia indebita huic sacramento.”

⁴⁶ *In Sent. IV*, D. 28, q. 1, a. 3, ad 2 “actus noster in poenitentia quamvis sit de essentia sacramenti, non est tamen sufficiens ad inducendum proximum effectum sacramenti, scilicet absolutionem a peccatis; et ideo oportet quod ad perfectionem sacramenti interveniat actus sacerdotis. Sed in matrimonio actus nostri sunt causa sufficiens ad inducendum proximum effectum.”

⁴⁷ *In Sent. IV*, D. 34, q. 1, a. 1, ad 1. “unde et poenitentiae, quae habet causam in nobis aliquo modo, Magister supra, dist. 16, quaedam impedimenta assignavit, ut hypocrisim, ludos, et hujusmodi.”

⁴⁸ *St. Thomas Aquinas Summa Theologica, Illa QQ. 74-90, Supplement QQ. 1-99.* (Allen, Texas: Christian Classics, 1981); Supplement, Question 50, art. 1, ad 1.

⁴⁹ See *In Sent. IV*, D. 38, Q. 1, art. 2, qc 2, ad 4, on the necessity of solemnity in taking religious vows: “Marriage and the other sacraments have their full effect even when those things that pertain to the solemnity

The centrality of the contract in this sacrament reveals the value and dignity given to human nature by God; this truth underpins all of Saint Thomas's account of marriage. The fact that God established marriage first as an office of nature before he elevated it to the level of a sacrament is an indication of what Errazuriz calls the "openness to transcendence" that is written into the nature of the human being. By allowing marriage to be established under natural law and civil law, God handed over marriage to human direction. But even as a sacrament, matrimony depends to an exceptional degree on the wills of the two spouses.

The fact that consent must be expressed publicly both for the sake of sacrament and for the sake of law illuminates another aspect of the inter-relatedness of the two. The form of a sacrament must be openly spoken because it specifies the sign.⁵⁰ But Saint Thomas points out by comparing the marital consent to a religious vow, that while religious vows may be secret, because religious life is a spiritual obligation, a marriage must be public, because it is a sacramental obligation.⁵¹ A sacramental sign is by nature related to the community, and thus must be perceptible by the community. This is also the reason that juridical consent must be publicly expressed. Law is ordered to the good of the community; even the personal virtue of justice is a moral virtue that orders a man's will toward others. The expression of marital consent establishes the interior intention of the spouses in an external way that can be ratified by the community. This is important because of marriage's political and ecclesial role, which will be discussed further in chapters 3 and 4.

In the *Summa Contra Gentiles*, Aquinas sums up the integration of nature and grace in his statement that the indissolubility of marriage "is of utmost importance to [the spouses] so that by earthly and fleshly means they may manage not to be disunited from Christ and the Church."⁵² Monsignor Elliot highlights the communal import of this comment:

as the dispositive means of Grace, the bond works as the strengthening gift of indissolubility, forming the secure basis whereby married Christians "may determine not to be disunited from Christ and the Church." The ecclesial nuance is important. The bond disposes for a special, close, married participation in the unity of the Mystical Body, thus fulfilling Saint Paul's vision of Marriage in Ephesians, spouses as "members of his body."⁵³

The contract showcases the aptitude of human nature for willing something that is ordered beyond the two contractants. In arguing that marriage is more religious covenant than legal contract, Palmer failed to realize that the marital contract involves the relation of the spouses to the community and to the divinity, by its very nature and the nature of man. Meanwhile the sacrament of marriage is dependent upon the contract as that earthly reality

of the sacrament are omitted, because they have efficacy from divine power, not human institution" (matrimonium et alia sacramenta habent plenum effectum suum praetermissis his quae ad solemnitatem sacramenti pertinent, propter hoc quod habent efficaciam ex virtute divina, et non ex institutione humana).

⁵⁰ *Summa Theologiae*, III, Q. 60, art. 6.

⁵¹ *In Sent.* IV, Dist. 27, Q. 1, art. 2, qc. 2, ad 1.

⁵² *Summa Contra Gentiles, Book Three: Providence, Part II*. Translated by Vernon J. Bourke. Notre Dame: University of Notre Dame Press, 1975. Lib III, cap 78, 4122.

⁵³ Peter J. Elliott, *What God Has Joined: The Sacramentality of Marriage*, p.97.

that is taken up and transformed into something spiritually effective. As Monsignor Peter Eliot writes,

If Our Lord can use bread, wine, oil, water, words, why can he not incorporate the human contract into a sacrament? It is obvious that Marriage is a unique contract, but it is like other contracts because it establishes the mutual obligations of commutative justice. While we would want to widen these mutual obligations beyond “rendering the Marriage debt,” including a community of life and especially procreation, the contract keeps before us the binding force of sacramental consent. By playing down or denying the contract, we not only eliminate the objective standard required by canonists in their work, but we also damage sacramentality, by weakening the solemnly binding obligations entailed in procreation, fidelity, and indissolubility.”⁵⁴

⁵⁴ Peter J. Elliott, *What God Has Joined: The Sacramentality of Marriage*. New York: Alba House, 1990, p.130.

2. THE ENDS OF MARRIAGE

If the effect of consent is the marital bond or *vinculum*, the bond is still only a middle term between the consent and the ends of marriage. On various occasions, Saint Thomas designates the effect of marriage as either *proles*⁵⁵ or shared domestic life.⁵⁶ The relationship between these two effects or ends to which marriage is ordered has become the single most debated aspect of marriage theology in our day, and the most frequently misunderstood.

Nor is the misunderstanding limited to those unschooled in Aquinas's writings. The subtlety with which he treats the relationship between what we now call "the procreative and the unitive ends" of marriage can easily be lost even on those who are very familiar with his work. Some of the problem arises from the ways that our thinking has been shaped by the modern era. Another factor lies in the radical interconnection of all of Saint Thomas's thought, so that understanding this aspect of marriage theology requires knowledge of seemingly distant subjects.

In the first place, Aquinas would never have spoken of a "unitive end" of marriage, because as we saw in section 1, *union* pertains to the essence of marriage. It is what marriage *is* for the sake of its ends. With regard to the two explicit ends of marriage, Aquinas looked for order in all things, an order placed there by an infinitely reasonable and loving God. According to this worldview, wherever a single reality is ordered to two things, one will be for the sake of the other.

Nevertheless, this simple principle can easily be misconstrued. In a 1974 article appearing in *Doctor Communis* and entitled, "La Conception Thomiste des Deux Finalités du Mariage," Guy de Broglie explained the relation between the unitive and procreative ends of marriage in a well-intentioned but misguided way. Taking as his point of departure the immense impact of Herbert Doms' 1935 book *Du sens et de la fin du mariage*⁵⁷ on twentieth century considerations of marriage, DeBroglie attempts to show the compatibility of the second Vatican council's approach to marriage with the foregoing tradition:

La seul moyen, semble-t-il, d'opposer autre chose que des protestations impuissantes à cet effondrement de toute une importante section de l'ancienne morale, c'est de *compléter* (sans y *contredire* aucunement) les quelques allusions sommaires que le Concile a faites aux finalités du mariage. Il suffira pour cela de montrer que si ces finalités sont effectivement, "diverses," et toutes pleinement dignes de notre estime, il reste néanmoins à la finalité de procréation une certaine primauté

⁵⁵ In *IV Sent.*, D. 27, q. 1, a. 1, qc. 2.

⁵⁶ In *IV Sent.*, D. 27, q. 1, a. 1, qc. 3.

⁵⁷ In English, *The Meaning of Marriage*. Translated by George Sayer. New York: Sheed and Ward, 1939.

indiscutable,--au sens précis ou l'entendait Saint Thomas et toute la théologie traditionnelle.⁵⁸

DeBroglie begins by surveying the vastly diverse aims that motivate people to marry, emphasizing the likely difference between the aim of the marriage contract and the aims of the individuals getting married:

lorsque saint Thomas nous parle d'une "finalité primordiale du mariage," il doit s'agir de tout autre chose que d'une fin destinée à jouer un rôle constant et privilégié *dans les intentions subjectives* de tous ceux qui se marient, ou de tous ceux qui veulent user de leurs droits conjugaux.⁵⁹

In order to make sense of "*la finalité propre*" of the marriage contract, "trop couramment méconnue par un certain « personnalisme » contemporain," DeBroglie introduces the distinction between a contract for mutual service and a contract between two people for shared service to the common good.⁶⁰ The marriage contract would be the latter: it is ordered to the "*grande cause*" of the healthy and assured renewal of the human race. Nevertheless, few people, if any, enter upon marriage for the sake of this great cause. Rather, most people get married for selfish reasons. But DeBroglie compares this scenario to the mechanism governing employment in the police force or the postal service:

Quand un jeune homme choisit de s'engager dans tel ou tel service public, après avoir peut-être hésité quelque temps entre les postes, les chemins de fer ou la police, sa décision finale ne lui sera que rarement dictée par un enthousiasme désintéressé pour tel ou tel genre particulier de fonctions à remplir. Elle se fondera presque toujours sur des motifs plus personnels et plus prosaïques. Il choisira la carrière qui semblera le mieux correspondre à ses aptitudes, à ses goûts, à ses chances d'avancement. Et à cela personne ne trouvera rien à redire, pourvu seulement que le sujet dont nous parlons sache se souvenir que de pareils engagements ont pour première et fondamentale raison d'être le service du bien public et non celui de son bien individuel. D'où il suit que, dans toute la zone d'action sur laquelle ces engagements portent expressément . . . le contractant devra faire passer les exigences du dit « service » avant tout souci de s'assurer quelque avantage personnel.

Ainsi en va-t-il dans le cas qui nous occupe. Personne ne demande aux gens de se marier pour des motifs purement désintéressés, --pas plus qu'on ne demande aux postiers d'avoir choisi leur profession par un désir pur et magnanime de coopérer efficacement à l'acheminement du courrier postal. . . . Mais tout comme on demande aux postiers de rendre hommage à la grande finalité communautaire de leur contrat en s'y montrant strictement fidèles *dans la zone d'activité dont ils sont convenus*, le contrat conjugal exige que les époux en observent rigoureusement les clauses dans tout le domaine sur

⁵⁸ Guy DeBroglie, "La Conception Thomiste des Deux Finalités du Mariage," *Doctor Communis* 30 (1974, 4), page 6.

⁵⁹ DeBroglie, p.10.

⁶⁰ DeBroglie, p. 12.

lequel ce contrat portait directement, c'est-à-dire *dans le domaine limité de leurs activités génitales*.⁶¹

According to this comparison, no one joins the postal service out of an altruistic interest in the common good for which the institution was established. Instead, people become postal workers out of interest in their own good—the desire for the benefits that this career will bring to them personally. Yet while they pursue their own benefits, their actions within the institution benefit the community. DeBroglie draws a comparison with marriage: spouses marry out of self-seeking desires, but as long as they follow the rules of the Church (remaining within the institution), they will be unconsciously working for the healthy and certain perpetuation of the human race.

It is easy to see how DeBroglie arrived at this understanding of Saint Thomas on the two ends. In the very first article that treats marriage in the *Commentary on the Sentences*, Aquinas states that the principal end of marriage is the good of offspring, while the secondary end is the mutual service the spouses devote to each other. Then, in Distinction 33, Thomas seems to make explicit the ordination of the primary end to the common welfare, while the secondary end reflects the good of the couple:

marriage is principally ordained to the common good under the *ratio* of the principal end, which is the good of offspring; although under the *ratio* of the secondary end it is ordained to the good of those contracting marriage, as it is *per se* a remedy for concupiscence.

matrimonium principaliter ordinatur ad bonum commune ratione principalis finis, qui est bonum prolis; quamvis etiam ratione finis secundarii ordinetur ad bonum matrimonium contrahentis, prout per se est in remedium concupiscentiae.⁶²

Yet it would be a mistake to conclude from this text that the primary end is for the good of the majority, to which the good of the individual must be subordinated. To engage in such a reading would be to subject Saint Thomas's understanding of the common good to a utilitarian interpretation, conditioned by Malthusian views of the human race. DeBroglie is right to look beyond the couple for the end of the marriage contract. The end of this contract indeed exceeds the happiness of the two parties engaged in it—a fact that makes it almost unique among contracts. This fact also accounts in part for the perpetuity of the marriage contract: because this contract is ordered beyond the contractants, it cannot be dissolved if one or both parties fail its terms, or are dissatisfied, since it is not a contract for the mutual benefit of the spouses solely, but for the good of the community. Yet DeBroglie fails to see that the common good includes the good of the contractants more deeply than the private goods they may pursue for themselves.

DeBroglie's explanation of the relation of these two ends to each other is something of an "invisible hand" theory of marriage. While not wholly incorrect, it reflects a modern attitude that actually obscures the truth that Aquinas sought to convey.

⁶¹DeBroglie, pp. 22-23.

⁶²In *IV Sent.*, D. 33, Q. 2, art. 1, ad 4.

To begin with, DeBroglie's admission that most couples embark upon marriage without intending marriage's ends reflects a modern misunderstanding of the nature of human acts. A comparable claim might hold that a person can walk without intending to move from the place he is standing: his intention would contradict the nature of the act itself. This dissolution of a physical act from the intention of the agent has its roots in a Cartesian dualism. As Saint Thomas points out, an intention that totally excludes the ends of marriage itself, is an intention *not* to marry, and would invalidate the marriage.⁶³ In a related question, Aquinas says that entering into marriage for reasons that are less than noble (*causae inhonestae*), does not affect the goodness of marriage itself, but the person with shameful aims sins by marrying for these motives:

the cause of marriage *per se* is that to which marriage is of itself ordained and this is always good; namely the procreation of children and the avoidance of fornication. But its final cause *per accidens* is that which the contracting parties intend from this marriage. And since what is intended from a marriage follows upon a marriage; and prior things are not changed by what comes later but rather the reverse; therefore the marriage does not receive goodness or badness from that cause. But the contractants themselves do since it is their end *per se*. And since *per accidens* causes are infinite such causes of marriage can be infinite some of them being honorable and others dishonorable.

causa finalis matrimonii potest accipi dupliciter; scilicet per se, et per accidens. Per se quidem causa matrimonii est ad quam matrimonium est de se ordinatum; et haec semper bona est; scilicet procreatio prolis, et fornicationis vitatio. Sed per accidens causa finalis ipsius est hoc quod contrahentes intendunt ex matrimonio. Et quia hoc quod ex matrimonio intenditur, consequitur ad matrimonium; et priora non variantur ex posterioribus, sed e converso; ideo ex illa causa non recipit matrimonium bonitatem vel malitiam, sed ipsi contrahentes, quorum est finis per se. Et quia causae per accidens sunt infinitae; ideo infinitae tales causae possunt esse matrimonii, quarum sunt quaedam honestae, et quaedam inhonestae.⁶⁴

DeBroglie's argument concerns couples who marry for the sake of the secondary end of marriage without intending matrimony's primary end. If the spouses simply remain within the limits set by the Church, they will attain their own personal ends—mutual love—as well as providing an unintended service to the human race.

DeBroglie himself laments the fact that the pervasive influence of modern philosophy makes an argument such as his a necessary compromise. Yet his compromise fails in the very thing he hoped to accomplish: to make Saint Thomas and the Church's traditional teaching on marriage palatable to modern sensibilities, “des esprits si mal préparés à les

⁶³ Cf. *In IV Sent*, Distinction 29, questio unica, articulus 3, questiuicula 3, on conditional consent; conditions placed on marital consent are upheld if they do not exclude the goods of marriage itself; if they do exclude the *bona conjugii* (for example, upon condition of sterilisation), the marriage itself is invalid.

⁶⁴ *In IV Sent*, Distinctio 30, Questio 1, articulus 3.

entendre en leur vrai sens.”⁶⁵ He himself falls prey to the confusion that issues from modern philosophy, for his account of the common good is of a good alien to the spouses serving it.

A. The Two Ends of Marriage and the Common Good

First of all, it is difficult to see how DeBroglie’s “great cause” of the perpetuation of the human race can really constitute a *common good* as Saint Thomas understands it. A common good is the kind of good from which every member of the community benefits. A truly common good is not diminished by more members partaking in it—rather it is increased. Accordingly, true common goods are limited to a very particular category of things like peace, fellowship, and truth.

In his article, “The Common Good in St. Thomas and John Paul II,” Michael Waldstein adds:

The peace of a state or a family is also a common good in the strict sense, provided that it is a genuine peace of the whole, from which no one is excluded. When I share in this peace, I do not lessen your share in it. In fact, without my share, your share in it would decrease, since peace can exist in the full sense only if each and every person shares in it.⁶⁶

It is evident that the kinds of things that are usually called common goods, like shared food, public property, or money in a common fund cannot be common properly speaking. These are technically private goods: the food that one person eats can in no way be possessed by the rest of the community; public property may be enjoyed by various members of the community in turn, but not held truly in common. Generally speaking no countable goods can be common: they can be divided but not shared.

The importance of this distinction can be applied to Fr. DeBroglie’s assertion that the assured perpetuation of the species is the common good that marriage is ordered to. If it is a true common good, every person in the species should benefit from its continuation, for the more there is of a common good, the more each member has to enjoy.

It would be mistaken to understand the good of *proles* as the sociopolitical benefits of an increased birth rate for the sake of social programs. Though this may be a real good, it does not reflect accurately what Saint Thomas understood as the *common good*; it is rather a collection of private goods. Nor is it sufficient to consider the metaphysical or ontological good of existence, in which every human in some way participates by the continued existence of the human race. This argument would also contain some truth, but Saint Thomas had more specific and elevated common goods in mind.

⁶⁵ DeBroglie, “La Conception Thomiste des Deux Finalités du Mariage,” p. 32.

⁶⁶ Michael Waldstein, “The Common Good in St. Thomas and John Paul II,” *Nova et Vetera*, Eng. Ed. Vol. 3 No. 3 (2005), p. 569.

What Aquinas meant by equating the *bonum prolis* with the *bonum commune* appears in his initial treatment of marriage in Distinction 26 of Book IV of the *Commentary on the Sentences*. Marriage is natural, he says, “First, as concerns its principal end, which is the good of offspring: for nature does not intend only their generation, but their upbringing, and their advancement to the perfect state of man as man, which is the state of virtue.”⁶⁷ For Saint Thomas, then, the *bonum prolis* could never be simply limited to the perpetuation of the human species. At every reference, Thomas emphasizes that the real heart of the good of offspring is not generating children, but educating them. This emphasis on bringing up children to virtue forms the backbone for his argument for monogamy and indissolubility at the natural level, because among all the animals, the young of the human animal requires the guidance of parents until he reaches adulthood, and “a child cannot be educated and instructed by a parent unless he has certain, definite parents: which would not be unless there were some obligation of a man to a particular woman.”⁶⁸ Thus it becomes necessary for the male and the female of this animal to remain together all their lives, to help each other in the shared task of raising the children.

But the education of children regards more than the biological dimension of marriage. It is the fundamental reason Aquinas gives that Mary and Joseph’s association was truly a marriage, despite the absence of conjugal relations:

A child is not called the good of marriage only because he is generated through marriage, but also inasmuch as he is accepted and educated in marriage; and thus the good of this marriage was a child, but not in the first way.

Ad quartum dicendum, quod proles non dicitur bonum matrimonii solum in quantum per matrimonium generatur, sed in quantum in matrimonio suscipitur et educatur; et sic bonum illius matrimonii fuit proles illa et non primo modo.⁶⁹

Though the relationship was never consummated, Mary and Joseph were united for life for the sake of raising to adulthood the child they had received from God.

In fact, nearly every time the *bonum prolis* is discussed, Thomas emphasizes that in considering the generation and the education of children, the former is always for the sake of the latter:

marriage was chiefly instituted for the good of offspring, not only their generation, since this can happen without marriage, but also their upbringing to the perfect state:

matrimonium principaliter institutum est ad bonum prolis, non tantum generandae, quia hoc sine matrimonio fieri posset, sed etiam promovendae ad perfectum statum:

⁶⁷ *In IV Sent.*, D. 26, Q. 1, Art. 1, c: “Primo quantum ad principalem ejus finem, qui est bonum prolis: non enim intendit natura solum generationem ejus, sed traductionem, et promotionem usque ad perfectum statum hominis, in quantum homo est, qui est virtutis status.”

⁶⁸ *In IV Sent.*, D. 26, Q. 1, Art. 1. “Filius autem a parente educari et instrui non posset, nisi determinatos et certos parentes haberet: quod non esset, nisi esset aliqua obligatio viri ad mulierem determinatam.”

⁶⁹ *In IV Sent.*, D. 30, Q. 2, art. 2, ad 4.

since everything naturally intends its effect to arrive at its perfect state. But in children a two-fold perfection must be considered: first, the perfection of nature not only as to the body, but also the soul, through those things which are of natural law; second, the perfection of grace.

quia quaelibet res intendit effectum suum naturaliter perducere ad perfectum statum. Est autem in prole duplex perfectio consideranda; scilicet perfectio naturae non solum quantum ad corpus, sed etiam quantum ad animam, per ea quae sunt de lege naturae; et perfectio gratiae.⁷⁰

The importance of education to the good of offspring shows us marriage's connection to the common good. For Saint Thomas, marriage is not for the sake of producing children, marriage is for the sake of producing adults. The aim of the *bonum prolis* is not more people to continue the human race but rather more just citizens for the polis and more charitable members for the Body of Christ. The more that citizens in the polis have the virtue of justice, the more just the community can become. The community of the Church, because it is the mystical Body of Christ, is even better constituted to enjoy the charity of its members as a common good. Justice and charity are true common goods, and it is these common goods that marriage is ordered to in the good of offspring.

In fact it is precisely the centrality of raising the children that is the reason for the secondary end of marriage, which Saint Thomas defines as “the mutual service that the spouses devote to each other in domestic matters.”⁷¹ Aquinas makes this relationship explicit in his discussion of the goods of marriage in the *Commentary on the Sentences*:

In the good of offspring is not only to be understood procreation of children but also their education, to which all sharing of labor between a man and a woman joined in marriage is ordered as to an end, for fathers naturally lay up treasure for their children, as is evident from 2 Cor 12. And thus in the procreation of children another end is included, as a secondary end in a principal end.

in prole non solum intelligitur procreatio prolis, sed etiam educatio ipsius, ad quam sicut ad finem ordinatur tota communicatio operum quae est inter virum et uxorem, inquantum sunt matrimonio juncti, quia patres naturaliter thesaurizant filiis, ut patet 2 Corinth., 12, et sic in prole, quasi in principali fine, alius quasi secundarius includitur.⁷²

This is what it means to call the mutual devotion ‘secondary.’ It does not mean that it is of less importance to marriage or can be dispensed with. Saint Thomas states that both ends belong to marriage *per se* or essentially.⁷³ It does not mean that the good of the individual is to be sacrificed to the good of the many. Nor is the secondary end the incentive that is attached to the procreative end in order to induce spouses to undertake this

⁷⁰ *In IV Sent.*, D. 39, Q. 1, art. 2, corpus.

⁷¹ *In IV Sent.*, D. 26, Q.1, Art. 1, corpus: “mutuum obsequium sibi a conjugibus in rebus domesticis impensum.”

⁷² *In IV Sent.*, D. 31, Q.1, Art. 2, ad 1.

⁷³ *In IV Sent.*, D. 30, Q.1, Art.3, corpus.

rather onerous duty to mankind. Rather, mutual service is called a secondary end because it is included in the primary end, as a means is included in the end.

B. Parents naturally lay up treasure for their children

This passage on the relation of the two ends also includes an important hint of the breadth and depth of Aquinas's vision for the two ends. In what almost seems like a non-sequitur, Saint Thomas says that all sharing of labor between a man and a woman is ordered to the education of children, "because fathers naturally lay up treasure for their children." The passage is a response to the objection that sharing of labors should be included among the goods of marriage, "since marriage does not only occur among men for the procreation and nurturing of children, but also for the *consortium* of a shared life for the sake of sharing the labors."⁷⁴

The word *consortium* illuminates further the mind of Saint Thomas as to the common good. Aquinas received the expression *consortium communis vitae* as a definition of marriage from his predecessors,⁷⁵ and it has persisted in the definition of marriage in canon law to this day. Canon lawyer Ladislav Orsy comments

consortium is virtually impossible to translate correctly; it has no equivalent in English. Literally, it means a close association of persons sharing the same fortune, fate and destiny. It is less than *communio*, which is the closest of intimate relationships. Yet it is more than *societas*, which can be a loose partnership for business purposes.⁷⁶

Quite literally, a *consortium* means not just shared life, but joint destiny, combined fortunes. It is under the aspect of "shared life" that Saint Thomas uses this word to explain why polygamy was tolerated among the patriarchs.⁷⁷ It is under the aspect of "combined fortunes" that *consortium* can be translated as "inheritance" in the articles treating adoption.⁷⁸ But in the definition of marriage, "*consortium communis vitae et communicatio divini et humani juris*," *consortium* adds something beyond the shared life (*communis vitae*). While its origins as a shared *sors* or fate derived from pagan ideas of the afterlife, Saint Thomas anchors it firmly in Christian theology by answering it with his allusion to II Corinthians 12:14, "parents naturally store up treasure for their children." Yet even in its original context, this Scriptural reference can seem like a non-sequitur. Paul tells the Corinthians that he will not be a burden to them, for he seeks not their possessions but the

⁷⁴ *In IV Sent.* D. 31, Q. 1, Art. 2, obj 1: "Quia matrimonium non solum fit in hominibus ad prolem procreandam et nutriendam; sed ad consortium communis vitae propter operum communicationem, ut dicitur in 8 Ethic."

⁷⁵ Cf. *In IV Sent.* D. 27, Q. 1, Art. 1, qc. 3.

⁷⁶ Ladislav Orsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, Wilmington, DE: Michael Glazier, 1986.

⁷⁷ Cf. D. 33, Q.1, Art. 1, sed contra and ad 9.

⁷⁸ Cf. *In IV Sent.* D. 41, Q. 1, Art. 2, qc. 2, obj. 2.

Corinthians themselves, “for neither ought children to lay up for the parents, but the parents for the children. But most gladly will I spend and be spent for your souls.”⁷⁹ Paul employs this economic language of saving up for one’s children to convey soteriological and eschatological realities.

With this Pauline appeal as subtext, Aquinas explains the nature of shared labor between husband and wife. The *consortium* inquired about in the objection is the shared fate and fortune that is combined for the sake of the children; the parents’ joint efforts in educating the young are the inheritance that they bestow on their children.

Aquinas makes an allusion to this statement from II Corinthians 12:14 once more in the treatise on marriage, in a text that sheds even more light on the question at hand:

marriage by the intention of nature is ordered to the education of children, not only for a certain time, but for the entire life of the children. For which reason it is from natural law that parents store up treasure for their children, and children are the heirs of their parents. Therefore, since children are a common good of the husband and wife, it is necessary for their association to remain undivided forever according to the dictates of the law of nature.

matrimonium ex intentione naturae ordinatur ad educationem prolis non solum per aliquod tempus, sed per totam vitam prolis. Unde de lege naturae est quod parentes filiis thesaurizent, et filii parentum heredes sint; et ideo, cum proles sit commune bonum viri et uxoris, oportet eorum societatem perpetuo permanere indivisam secundum legis naturae dictamen.⁸⁰

Here the same comment—parents naturally store up treasure for their children—is summed up a moment later thus: “children are a common good of the husband and wife.” Not only does the *consortium*, the common good of the couple, exist for the sake of the children, but the children themselves are a common good for the couple.

This is a radically new way for Saint Thomas to use the expression *bonum commune*. Michael Waldstein contextualizes it thus:

An important distinction St. Thomas makes is that between intrinsic and extrinsic common good. The example he usually uses to illustrate this distinction, following Aristotle, *Metaphysics Lambda*, is an army. The intrinsic common good of an army, which is its internal order and unity, is ordered to victory, which is the army’s extrinsic common good. A universal principle can be seen here. “Whenever we see a multitude ordered to each other, it must be ordered to some external principle” (*De Veritate*, 5.3.c). This principle applies also to marriage. The intrinsic common good of marriage, which is the unity of love between husband and wife on the basis

⁷⁹ II Corinthians 12:14, Douay-Reims translation.

⁸⁰ *In IV Sent.* D. 33, Q. 2, Art. 1.

of the marriage vow, is ordered to the child, which is the extrinsic common good of marriage.⁸¹

Obviously a child is in many ways a private good—neither of the spouses can wholly possess him the way they might fully and completely possess peace or truth. But by his allusions to II Corinthians, Saint Thomas highlights the very real way that children can be a common good of their parents. Aquinas uses the word once to describe the cooperation of husband and wife in raising the children, and once to describe that cooperation enduring for the entire lifetime of the spouses. As the common good of his parents, the child is equally the good of both: he comes from both equally and grows under their shared attention. If the parents' shared life is one of virtue, the child's inheritance will be his education in virtue. This working together to bestow on the child the legacy of a life lived well, shows us how the unitive and procreative ends of marriage are more deeply interwoven than distinct.

Thomas' vision, "Whenever we see a multitude ordered to each other, it must be ordered to some external principle" reveals to us even more about marriage. A multitude ordered to each other must be for the sake of something greater than themselves. The love between spouses goes beyond willing the good of the other to willing even more others to be brought into that love, and to be willed that good.

Moreover, Saint Thomas's references to II Corinthians as an explanation of the *consortium* adumbrate the higher ordination of the *bonum prolis*. At the natural level, children are a common good of the parents as the mode in which the parents' life will continue after their physical death. Their consortium, their shared efforts and earnings, will pass to the child when they die; if they are virtuous, these shared efforts will endow their children with an education in virtue. Yet just as the pagan *sors* conveyed a sense of fate or destiny, the *consortium* of Christian marriage is ordered to the afterlife. The II Corinthians allusion reinforces this, for Paul is not discussing material savings, but rather the "spending" of himself in saving the souls of his spiritual children. Similarly, the *bonum prolis* in a Christian marriage extends beyond the education of children to civic virtue; it aims to rear children to a heavenly inheritance. Saint Thomas addresses this further meaning of the *bonum prolis*:

The procreation of children, as a good of the sacrament, adds something beyond procreation of children as intended by nature. For nature intends offspring according as the good of the species is preserved in them. But beyond this, in offspring as a good of the sacrament of matrimony, is understood that children received are ultimately ordained to God. Therefore it is necessary that

proles prout est bonum sacramenti, addit supra prolem prout est intentum a natura. Natura enim intendit prolem prout in ipsa salvatur bonum speciei; sed in prole secundum quod est bonum sacramenti matrimonii, ultra hoc intelligitur ut proles suscepta ulterius ordinetur in Deum; et ideo oportet quod intentio naturae qua prolem intendit, referatur actu vel habitu ad intentionem prolis prout

⁸¹ Waldstein, "The Common Good in St. Thomas and John Paul II," p. 677.

nature's intention by which she intends children, is referred actually or habitually to the intention of children as a good of the sacrament; otherwise it would be stuck at the level of creation; which cannot happen without sin.

est bonum sacramenti; alias staretur in creatura; quod sine peccato esse non potest.⁸²

If children are a common good of marriage, they must finally be ordered to the ultimate common good of the universe, which is God. Saint Thomas even goes so far as to say that

Offspring, as a good of matrimony, includes remaining faithful to God. For children are only considered a good of marriage according as they are hoped for in order to be raised to the worship of God.

proles, secundum quod est bonum matrimonii, includit fidem ad Deum servandam; quia secundum quod proles expectatur ad cultum Dei educanda, ponitur matrimonii bonum⁸³.

The problem with DeBroglie's account of the "*grande cause*" is that it does not paint things grandly enough. To bind marriage only to the rather uninspiring end of producing more people is not so very different from the mentality that looks at population as a series of digits and declaims that there are too many. When we begin to view humans quantitatively we leave the realm of the common good and place ourselves squarely among private goods. Modern readers' understandings of population seem to be irretrievably tainted by Malthusian views, which, resting as they do on the calculation of private goods, terminate in frightening prognoses of finite material resources. Thinking more deeply about the meaning of the common good offers us a way out of this culture of death.

To DeBroglie's credit, his purpose was to defend magisterial teaching by harmonizing traditional Thomistic doctrine on marriage with that enunciated in *Humanae Vitae*—a commendable aim during what must have been a time of great confusion after Vatican II but before the Theology of the Body. Nevertheless a hazy grasp of the Thomistic idea of the common good—a topic so important to Aquinas that Waldstein calls it "architectonic"⁸⁴—results in an analysis of marriage that is riddled with problems. If a lifelong student of Saint Thomas and one-time professor at the Institut Catholique could fail the mark on a theme so central to Thomas, it should be a sign of how easily anyone might stumble into the same misreading. DeBroglie's errors are a testament to the pervasiveness of modern philosophy; even among those of us who do not subscribe to modern ideas expressly, our minds are all informed to some degree by the materialistic and utilitarian outlook of this modern era. One result of the influence of modern science on our thinking is that when we try to weigh the two ends of marriage against each other, we will always end by bringing them into competition with each other. Even well-intentioned attempts to

⁸²In *IV Sent.*, D. 31, Q. 2, A. 2, ad 1.

⁸³In *IV Sent.*, D. 33, Q. 1, A. 2, ad 5.

⁸⁴Waldstein, p. 569.

defend Saint Thomas will merely end in gluing the two ends together in some mechanistic way. By looking through the lens of Saint Thomas's notion of universal order, it becomes clear that the two ends' relationship is much more organic: they are indissolubly connected by nature like a flower and its fruit.

Palmer and DeBroglie may have had different attitudes toward Saint Thomas, and differing approaches to his marriage theology. When looked at together, they represent well the problems that have sidelined Aquinas in marriage studies in recent years. Many, like Palmer, consider Saint Thomas outdated because his attention to law seems to diminish marriage's spiritual beauty and power. Meanwhile a supporter of Aquinas like DeBroglie, who argues that his subordination of love to duty will not ultimately detract from the personal fulfillment of the spouses, consequently misrepresents Aquinas badly. Although modern readings of Saint Thomas focus on different aspects of his marriage theology, many share in a common misperception: a desire to diminish or separate man's biological, animal nature from his spiritual nature. By contrast, Aquinas views human nature as an integrated whole. Moreover, he recognizes that the economy of salvation in general, rooted as it is in the Incarnation, and the sacraments in particular, depend upon this integration of material and spiritual. Law does not contaminate sacramentality, but rather ensures its penetration to every level of the human being. By the same token, duty need not be in competition with love, but rather should strengthen and deepen it, as we will see in the next two chapters.

CHAPTER II: THE MARITAL ACT

The difference between current attitudes toward sexuality and Saint Thomas's understanding can hardly be over-stated. Even among sympathetic 20th century readers of Thomas, his characterization of marital intimacy can seem unfeelingly analytical. He is commonly reproached with condemning marital intercourse unless it is "*propter solam procreationem*." His understanding of the marital act as a "remedy for concupiscence" strikes some as being mired in the biological and the animal, others as springing from an Augustinian obsession with sin that borders on jansenism.⁸⁵ His description of conjugal intimacy as "the marital debt" smacks of a cold legalism. Meanwhile, Aquinas has drawn criticism from other authors (Milhaven and Palmer, for example), for describing as a venial sin conjugal relations that are motivated by the desire for sexual pleasure.⁸⁶ Modern theologians wish to focus on sexual love as the ultimate expression of spousal affection, and find it difficult to reconcile Aquinas's language with the current language of "unitive significance."⁸⁷ Thomas's understanding of marital love will be examined more closely in the following chapter. Here we will consider his assessment of conjugal intimacy.

⁸⁵ See Theo Belmans, *Le sens objectif de l'agir humain: pour relire la morale conjugale de Saint Thomas*; Libreria Editrice Vaticana, Citta del Vaticano, 1980, pages 328, 336. See also, Belmans, "Le remedium concupiscentiae comme fin de mariage," *Revue Thomiste*, XCIII (1993), p. 297.

⁸⁶ John Giles Milhaven, "Aquinas on Sexual Pleasure," *Journal of Religious Ethics*, 5/2 (1977), p. 157-181. Palmer, Paul F., S.J. "Christian Marriage: Contract or Covenant?" *Theological Studies* 33 (1972): 617-665.

⁸⁷ *Humanae Vitae*, 12.

1. THE MARITAL ACT AS REMEDY FOR CONCUPISCENCE

In his book, *Le sens objectif de l'agir humain*, Theo Belmans catalogues the modern critics of Aquinas who find fault with his designation of the secondary end of marriage as *remedium concupiscentiae*.⁸⁸ They prefer to focus on his description of it elsewhere as *communicatio operum*,⁸⁹ *domestica conversatio*⁹⁰ or *vita communis in rebus domesticis* or *mutuum obsequium*,⁹¹ since these more general Aristotelian terms seem to open the possibility of marital intimacy only out of purely affective reasons. Aquinas's interchangeable use of the term *vitatio fornicationis*⁹² as the *per se* secondary end of marriage makes his meaning in speaking of a remedy for concupiscence more explicit.

Belmans sums up the criticism of Aquinas on this topic in a quote from Bernhard Haering, who accuses Saint Thomas of a

sacralism aliéné et faux concentrant toute l'attention sur la validité du contrat et ses aspects cérémoniels, tout en déclarant l'amour conjugale accessoire . . . Le commerce marital se trouve ainsi simplement excusé en tant qu'il constitue pour les conjoints un moyen pour la procréation d'enfants ou que, en raison du peu de maîtrise de soi, il signifie, en tant que *remedium concupiscentiae*, ou remède contre une convoitise débridée, un moindre mal que la fornication.⁹³

In a related misreading, numerous current scholars lambaste Saint Thomas for his supposed censure of pleasure in conjugal intimacy. Usually this charge forms part of a larger erroneous belief that Aquinas forbade marital relations for any reason other than *propter solam procreationem*. This widespread myth about Aquinas's teaching overwhelmingly owes its origin to John Noonan's influential work *Contraception: a History of Its Treatment by the Catholic Theologians and Canonists*.⁹⁴

To understand Thomas's characterization of marital intimacy, we must first begin by considering the several meanings of the word *concupiscentia* in Aquinas, meanings which

⁸⁸ Belmans lists, among others, Doms, Fuchs, Aubert, Haering, Linsenmann, Pruemmer.

⁸⁹ *Summa Theologiae*, II-II, 164, 2; *In Sent.* IV, D. 31, q. 1, a. 2, ad 1; also D. 33, q. 1, a. 3, qc. 3.

⁹⁰ *ST, Supplementum*, 44.3.; *In Isaiam*, 4:1.

⁹¹ *In Sent.* IV, D. 26, q. 1, a. 1.

⁹² *In Sent.* IV, D. 30, q. 1, a. 3.

⁹³ Belmans, "Le remedium concupiscentiae comme fin de mariage," p. 301.

⁹⁴ John Noonan, *Contraception: a History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge: Belknap Press of Harvard University Press, 1965). In "The Good of Marriage: Some Historical and Philosophical Observations" (*American Journal of Jurisprudence* 42 [1998]), John Finnis traces the misreading of two other scholars disseminating Noonan's errors: John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (University of Chicago Press: Chicago and London, 1980), p. 165 and 322; and Andrew Koppelman, "Is Marriage Inherently Heterosexual?" (*American Journal of Jurisprudence* 42 [1997]). We might add to the list James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (University of Chicago Press: Chicago and London, 1987), page 421-422, 429. See also Finnis, "Law, Morality and 'Sexual Orientation'" in *Same Sex: Debating the Ethics, Science, and Culture of Homosexuality* (John Corvino, ed.; Lanham-New York-London: Rowman and Littlefield, 1997).

are related to each other in an order descending from the general to the particular: concupiscence as the desire for a good; concupiscence as the desire for pleasure; and concupiscence as an inordinate desire for corruptible goods. Many of the problems in those texts that have seriously examined Aquinas on this topic derive from conflating these various uses of the word “concupiscence.” Saint Thomas distinguishes the use of *concupiscentia* himself in *Summa Theologiae*, I-II, Q. 30, Article 1.

A. *Three definitions of concupiscence*

Desire for goods. Thomas gives as an example the text of Wisdom 6:21, “the concupiscence of wisdom.”⁹⁵ This general sense of concupiscence as *desire for a good* is the source of Aquinas’s distinction between the *love of concupiscence* and the *love of friendship*. The love of concupiscence is directed at goods which are desired for oneself or for others. The love of friendship, on the other hand, is concerned with the person for whom goods are desired. James McEvoy cautions however that the love of concupiscence “has wrongly suggested to many a form of selfish love that is the opposite of altruism and that verges upon narcissism.”⁹⁶ Rather:

Amor concupiscentiae is attached to things, in the first place—things wanted for people. Hence the distinction between the two loves reposes essentially upon the difference between means (things) and ends (persons). Desiring love is of course self-referring. However, it is not selfish of its very nature, for the thing wanted may be wanted for myself or for someone else (*vel sibi vel alii*), as a means to be used well.⁹⁷

It is also in this sense that the lower, sensitive powers of the soul are divided into *irascible* and *concupiscible appetites*: the concupiscible appetite seeks goods; by contrast the irascible appetite deals with obstacles to those goods.⁹⁸

Desire for pleasure. This use of concupiscence with regard to the sensual appetite leads to its meaning as a specific passion of the concupiscible faculty, which Aquinas defines as “a craving for what is pleasant,”⁹⁹ or the desire for sensible good (*qua absent*).¹⁰⁰ This desire for pleasure can be natural, i.e. suited to one’s nature, or rational, perceived by reason to be suited to one’s nature (as wealth, for example).

⁹⁵ *ST*, I-II. 30.1, objection 1.

⁹⁶ James McEvoy, “The other as oneself: friendship and love in the thought of Saint Thomas Aquinas” in *Thomas Aquinas: Approaches to Truth*, ed. James McEvoy and Michael Dunne. (Four Courts Press, Dublin, 2002), page 24. See also, McEvoy, “Amitié, attirance et amour chez S. Thomas d’Aquin” in *Revue philosophique de Louvain*, 91 (1993), p. 391.

⁹⁷ McEvoy, “The other as oneself,” page 25.

⁹⁸ *ST*, I, Q. 81, A2.

⁹⁹ *ST*, I-II. 30.1 and 3.

¹⁰⁰ *ST*, I-II. 30.2, ad 1.

“*The immoderate turning to mutable goods.*”¹⁰¹ According to both of the previous two meanings of concupiscence, concupiscence can be considered a natural and good part of created nature. However, the disintegration of the natural order of things that occurred as a result of the Fall of Man means that neither the concupiscible appetite nor its desires are subject to man’s reason. This overthrow of the natural order gives us the most familiar use of the term *concupiscence*: the material effect of original sin by which we tend to corruptible goods for their own sake.

While concupiscence in this last sense tends to a much broader range of sins than sexuality (indeed, any sin), common speech tends to equate this “immoderate turning to mutable goods” with the immoderate desire for sexual pleasure. Aquinas explains this association by pointing out that lust is the most obvious manifestation of concupiscence because sexual pleasures are among the most vehement of sensual pleasures, and therefore cloud the reason more than other mutable goods.¹⁰²

Some of the misreadings of Thomas on the relation of concupiscence to marriage are clearly traceable to an equivocation of these many varying, though closely-related, meanings of the word *concupiscence*. John Milhaven’s article, “Thomas Aquinas on Sexual Pleasure”¹⁰³ provides several examples, while condensing representatively several of the current complaints about Aquinas’s attitude toward marital intimacy.

B. Concupiscence as sensual pleasure

While ostensibly undertaking to defend Saint Thomas against claims that his position toward sexual pleasure is inconsistent, Milhaven argues that Thomas should have better appreciated the positive benefits of sexual pleasure. Universally translating *concupiscentia* as “the appetite for sexual pleasure,” Milhaven contrasts Aquinas’s condemnation of marital intercourse *ex concupiscentia*, which Thomas considers at least a venial sin,¹⁰⁴ with Thomas’s innovative stance in affirming the “goodness and naturalness” of *concupiscentia*:

He rejects the widespread medieval position that this appetite (*concupiscentia*) is essentially sinful. He also denies—and is the first medieval theologian to do so—that this appetite constitutes a flaw or perversion of human nature. Original sin has “corrupted” the appetite only in reducing it to its natural state. In its natural state, *concupiscentia* is no longer completely subject to reason.¹⁰⁵

Clearly, there are several different meanings of concupiscence at work here. The passage quoted refers to Thomas’s use of *concupiscence* according to its first and second

¹⁰¹ ST I-II, Q 82, A3.

¹⁰² Cf. ST, II-II.151.3; II-II.153.1.

¹⁰³ John Milhaven, “Thomas Aquinas on Sexual Pleasure,” in *The Journal of Religious Ethics*, 5:2 (1977) pp. 157-181.

¹⁰⁴ *In Sent.* IV, D. 26, Q. 1, a. 4; *In Corinth.* 7.1; ST, II-II, 154, 2, ad 6.

¹⁰⁵ Milhaven, page 159.

meanings, as a natural appetite for pleasures. But by deeming marital intimacy “*propter solam delectationem*” a venial sin, Thomas is considering an example of the immoderate seeking of mutable goods that is the vestige of original sin. The relationship between the two meanings has its roots in something Milhaven does recognize: the insubordination of the lower faculties to reason since the Fall of Man. Yet Milhaven still fails to distinguish between the faculty that is part of man’s nature, the passion that it is subject to, and the disorder that goes by the same name. To state that original sin has corrupted the concupiscible appetite “only” by reducing it to its “natural state” of rebellion against reason is, if not false, at least very misleading; it gives the impression that the theologian who so valued man’s created nature approved the disorder that damaged that nature so severely.

Nor does the relationship of concupiscence (whether as appetite or passion) to reason explain fully Thomas’s teaching on it. To understand why seeking the pleasure of sex—or indeed any pleasure—for its own sake would always amount to at least a venial sin for Saint Thomas, it is important to understand the place of pleasure in his anthropology.

For Aquinas, pleasure is the repose of an appetite in having attained the good that it was made for. It is a passion limited to sentient creatures, because it requires not only the attainment of a sensible good but the recognition or perception of its suitability to a given faculty. (Thomas distinguishes that *pleasure*, properly speaking, is limited to sensible goods; its spiritual or intellectual counterpart should really be called *joy*.¹⁰⁶) The objects of pleasure vary according as the appetites do, but what makes an object pleasant is its suitability to the faculty that it pleases. Animals and children, “have from God their natural appetite, which is moved to what is naturally suitable to them.”¹⁰⁷ Adult humans have the possibility of desiring more complex objects based on the goodness that they perceive themselves as good; their desires may vary according as their needs vary, or they may err in perceiving something as a suitable good.¹⁰⁸ It is in this way that Aquinas speaks of the morality of pleasure: “there is a good pleasure, whereby the higher or lower appetite rests in that which is in accord with reason.”¹⁰⁹

Milhaven recognizes the critical moderating role of reason in the morality of pleasure for Aquinas. But he considers Aquinas’s claim that the Blessed will not enjoy sexual pleasures after the resurrection of the body,¹¹⁰ a sign of inconsistency:

Thomas’ negative judgment on sexual pleasure is, therefore, not based exclusively on the power this pleasure has, as a result of Original Sin, to move man out of the control of his reason and thus to disturb his higher life. A more fundamental negativity of sexual pleasure is seen by Thomas even when the pleasure is totally subordinated to man’s reason . . . and man’s intellectual contemplation goes on undisturbed.¹¹¹

¹⁰⁶ *ST*, I-II, 31.3.

¹⁰⁷ *ST*, I-II, 34.1. ad 2.

¹⁰⁸ *ST*, I-II, 34.2.

¹⁰⁹ *ST*, I-II, 34.1.

¹¹⁰ *SCG*, IV, 83.

¹¹¹ Milhaven, page 161.

Yet this apparent inconsistency only arises if one ignores the most basic nature of pleasure as the experience of fulfillment of a faculty. While Saint Thomas confirms that other sensible pleasures will enrich the joy of the beatific vision (for example, the pleasures of sight and sound), there will be no need for human generation after the resurrection. Therefore, the sexual appetite will no longer be seeking its fulfillment, the attainment of which causes sexual pleasure. Thomas excludes the pleasures of food for the same reason: the objects of the animal body will no longer be necessary to the spiritual body.

Milhaven, drawing heavily on Noonan and Fuchs,¹¹² finds confusing Thomas's praise for the goodness of pleasure, especially sexual pleasure, when viewed alongside his condemnation of acting for the sake of it in conjugal intimacy. But Aquinas did not consider pleasure an end to be sought, but a fruit accompanying the attainment of an end. To seek the *enjoyment* of attaining an end while trying to avoid attaining the end involves a certain metaphysical and moral absurdity.

Cornelius Williams expounds on this in his lecture on "The Hedonism of Aquinas."¹¹³ While too early to speak to Milhaven's article, Williams's lecture addresses directly the errors in Noonan, on whom Milhaven relies so heavily.

The implication is that Saint Thomas taught that married people may never seek the pleasure attaching to sexual intercourse, that they may never desire bodily union because it pleases them, because they delight in it. Now it must be clearly stated that such a teaching is to be found nowhere in his writings, neither in the early nor in the later and more mature works. . . . On the contrary, he constantly insisted on the important place and value of pleasure, of sexual pleasure, in married life, and, anticipating the moderns, even pointed to the close connection between the seeking of that pleasure and the indulgence in it and the expression and fostering of married love. Sexual pleasure of the married is for him something holy and meritorious of eternal life and is increased in intensity by the love of those who seek it and indulge in it. . . . But he also insisted just as strongly that the pleasure and the seeking for it must be in order, ordered by right reason according to the needs of life and of one's station in life. In other words, in line with the whole tradition of human thought from Aristippus to Frankl, he ever adamantly rejected the pleasure-principle; he always refused to admit that the *summum bonum* is pleasure—whether spiritual or sensual—or the seeking after it. And in that precise sense he also consistently taught that it can never be in order for the married to indulge in coital activity *for the sake of pleasure alone*—*propter solam delectationem*, realizing certainly the intrinsic disorder of such a manner of acting and conscious perhaps as well of the imminent danger of addiction, which can exclude all human value. He also always kept in mind the important distinction between the *finis operis* and the *finis operantis*, and he always refused to admit that it is in order for the *operans* to rob the *opus* of its intrinsic finality in order to achieve its own

¹¹² Milhaven cites repeatedly Josef Fuchs, *Die Sexualethik des heiligen Thomas von Aquin*, Koln: Bachem, 1949; and John T. Noonan, *Contraception: A History of Its Treatment by Catholic Theologians and Canonists*. Cambridge: Harvard University Press, 1965. Since both of these texts have been addressed by magisterial documents in the intervening years since their publication, we have not engaged them directly.

¹¹³ Cornelius Williams, O.P., "The Hedonism of Aquinas," *The Thomist*, 38 (1974): 257-90.

subjective end. As to the use of contraceptive methods, the exercise of coital activity together with the hindering of conception, he saw with absolute lucidity that in such a case there is no question of true marital or conjugal intercourse...¹¹⁴

Aquinas never states that married couples may not desire pleasure in their conjugal union, but rather that they may not approach each other for the sake of pleasure *alone*. In fact, in the *Sentences Commentary* Thomas explicitly rejects the position commonly attributed to him, giving a schema that he would repeat often throughout his career¹¹⁵:

Certain people say that whenever sexual desire (libido) principally moves someone to the conjugal act, it is a mortal sin. But when it is a side-motive (mouet ex latere), then it is a venial sin. However when someone refuses pleasure altogether, and it displeases him, then it is without any venial sin at all. Thus, to seek pleasure in this act would be mortal sin, to accept the pleasure offered would be venial sin, but to hate it would be a thing of perfection.

...quidam dicunt quod quandocumque ad actum conjugalem libido principaliter mouet, est peccatum mortale; sed quando mouet ex latere, tunc est peccatum veniale; quando autem delectationem omnino respuit, et displicet ei; tunc est omnino absque veniali peccato: ut sic delectationem in actu illo quaerere, sit peccatum mortale; delectationem oblatam acceptare, sit peccatum veniale; sed eam odire, sit perfectionis.

But this cannot be: for according to the Philosopher in Book 10 of the *Ethics*, the judgment of a pleasure and an operation is the same: for the pleasure of a good operation is good, and a bad operation carries bad pleasure. Whence since the marital act is not evil per se, neither will seeking its pleasure be always a mortal sin. And therefore it should be said that if pleasure should be sought outside the dignity of marriage, such that, for example, someone should not turn to his wife because she is his wife, but only because she is a woman, prepared to do the same with her as if she were not his wife, it is a mortal sin. And such a man is called 'too ardent a lover' of his

Sed hoc non potest esse: quia, secundum philosophum in 10 *Ethic.*, idem est iudicium de delectatione et operatione: quia operationis bonae est delectatio bona, et malae mala. Unde cum actus matrimonialis non sit per se malus; nec quaerere delectationem erit peccatum mortale semper. Et ideo dicendum, quod si delectatio quaeratur ultra honestatem matrimonii, ut scilicet quia aliquis in conjuge non attendat quod conjux est, sed solum quod mulier est, idem paratus facere cum ea etsi non esset conjux, est peccatum mortale; et talis dicitur ardentior amator uxoris, quia scilicet ardor ille extra bona matrimonii effertur. Si autem quaeratur delectatio infra limites matrimonii, ut scilicet talis

¹¹⁴ Williams, pages 283-284.

¹¹⁵ See, for example, *Ad Corinthios*, 7.1.329.

wife, for in fact that ardor tends outside the goods of marriage. If, on the other hand, pleasure were sought within the limits of marriage, so that namely such pleasure were not sought in any woman but one's wife, thus it would be a venial sin.¹¹⁶

delectatio in alia non quaereretur quam in conjuge, sic est veniale peccatum.

Thomas adds that this kind of sin is considered a 'daily sin,' for which saying one Pater Noster suffices.

Approaching one's spouse solely as an object of pleasure would be the love of concupiscence (according to the first meaning of concupiscence above), which, while an appropriate love for things, remains an insufficient response to a human being.¹¹⁷ In fact, John Paul II more dramatically condemned this kind of attitude as *using* one's spouse.¹¹⁸

Saint Thomas has a larger goal in mind for spouses uniting in conjugal intimacy, an intention which orders the act to God, to the couple's final end, and to bringing new souls into the grace of Christ.

Much of Milhaven's misunderstanding arises from his failure to recognize the fundamental organic relationship between an appetite and its end. He describes the relationship thus:

The real end of the sex appetite is different from the end it seeks, pleasure. The real end of the sex appetite is what God and nature have in view in affixing pleasure to the appetite as an inducement for the appetite to move. The end God and nature have in view is the conservation of the human species through procreation. . . . The conservation of the species, in turn, has as its ultimate end the ultimate end of the members of the species, i.e., the spiritual activity by which they have their beatitude with God. The senses can know nothing of ends like these.¹¹⁹

Again, Milhaven's phrasing obscures Aquinas's meaning, while revealing a worldview that is completely incompatible with Saint Thomas's. By stating that "God and nature" have "affixed" pleasure to the appetite in order to "induce" it to move, Milhaven (like DeBroglie in the previous chapter) evokes a vision of nature's Author as outside the things He has created, artificially and mechanistically eliciting the activities He desires in

¹¹⁶ *Commentary on the Sentences*, Book IV, Distinction 31, q.2, a3.

¹¹⁷ Cf. Galeotti, F. "Amore ed amicizia coniugali secondo S. Tommaso d'Aquino." *Doctor Communis* 25 (1972), pp. 41-44.

¹¹⁸ Cf. "The concupiscence that arises as an interior act on this foundation . . . changes the very intentionality of the woman's existence 'for' the man by reducing the wealth of the perennial call to the communion of persons, the wealth of the deep attraction of masculinity and femininity, to the mere satisfaction of the body's sexual 'urge' . . . Such a reduction has the effect that the person (in this case the woman) becomes for the other person (the man) above all an object for the possible satisfaction of his own sexual 'urge' . . . A man can commit such adultery 'in the heart' even with his own wife, if he treats her only as an object for the satisfaction of instinct." John Paul II, and Michael Waldstein. *Man and Woman He Created Them: A Theology of the Body*. Boston, MA: Pauline Books & Media, 2006, 43:3, pages 298-299.

¹¹⁹ Milhaven, page 162.

contrast to the ends the creatures seek themselves. This dislocation of the pleasure and end of the appetite—indeed, the dislocation of the Creator and creation—replaces a true understanding of *nature* as that which unfolds from its own internal principles, principles that God placed within it to bring it to its good. The dis-integration of Milhaven’s cosmology does not end there: he sees the goal of procreation, and of human life, as ultimately each individual’s private possession of God. Again the enjoyment of the good is valued above the good to be enjoyed; such a schema amounts to desiring God by a love of concupiscence, rather than the love of friendship.

The inherent failures in Milhaven’s vision become apparent in the conclusion that he draws subsequently:

But Thomas’s treatment of sexual pleasure, as seen thus far, seems to suggest an underlying dualism whereby man’s sense life would have no value except in serving his spiritual life... Does not reason know that the rich sense life of man is worth seeking for itself and not solely to make possible his spiritual activities?¹²⁰

Milhaven’s lamentation that sense knowledge would exist only to further man’s spiritual good reveals his fundamental lack of understanding of Saint Thomas’s anthropology and ultimately his whole cosmology. Far from evidencing a “dualism” in Thomas’s thought, it is only this subordination of all man’s gifts and abilities to the pursuit of his final end that most deeply unites body and soul. To complain that the joys of the senses should be sought for their own sake is to advocate the *deliberate* “turning toward corruptible goods”—the very practice of concupiscence according to its third, most dangerous and potentially sinful meaning.

Repeatedly, Milhaven errs by looking for private ends where he should be seeing common goods. Even his discussions of man’s ultimate end fall prey to this tendency: he describes beatitude as a private activity of individuals rather than the shared good of all creation, God.¹²¹ Ironically this tendency to choose personal goods rather than common goods lies at the root of the failing called concupiscence that afflicts all mankind.

Yet if Thomas does not share Milhaven’s view of the ordering and end of the universe, how does he see it? What does concupiscence mean to him and how is marriage a remedy for it, if it does not simply designate the sexual drive or the desire for sexual pleasure?

C. Concupiscence as disordering

For Aquinas, the love of concupiscence is a good and necessary part of human nature. It follows upon the love of friendship (in that one always desires a good *for someone*, whether another or oneself). At its best it can be the altruistic desiring of noble goods for

¹²⁰ Milhaven, p. 163.

¹²¹ The difference between private goods and common goods will be discussed more thoroughly in chapter four.

another or a virtuous desiring of honorable things for oneself. However, one effect of original sin is that the love of concupiscence may be directed at improper objects.

Likewise, the concupiscence that is a desire for pleasure is an integral part of nature: every creature naturally tends toward the end for which it was created and pleasure is the enjoyment of the attainment of the end. The passion of concupiscence is disordered if it becomes extreme, or, as in the case of marriage, if the experience of pleasure is desired to the exclusion of the fulfillment that it signals.

Thomas never fails to take into account the derailing of the natural order that afflicts the faculty and the passion of concupiscence in his discussion of the marital act. Nevertheless, he maintains the goodness of that act, rooted in the demonstrable goodness of created nature.¹²² In fact, he reserves his strongest condemnation for those who denigrate the material aspects of marital intimacy, contending,

it is impossible to say that the act by which children are procreated is universally illicit so that the mean of virtue could not be found in it: unless it is argued according to the insanity of certain people, that corporeal things were caused by an evil god; from which perhaps that opinion is derived. And that is the worst heresy.

impossibile est dicere, quod actus quo procreatur proles, sit universaliter illicitus, ut in eo medium virtutis inveniri non possit; nisi ponatur secundum quorundam insaniam, quod res corporales causatae sunt a Deo malo; ex quo forte ista opinio derivatur quae in littera tangitur; et ideo est pessima haeresis.¹²³

Thus to desire the goods of marriage is what God intended for man, at the natural level. To desire the pleasure that accompanies any faculty's accomplishment of what it was made to do, is entirely natural. It is when the pleasure of that fulfillment is sought to the exclusion of the fulfillment itself that the order of nature is inverted.

When the spouse is viewed as an object for the source or pleasure of the other spouse, the love of concupiscence has overstepped its bounds. It is the inversion, derailing, or misdirection of these aspects of human nature that marriage, and specifically the marital act, offers a remedy for.

Aquinas points out that the marital act has been providing a remedy to the disordering that is concupiscence ever since this disorder came about.

And thus marriage, according as it is ordained to the procreation of offspring, which was necessary also when sin did not exist, was instituted before sin. But according as it is a remedy provided against the wound of sin, it was instituted after sin in the time of the law of nature. But according to the

Et ideo matrimonium, secundum quod ordinatur ad procreationem prolis, quae erat necessaria etiam peccato non existente, institutum fuit ante peccatum: secundum autem quod remedium praebet contra vulnus peccati, institutum fuit post peccatum tempore legis naturae;

¹²² *In IV Sent*, D. 26, q.1, a. 3.

¹²³ *In IV Sent*, D. 26, q.1, a. 3.

determination of persons, it had its institution under the law of Moses. Yet, according as it represents the mystery of the union of Christ and the Church, it had its institution under the New Law; and according to this it is a sacrament of the New Law. But as to the other benefits which are consequent upon marriage, like friendship and the mutual service devoted to each other by the spouses, it has its institution in civil law. But since it is of the *ratio* of the sacrament that it be a sign and a remedy, thus the middle institutions have to do with it under the *ratio* of a sacrament; but as to the first institution, it has to do with what it is in the office of nature; as to the last, what it is in the office of civic life.

secundum autem determinationem personarum, institutionem habuit in lege Moysi; sed secundum quod repraesentat mysterium conjunctionis Christi et Ecclesiae, institutionem habuit in nova lege; et secundum hoc est sacramentum novae legis. Quantum autem ad alias utilitates quae ex matrimonio consequuntur, sicut est amicitia et mutuum obsequium sibi a conjugibus impensum, habet institutionem in lege civili. Sed quia de ratione sacramenti est quod sit signum et remedium; ideo quantum ad medias institutiones competit ei ratio sacramenti; sed quantum ad primam institutionem competit ei quod sit in officium naturae; quantum vero ad ultimam quod sit in officium civilitatis.¹²⁴

Thus, even before the coming of Christ, God was refining marriage to provide a remedy for sin. That “determination of persons” that was introduced under the law of Moses was also ordered toward the repression of concupiscence. For example, Aquinas states that Mosaic restrictions against marrying close relatives had as their reason that,

The secondary end of marriage *per se* is as much the repression of concupiscence; which is lost if any consanguineous woman can be taken in marriage; for a great opportunity is presented to concupiscence unless carnal intimacy is forbidden between those persons who must keep company in the same house.

finis matrimonii secundarius per se tantum est concupiscentiae repressio; qui deperiret, si quaelibet consanguinea posset in matrimonium duci; quia magnus concupiscentiae aditus praeberetur, nisi inter illas personas quas oportet in eadem domo conversari, esset carnalis copula interdicta.¹²⁵

In the Old Testament, the kind of remedy that marriage provided against sin does indeed resemble the restraint of animal instincts that Thomas’s 20th century opponents criticize. Aquinas states that

The remedy that [marriage] offers for the satisfying of concupiscence lest it should drive someone over the edge from being

remedium praebeat satisfaciendo concupiscentiae, ne in praeceps ruat, dum nimis arctatur, habuit etiam in veteri lege ex ipsa

¹²⁴ *In IV Sent.*, Distinctio 26, question 2, article 2.

¹²⁵ *In IV Sent.*, D. 40, a.3.

too strictly restrained, it possessed
also in the Old Law by the very
nature of its act.

natura actus.¹²⁶

The effect was that

. . . an act having baseness is
impeded; which happens by the
very nature of the act; since while
concupiscence is satisfied in the
conjugal act, it is not so incited to
other corrupting influences;
because of which the Apostle says,
1 Corinthians 7:9, *it is better to
marry than to burn.*

actus turpitudinem habens
impediatur; quod fit ex ipsa natura
actus: quia dum concupiscentiae
satisfit in actu conjugali, ad alias
corruptelas non ita incitat; propter
quod dicit apostolus, 1 Corinth. 7,
9: melius est nubere quam uri.¹²⁷

Yet even under the law of nature, the goodness of the marital act was not limited to a stifling or channeling of animalistic urges. As mentioned above, Aquinas believed that even in a natural marriage, the marital act could be an act of virtue. To defend the virtue of the marital act, Aquinas must meet many objections that resemble the criticisms of modern readers: why must the marital act be “excused” by the goods of marriage, if it is not a sin? Hasn’t it always got concupiscence attached to it? Doesn’t the extreme pleasure of the act eclipse reason to such a degree that man is incapable of a human act of virtue? (Of course, when these objections arose among Thomas’s contemporaries, they sprang from a belief in the baseness of marriage; current criticisms are leveled at Thomas for even entertaining such negative views of marriage and the conjugal act.)

Aquinas answers these objections with equanimity: we speak of the goods of marriage as “excusing” marital intimacy not because of any sinfulness in the act itself:

Something is properly said to
be excused which has a
resemblance to evil, and yet is not
evil . . . and since the marital act
has a likeness to an inordinate act
because of the corruption of
concupiscence, therefore, for the
goods of marriage it is excused
entirely, so that it is not a sin.

illud proprie dicitur excusari
quod aliquam similitudinem mali
habet, et tamen non est malum, vel
non tantum quantum apparet:
quorum quaedam excusantur a toto,
quaedam a tanto; et quia actus
matrimonialis propter corruptionem
concupiscentiae habet
similitudinem actus inordinati, ideo
pro bono matrimonii excusatur a
toto, ut non sit peccatum.¹²⁸

Moreover, the corruption of concupiscence that gives the marital act a resemblance to a disordered act is “not the baseness of fault, but of punishment, coming from our first sin;

¹²⁶ *In IV Sent.*, D. 26, q. 2, a. 3.

¹²⁷ *In IV Sent.*, D. 26, q. 2, a. 3, ad 4.

¹²⁸ *In IV Sent.*, D. 26, q. 1, a. 3, ad 4.

so that namely the lower powers and members of the body do not obey reason.”¹²⁹
 Nevertheless, the corruption of concupiscence that accompanies marital union does not prevent reason from appointing a mean of virtue:

Any human act is called good in two ways. In one way, by the goodness of virtue, and thus an act is made good by those things which place it in the mean: and fidelity and the procreation of children do this in the marital act . . .

Dicitur autem aliquis humanus actus bonus dupliciter. Uno modo bonitate virtutis; et sic actus habet quod sit bonus ex his quae ipsum in medio ponunt; et hoc faciunt in actu matrimonii fides et proles...¹³⁰

Fidelity and procreation act like “due circumstances,” making the act good and reasonable. In this way, “through the goods of marriage, which dignify carnal concupiscence, the act to which concupiscence inclines loses its external baseness.”¹³¹ And even if, due to the insubordination of the passions because of concupiscence, reason is unable to operate during the conjugal act, the act remains a virtuous human act because it is “pre-ordered by reason.”¹³²

The overflow of passion which causes vice is not found according to its quantitative intensity, but according to its relation to reason. . . However, the pleasure experienced in the marital act, no matter how intense it may be according to quantity, nonetheless does not exceed the limits fixed for it by reason before its beginning, regardless of how incapable reason may be to establish them during the pleasure itself.

superabundantia passionis quae vitium facit, non attenditur secundum intensionem quantitativam ipsius, sed secundum proportionem ad rationem.... Delectatio autem quae fit in actu matrimoniali, quamvis sit intensissima secundum quantitatem, tamen non excedit limites sibi a ratione praefixos ante principium suum, quamvis in ipsa delectatione ratio eos ordinare non possit.¹³³

Thus the marital act provides a remedy for the disordering that is concupiscence, even at the natural level. For by intending the goods of fidelity and procreation, a couple can actually build virtue through their conjugal intimacy:

For although the works corresponding to concupiscence *secundum se* are bound to increase concupiscence, yet according as

Quamvis enim opera concupiscentiae congrua secundum se nata sint concupiscentiam augere; tamen secundum quod ratione

¹²⁹ *In IV Sent*, D. 26, q.1, a. 3, ad 3: “turpitudine illa concupiscentiae quae actum matrimonii semper concomitatur, non est turpitudine culpae, sed poenae, ex peccato primo proveniens; ut scilicet inferiores vires et membra corporis rationi non obediant.”

¹³⁰ *In IV Sent*, D. 31, q. 2, a. 1.

¹³¹ *In IV Sent*, D. 26, q. 2, a. 3, ad 4: “ut actus ad quem inclinatur concupiscentia, exterius turpitudine careat; et hoc fit per bona matrimonii, quae honestant carnalem concupiscentiam.”

¹³² *In IV Sent*, D. 26, q. 1, a. 3, ad 6: “est a ratione praedeterminatus.”

¹³³ *In IV Sent*, D. 31, q. 2, a. 1, ad 3.

they are ordered by reason they repress it: for by repeated acts are left behind similar habits and dispositions.

ordinantur, ipsam reprimunt: quia ex similibus actibus similes relinquuntur dispositiones et habitus.¹³⁴

Nevertheless, even virtue at the natural level is insufficient for Saint Thomas to consider the marital act a true remedy for concupiscence. He reviews the inadequacy of this stance in Distinction 26, Question 2, Article 3, “Whether marriage confers grace,”

For certain people have said that marriage is a cause of grace in no way, but only a sign. But this cannot stand, for according to this it would not differ at all from the sacraments of the Old Law . . . for the remedy that it offers for the satisfying of concupiscence lest it should drive someone over the edge from being too strictly restrained, it possessed also in the Old Law by the very nature of its act.

And thus others have said that grace is conferred there in order to withdraw one from evil, for the act is excused from sin, which would have been a sin without marriage. But this would be scarcely anything, for this was also the case under the Old Law. So they say that it withdraws one from evil inasmuch as it lessens concupiscence lest it be borne outside the goods of marriage; but by that grace there is no help for acting well. But this cannot stand, for it is the same grace which impedes sin and which inclines to good . . .

Wherefore, others say that marriage, inasmuch as it is contracted in the faith of Christ, is able to confer a grace helping those things to be done which are required in marriage; and this is more probable: for wherever a certain divine faculty is given, help is also given by which man can fittingly make use of that faculty. . . . Wherefore, since in marriage is

Quidam enim dixerunt, quod matrimonium nullo modo est causa gratiae, sed est tantum signum. Sed hoc non potest stare: quia secundum hoc in nullo differret a sacramentis veteris legis... Quod enim remedium praebeat satisfaciendo concupiscentiae, ne in praeceptis ruat, dum nimis arctatur, habuit etiam in veteri lege ex ipsa natura actus.

Et ideo alii dixerunt, quod confertur ibi gratia in ordine ad recessum a malo: quia excusatur actus a peccato, qui sine matrimonio peccatum esset. Sed hoc esset nimis parum: quia hoc etiam in veteri lege habuit; et ideo dicunt, quod facit recedere a malo, inquantum mitigat concupiscentiam ne extra bona matrimonii feratur; non autem per gratiam illam sit aliquod auxilium ad bene operandum. Sed hoc non potest stare: quia eadem gratia est quae impedit peccatum, et quae ad bonum inclinat...

Unde alii dicunt quod matrimonium, inquantum in fide Christi contrahitur, habet ut conferat gratiam adjuvantem ad illa operanda quae in matrimonio requiruntur; et hoc probabilius est: quia ubicumque datur divinitus aliqua facultas, dantur etiam auxilia quibus homo convenienter uti possit facultate illa... Unde, cum in matrimonio detur homini ex divina institutione

¹³⁴ *In IV Sent*, D. 26, q. 2, a. 3, ad 4.

given to a man by divine institution the faculty of enjoying his wife for the procreation of children, grace is also given without which he could not do this fittingly... and thus that grace is now given in this sacrament like a *res contenta*.

facultas utendi sua uxore ad procreationem prolis, datur etiam gratia sine qua id convenienter facere non posset; sicut etiam de potestate ordinis supra dictum est, et sic ista gratia data est ut jam res contenta in hoc sacramento.¹³⁵

Ultimately, in his characterisation of marriage as a remedy for concupiscence, Aquinas never loses sight of the fact that the only true remedy for concupiscence is supernatural grace. While in regard to its act, concupiscence can be mitigated and even redirected to something good through the goods of marriage, “on the part of concupiscence itself, as it is repressed in its root...marriage offers a remedy by the grace which is given in it.”¹³⁶

D. The Remedy for Concupiscence is Grace

Let us first consider Thomas’s description of marriage as a source of grace before we examine the question of grace given in the conjugal act.

In contrast to his contemporaries, Aquinas insisted that marriage was a sacrament of the New Law, and therefore must be a source of grace by that very fact: “a sacrament carries a certain remedy of holiness for man against sin,...wherefore, since this is found in marriage it is counted among the sacraments.”¹³⁷ Or again:

in the definition of sacrament is included causality of grace... Therefore since marriage is a sacrament, it will be a cause of grace...

it is not a remedy except to the extent that it has some effect. Therefore it has something of efficacy for repressing concupiscence. But concupiscence is not repressed except by grace. Therefore grace is conferred in

in definitione sacramenti ponitur causalitas gratiae... Ergo cum matrimonium sit sacramentum, erit causa gratiae...

non est in remedium nisi inquantum aliquam efficaciam habet. Ergo habet aliquid efficaciae ad reprimendum concupiscentiam. Sed concupiscentia non reprimatur nisi per gratiam. Ergo confertur in ipso gratia.

¹³⁵ *In IV Sent*, D. 26, q. 2, a. 3, corpus.

¹³⁶ *In IV Sent*, D. 26, q. 2, a. 3, ad 4: “ex parte ipsius concupiscentiae, ut reprimatur in sua radice; et sic remedium praestat matrimonium per gratiam quae in eo datur.”

¹³⁷ *In IV Sent*, D. 26, q.2, a. 1: “sacramentum importat aliquod remedium sanctitatis homini contra peccatum, exhibitum per sensibilia signa, ut in 1 dist, quaest 1, art. 2, quaestiunc. 1, dictum est; unde, cum hoc inveniatur in matrimonio, inter sacramenta computatur.”

it.¹³⁸

Ironically, one of the strongest arguments against the sacramentality of marriage that Thomas had to address among his contemporaries, was the very pleasure that accompanies marriage. His objectors argued that the efficacy of the sacraments comes from the Passion of Christ, but no one can be conformed to the Cross by something that carries as many pleasures as matrimony. Thomas's answer shows his characteristic breadth of vision: "Although marriage does not conform to the Passion of Christ in suffering, yet it does conform to it in the love, by which he suffered for the Church in order that she might be joined to him as bride."¹³⁹

It is clear that the remedy for concupiscence that Aquinas sees in marriage corresponds to the love, and more specifically, the charity, that the grace of the sacrament endows the spouses with. While the relationship of charity between the spouses will be considered more extensively in the next chapter, here we should examine how charity combats the disordering that is concupiscence.

Elsewhere in his works, Thomas delineates the relationship between sacramental charity and the diminishment of concupiscence; for example, in his treatment of the Eucharist in the *Summa Theologiae*. Thomas argues that the Eucharist acts as armor, strengthening man against the *fomes* of sin, by the fact that it is "a sign of the Passion of Christ, by which the demons were defeated."¹⁴⁰ The fact that marriage also represents the Passion accounts for its sacramental efficacy: "Just as the water of baptism is able to touch the body and cleanse the heart by its contact with the flesh of Christ, so marriage has this from the fact that Christ represented it in his Passion."¹⁴¹

Marriage is a source of grace from the moment of consent, for those in whom no obstacle against grace remains: "Before fleshly commingling happens, marriage is a remedy by the grace that is given in it, although not by the act, which belongs to its second integrity."¹⁴² Yet the good of the sacrament, the fact that the union represents the love of Christ and his Church has the effect of making conjugal intimacy not only virtuous, but even *holy*:

Any human act is called good in two ways. In one way, by the goodness of virtue...In another way, by the goodness of sacrament, according to which an act is not only called good but also holy; and the marital act has this goodness

Dicitur autem aliquis humanus actus bonus dupliciter. Uno modo bonitate virtutis...alio modo bonitate sacramenti, secundum quod actus non solum bonus sed etiam sanctus dicitur; et hanc bonitatem habet actus matrimonii

¹³⁸ *In IV Sent*, D. 26, q. 2, a. 3, sed contra.

¹³⁹ *In IV Sent*, D. 26, q. 2, a. 1, ad 3: quamvis matrimonium non conformet passioni Christi quantum ad poenam, conformatur tamen ei quantum ad caritatem per quam pro Ecclesia sibi in sponsam coniungenda passus est

¹⁴⁰ *Summa Theologiae*, III. 79. 6.

¹⁴¹ *In IV Sent*, D. 26, q. 2, a. 3, ad 1: "sicut aqua Baptismi habet quod corpus tangat et cor abluat ex tactu carnis Christi; ita matrimonium hoc habet ex hoc quod Christus sua passione illud repraesentavit."

¹⁴² *In IV Sent*, D. 26, q. 2, a. 4, ad 4: "ante commixtionem carnalem est matrimonium in remedium ex gratia quae in eo datur, quamvis non ex actu, quod pertinet ad integritatem secundam."

from the indissolubility of the union, according to which it represents the union of Christ and his Church.¹⁴³

ex indivisibilitate conjunctionis, secundum quam signat conjunctionem Christi ad Ecclesiam.

The consummation of the marriage confers upon it a new level of indissolubility, by which it represents more completely the union of Christ and the Church. Thus the marital act possesses not only the goodness of virtue, but the goodness of sanctity.

Moreover, this sanctity does not only characterize the marital act in the abstract; it is a real possibility for the two spouses as well. One consequence of matrimony's sacramental grace is that it gives the spouses the possibility of meriting eternal life by the marital act,

for every act in which a precept is fulfilled is meritorious, if it is done out of charity...since no act proceeding from a deliberate will is indifferent... the marital act is always either a sin or it is meritorious in someone who has grace.

omnis actus in quo impletur praeceptum, est meritorius, si ex caritate fiat... cum nullus actus ex deliberata voluntate procedens sit indifferens, ... actus matrimonialis semper est peccatum, vel meritorius in eo qui gratiam habet.¹⁴⁴

Against objectors who balk at attributing such effects to something as common and enjoyable as conjugal intimacy, Thomas maintains the all-decisive character of Christian love: "The root of meriting as to the substantial prize is charity itself."¹⁴⁵

The specific aim of charity is to direct a person's actions toward God as ultimate end, and toward the good of neighbor, which is God. Thomas gives various references to how charity informing the conjugal act could change the intentionality of the spouses. For example, thinkers like DeBroglie, whom we saw in Chapter 1, draw a tension between the service to the common good and the personal aims and desires of the spouses in marital intimacy. Their arguments rest on statements of Aquinas like the following:

Marriage is principally ordained to the common good under the *ratio* of the principal end, which is the good of offspring; although under the *ratio* of the secondary end it is ordained to the good of those contracting marriage, as it is *per se* a remedy for concupiscence.

matrimonium principaliter ordinatur ad bonum commune ratione principalis finis, qui est bonum prolis; quamvis etiam ratione finis secundarii ordinetur ad bonum matrimonium contrahentis, prout per se est in remedium concupiscentiae.¹⁴⁶

But in the light of charity, it becomes clear that the common good referred to is not some fascist notion of increasing the population, but rather a concrete action ordered to the

¹⁴³In IV Sent, D. 31, q. 2, a. 1.

¹⁴⁴In IV Sent, D. 26, q. 1, a. 4.

¹⁴⁵In IV Sent, D. 26, q. 1, a. 4, ad 1: "radix merendi quantum ad praemium substantiale est ipsa caritas."

¹⁴⁶In IV Sent, D. 33, q. 2, a. 1, ad 4.

love of neighbor. In contrast to that interpretation of Aquinas, it is evident that he includes in the good of *proles* the education of the children toward a shared life with God:

The procreation of children, as a good of the sacrament, adds something beyond the procreation of children as intended by nature. For nature intends offspring according as the good of the species is preserved in them. But beyond this, in offspring as a good of the sacrament of matrimony, is understood that children received are ultimately ordained to God. Therefore it is necessary that nature's intention by which she intends children, is referred actually or habitually to the intention of children as a good of the sacrament; otherwise it would remain stuck at the level of creation, which cannot happen without sin.

proles prout est bonum sacramenti, addit supra prolem prout est intentum a natura. Natura enim intendit prolem prout in ipsa salvatur bonum speciei; sed in prole secundum quod est bonum sacramenti matrimonii, ultra hoc intelligitur ut proles suscepta ulterius ordinetur in Deum; et ideo oportet quod intentio naturae qua prolem intendit, referatur actu vel habitu ad intentionem prolis prout est bonum sacramenti; alias staretur in creatura; quod sine peccato esse non potest¹⁴⁷

Nor is Thomas's emphasis on marriage as a remedy for concupiscence mired in the biological or a Freudian idea of libido. An insight to the charity that he expects to be at work can be seen in his distinction that

If someone intended by the marital act to avoid fornication in his spouse, this is not a sin; for this is a kind of rendering of the debt which belongs to the good of fidelity. But if he intended to avoid fornication in himself, then a certain excess exists here; and according to this it is a venial sin: nor was marriage instituted for this, unless according to the forbearance which exists about venial sins.

si aliquis per actum matrimonii intendat vitare fornicationem in conjuge, non est aliquod peccatum; quia hoc est quaedam redditio debiti, quod ad bonum fidei pertinet. Sed si intendat vitare fornicationem in se, sic est ibi aliqua superfluitas; et secundum hoc est peccatum veniale: nec ad hoc est matrimonium institutum, nisi secundum indulgentiam, quae est de peccatis venialibus.¹⁴⁸

By referring to the secondary end of intercourse as a "remedy for concupiscence" or "the avoidance of fornication," Thomas does not understand it as an outlet for unbridled animal urges, but as the most important part of the mutual aid and service that the spouses owe each other in charity. The spouse can more surely avoid fornication in himself by the

¹⁴⁷ *In IV Sent*, D. 31, q. 2, a. 2, ad 1.

¹⁴⁸ *In IV Sent*, D. 31, q. 2, a. 2, ad 2.

grace of the sacrament; Thomas will not call it virtue to seek one's spouse for this reason, though neither will he allow it to be called mortal sin. Yet to engage in the marital act out of concern for the highest good of one's spouse—his union with God which is threatened by temptation—is truly a work of charity.

Indeed, Thomas's unwavering focus on charity as the effect of sacramental grace also lays to rest the problem of pleasure in the marital act, because "no virtue has such a strong inclination to its act as charity, nor does any virtue perform its act with so great a pleasure."¹⁴⁹ It is the nature of charity to increase the pleasure of any act it performs. Thus in their conjugal intimacy, spouses endowed with the charity that accompanies sacramental grace not only offer a remedy to each other's concupiscence, but they merit eternal life for themselves while rendering the act even more pleasurable.

Ultimately, the charity that accompanies the grace of the sacrament provides the true remedy for the turning inward or selfish grasping at private goods that original sin makes all men prone to. As Belmans states, Aquinas's teaching means that the marital pact and the actions that follow are "de nature à porter remède à l'égoïsme qui guette tout mortel ici-bas depuis le péché originel et ne peut être surmonté que par notre incorporation au Christ glorifiée."¹⁵⁰

¹⁴⁹ *Summa Theologiae*, II-II, 23.2.

¹⁵⁰ Theo Belmans, "Le remedium concupiscentiae comme fin de mariage," *Revue Thomiste*, XCIII (1993), p. 289.

2. THE MARITAL ACT AS DEBT

In recent years John Paul II's "Theology of the Body" has given us a hopeful new way of considering marital love, in language that resonates with modern individuals who see sexuality only denigrated and cheapened in our society. John Paul II describes the marital act as "the sign and fruit of total personal self-giving,"¹⁵¹ which springs from the total gift that every human being is called to make of himself.¹⁵² Donald Asci sums up the new vision thus:

The conjugal act is a singular and irreplaceable act of love between husband and wife. In and through the conjugal act man and woman give themselves to one another, express and perfect their love for each other, participate in the goods of marriage and consummate their marriage.¹⁵³

Beside this luminous understanding of marital love, which we have scarcely begun to plumb, Saint Thomas's treatment of the marital act may seem overwhelmingly legalistic, and therefore inadequate. There seems to be a most jarring division between Thomas's treatment of marriage and the current understanding of marriage as a path to holiness and a union of hearts. John Paul II characterizes conjugal intimacy as a "total gift of self" by both spouses; Thomas Aquinas refers to it as the *debitum*, which is usually translated "marital debt" or "duty,"¹⁵⁴ a phrase that evokes at best a dry legalism, and at worst a kind of servitude. While the 'gift' exalts the joyful freedom of a Christian, the 'debt' rings of compulsion; the former seems the quintessential act of love while the latter is simply a submission to law.

Can these notions be reconciled? How can something be both gift and debt?

A careful look at Aquinas's exposition of marriage within the context of his entire vision of theology reveals that the marriage debt for him held the potential to be as beautiful and sanctifying as the gift of self seems to us. The fact that Saint Thomas wrote comparatively little about the sacrament of marriage does not make it insignificant in his thought. In fact, the relationship that he delineates between the juridical aspects of matrimony and its sacramental nature stems from one of Saint Thomas' greatest contributions to the theological tradition, his exposition of the relation between nature and grace.

The marital act provides a focal point and microcosm for this discussion.

¹⁵¹ *Familiaris Consortio*, 11.

¹⁵² Cf. *Gaudium et Spes*, 49 and 51.

¹⁵³ Donald P. Asci, *The Conjugal Act as Personal Act*, Ignatius Press, San Francisco, 2002; page 274.

¹⁵⁴ Saint Thomas Aquinas, *In IV Sententiarum*, Distinctio 32.

A. The Origins of the Debt

Initially, Saint Thomas's language does seem to describe an almost commercial exchange with respect to marital duties:

As a slave is in the power of his master, so also is one spouse in the power of the other, as is clear from I Corinthians 7. But a slave is bound by the necessity of a precept to render his debt of servitude to his master, as is clear from Romans 13:7: *Render your debts to all: tribute to whom tribute is owed, etc.* Therefore one spouse is bound by the necessity of precept to render the debt to the other.

sed contra sicut servus est in potestate domini sui, ita et unus conjugum in potestate alterius, ut patet 1 corinth. 7. Sed servus tenetur ex necessitate praecepti domino suo debitum servitutis reddere, ut patet Rom. 13, 7: *reddite omnibus debita: cui tributum etc.*... Ergo et unus conjugum ex necessitate praecepti tenetur alteri reddere debitum.¹⁵⁵

Yet closer consideration reveals that the spouses, in this matter, are not equivalent to slaves. Saint Thomas distinguishes between legal debt, which has the force of a precept, and moral debt, which is necessary for maintaining or growing in virtue.¹⁵⁶ The marital debt is indeed a legal debt (or “duty”), arising from a juridical contract. In the consent, which is the efficient cause of the marriage bond, it is “the power of *carnalis copulae*, to which one consents.”¹⁵⁷ The spouses consent to exchange power over their own bodies with regard to the faculty of generation.

It is important for Saint Thomas to defend the teaching that conjugal consent is consent to the *power* of sexual union rather than to sex itself. On the one hand, the two purposes of marriage (procreation and as a remedy for concupiscence) make consenting to this power essential for the contract. On the other hand, the fact that what is exchanged in the contract is the *power* over one's body rather than the *bodies themselves* opens the contract to the possibility of a valid Josephite marriage or entry into religious life by mutual agreement. Consenting to exchange power over one's body also distinguishes the marriage contract and its consequent debt from simple slavery.

The conditions of the consent itself form another important difference. Thomas spends an entire Distinction of the *Commentary on the Sentences* showing that the consent must be completely *sua sponte*, and can be invalidated by grave fear, family pressure, mistaken understanding¹⁵⁸ or any compulsion¹⁵⁹ in either party. Moreover, even laying down a condition that goes against one of the goods of marriage will invalidate the consent.¹⁶⁰ If this debt arises from a kind of submission or servitude, it is a servitude that

¹⁵⁵ *In IV Sent.*, Distinction 32, Article 1.

¹⁵⁶ *ST*, II-II, Q. 80, Article 1, Corpus.

¹⁵⁷ *In IV Sent.*, Distinction 28, Article 4, corpus: « potestas carnalis copulae, in quam consentitur . . . »

¹⁵⁸ Cf. *In IV Sent.*, Distinction 30, Question 1, Articles 1-2.

¹⁵⁹ Cf. *In IV Sent.*, Distinction 29, Articles 2, 4, and 3.

¹⁶⁰ Cf. *In IV Sent.*, Distinction 29, Article 3.3, and Distinction 30, Question 1, Article 3.

must be entered into with full knowledge and free will, and without any trace of compulsion.

While full disclosure and freedom from compulsion are standard legal conditions required for the validity of any contract, Saint Thomas remains aware that this contract is also a sacrament, for he adds as a reason for this freedom that “marriage represents the union of Christ and the Church, which happens according to the freedom of love. Therefore it cannot happen by a forced consent.”¹⁶¹

If the efficient cause of the marriage debt lies in the contract, the final cause is one of the ends of marriage: providing a remedy for concupiscence. As such, the debt pertains to the good of *fides*, which has to do with the unity of marriage:

Just as it is contained in the promise of marriage that neither party may approach the bed of someone else, so also that both must render the debt to each other, and this latter is more important, since it follows from the mutual power given each to the other; and therefore, both matters belong to faith; but in the text is stated what is less manifest.

Sicut in promissione matrimonii continetur ut neuter ad alterum torum accedat; ita etiam quod sibi invicem debitum reddant: et hoc etiam est principalius, cum consequatur ex ipsa mutua potestate invicem data; et ideo utrumque ad fidem pertinet; sed in littera ponitur illud quod est minus manifestum.¹⁶²

The good of *fides* adds another aspect of justice to the rendering of the marital debt. Faith (or fidelity), one of the three goods that dignify or *honestant* marriage, is the part of justice that concerns keeping one’s promises:

faith is not taken here as a theological virtue, but as a part of justice, according to which faithfulness is named from those things mentioned which are done in the observation of promises. For in marriage, since it is a certain contract, is a certain promise, by which a certain man is determined to a certain woman.

Fides non accipitur hic prout est virtus theologica, sed prout est pars iustitiae, secundum quod fides dicitur ex hoc quod fiunt dicta in observatione promissorum: quia in matrimonio, cum sit quidam contractus, est quaedam promissio, per quam talis vir tali mulieri determinatur.¹⁶³

The good of *fides* arises from keeping one’s promise to offer one’s spouse a virtuous alternative to the impulses of concupiscence. As such, it provides for the good of the other in a crucial way, for, in pursuing *fides*, one spouse lays himself down to prevent the other from falling into mortal sin.

¹⁶¹ *In IV Sententiarum*, Distinction 29, Question 1, Article 3, questiunculus 1, sed contra. “matrimonium significat conjunctionem christi ad ecclesiam, quae fit secundum libertatem amoris. Ergo non potest fieri per coactum consensum.”

¹⁶² *In IV Sent.*, Distinction 31, Question 1, Article 2, responsum ad 3.

¹⁶³ *In IV Sententiarum*, Distinction 31, Question 1, Article 2, responsum ad 2.

It is important too, to remember that it is easier to fall into mortal sin in this area than it may seem. Modern readers of Aquinas may be shocked at the picture he paints of a married person who must render the spouse's conjugal rights with urgency in order avoid the spouse's fornication.¹⁶⁴ It gives the impression that Saint Thomas imagines married people to suffer from an almost pathological lack of self-control. But on the contrary, he is accurately aware of how delicate interior purity is. As he remarks in his discussion of kissing in the *Summa Theologiae*,

A lustful look is less than a touch, a caress or a kiss. But according to Matt. 5:28, "Whosoever shall look on a woman to lust after her hath already committed adultery with her in his heart."¹⁶⁵

The "fornication" that is to be averted need not be a full-fledged adulterous affair. Thomas is all too aware that the struggle for holiness is both urgent and constant; thus the aid that the spouses have pledged to each other must be correspondingly available and continuous.

Aquinas also harbors a certain sympathy for the needs of the spouses, which he shows in surprising places. He advises that a husband should be sensitive to the desires that a wife may be too bashful to express.¹⁶⁶ Even a married man who has taken a vow of continence must be sensitive in responding to his wife's unspoken wishes for intimacy, "lest the marriage be made exceedingly burdensome for the wife who is always having to demand the debt."¹⁶⁷ In addressing the situation of the leper's wife, which had been a matter of some discussion among theologians since it had appeared in one of the Decretals,¹⁶⁸ Aquinas allows that a wife need not cohabit with her leprous husband, so as to avoid contracting the disease. But where the conjugal rights are concerned, he does not offer any escape clause to the wife *propter horrorem*, as some of his contemporaries did.¹⁶⁹ He states that her likelihood of being infected by such brief contact is slim, and apparently the act of fidelity that intercourse would represent is of such necessity to the souls of both spouses, as to outweigh the physical risk.

Saint Thomas first mentions the marital debt (or "duty") in proving that the marital act is not only devoid of sin, but actually meritorious in someone possessing grace,¹⁷⁰ for "when spouses come together for the sake of the procreation of children, or so that they might render the debt to one another, which belongs to fidelity, they are totally excused from sin."¹⁷¹ It is not sinful because it was commanded by God for the sake of procreation; its merit derives from the fact that that rendering a debt is the quintessential act of the virtue

¹⁶⁴ See for example, *In IV Sent.*, D. 32, Q. 1, Art. 2; D. 31, Q. 1, Art. 3; D. 31, Q. 2, art. 2.

¹⁶⁵ *Summa Theologiae*, II-II, Q. 154, Art. 4.

¹⁶⁶ *In IV Sententiarum*, D. 32, Q. 1, Art. 2, qc. 1, corpus.

¹⁶⁷ *In IV Sententiarum*, D. 38, Q. 1, Art. 3, qc. 2, ad 4. "ne nimis onerosum reddatur matrimonium uxori semper exigenti."

¹⁶⁸ Decretals IV.8.2

¹⁶⁹ Elizabeth Makowski, "The Conjugal Debt and Medieval Canon Law," *Journal of Medieval History* 3, (1977), no. 2, p. 112.

¹⁷⁰ *In IV Sententiarum*, Distinctio 26, Question 1, Articles 3 and 4.

¹⁷¹ *In IV Sent.*, Distinction 31, Question 2, Article 2, Corpus.

of justice.¹⁷² But the ways that this act fulfills the virtue of justice are manifold. Engaging in marital intimacy for the sake of procreation is an act of obedience to divine command or an act of religion, in bringing forth children for the worship of God; Saint Thomas counts both of these virtues as “annexed” to justice for their resemblance to justice. To engage in the conjugal act for the sake of fidelity protects the unity of the marriage and exercises the virtue of justice in keeping one’s promise.

Some scholars, like John Finnis, object to the very translation of *debitum* as debt, arguing that it necessarily leads to a misinterpretation of Saint Thomas. Within the context of his larger study of Aquinas’s natural law theory (which will be discussed further in Chapter 4), Finnis explains the good of *fides* in the following way:

...it is necessary first to be clear about Aquinas’ view of marital intercourse—a view often misunderstood. A virtuous choice to engage in an act of marital intercourse need not be motivated by the hope of having children. Another distinct, sufficient, and entirely acceptable reason is: ‘to give one’s spouse the bodily co-operation, in *marital* [sexual] intercourse, to which he or she is entitled’ {ut debitum reddat}. Does this mean acting out of a sense of duty? Or only in response to one’s spouse’s claim of right or other initiating request? Not at all. There is nothing unreasonable about either party taking the initiative and asking for or tacitly seeking intercourse. Appropriately making and acting on and/or in response to such a request, the spouse will indeed ‘*each be giving the other* what he or she is entitled to {ut *sibi invicem reddant*}’—one’s bodily co-operation in marital sexual intercourse. But doing so has a point; it need not be at all a matter of choosing ‘to do one’s duty’ or even ‘to give him what he’s entitled to’ or ‘give her her rights’. Rather the point will be, says Aquinas, the good of marital *fides* {bonum fidei}.

What, then, is *fides*—literally ‘fidelity’ or ‘faithfulness’—in this context? It is the disposition and commitment of each of the spouses to ‘cleave to’ {accedere}—precisely, to *be maritally united with*—the other and no other person. So, besides the negative commitment not to be maritally or in any other way sexually united to anyone else (‘fidelity’), *fides* even more basically includes a positive commitment and willingness, a reason *for* action. This is the key to understanding Aquinas’ understanding of sexual morality. *Fides* is, indeed, the characteristic proximate object(ive) or ‘appropriate matter about which {debita materia [circa quam]}’ we are engaged when we choose and engage in marital intercourse, even on those occasions when we also have explicitly or implicitly the hope of procreating. This positive *fides* is the willingness and commitment to belong to, and be united in mind and body with, one’s spouse in the form of *societas* and friendship which we call marriage...

...So *fides* is a motive, a reason for many co-operative acts intrinsic or incidental to a sharing in the ‘whole life’ of the marital household...Each of us is entitled to the other’s co-operation in such acts, provided there is no reason for abstaining. So, truly marital intercourse is literally an act of

¹⁷² In the same place he adds that conjugal intimacy for the sake of procreating children for the worship of God, or out of respect for God’s precept is an act of religion, itself a sub-virtue of justice (Cf. *Summa Theologiae*, II-II, Q. 81).

justice. But that does not prevent it from being an act of love. It is an act that we can enter into with joy {laetantes}¹⁷³; the fact that it can give the greatest of all bodily pleasures {delectatio intensissima} in no way makes it unreasonable; there is nothing wrong at all with our welcoming assent to such pleasure in the marital act; nor in our being motivated towards such an act by the prospect of giving and sharing in that delight as token of our marital commitment.¹⁷⁴

Yet, despite Finnis's exegesis, praising the marital act as a virtuous act of justice still leaves us some distance from the spontaneous loving self-abandonment that is currently touted. Saint Thomas bridges this gap by showing us how much is included in the notion of justice and what character it confers on the conjugal act.

B. Justice and the Conjugal Act

We in the modern era may be tempted to narrow our understanding of justice to commutative justice, but for Saint Thomas justice was a much broader, richer concept. Where post-Enlightenment man thinks in terms of *rights*, a notion that invariably arises in contentious, self-seeking contexts, Saint Thomas speaks not of *rights*, but rather of *right*, as the object of justice. Justice is not only the noblest of moral virtues, but all virtues share in the general notion of justice, from the fact that justice directs all other virtues to its own end, the common good.¹⁷⁵ Already it is a vision of justice that is more communal, more universal, less individualistic, less grasping.

To gain a glimpse of everything subsumed under the notion of justice, one need only glance at the themes Saint Thomas includes in his treatise on justice in the *Summa Theologiae*: not only restitution and equity, but religion, devotion, prayer, adoration, sacrifice, oblations and first-fruits, tithes, vows, oaths, praising the name of God, piety, observance, obedience, thankfulness, truth, affability, and liberality. These virtues are considered to be “annexed” to justice because justice goes beyond legal debt to include moral debt as well.

Justice is a fundamentally social virtue, for

It is proper to justice, as compared with the other virtues, to direct man in his relations with others; because it denotes a kind of equality, as its very name implies . . . on the other hand, the other virtues perfect man in those matters only which befit him in relation to himself. . . Because a man's work

¹⁷³ Finnis refers to *In I Cor.* 7, I ad v. 5 [325], and points out that the idea that couples who have been abstaining will experience their *retrouaille* with joy is Aquinas's own contribution, “not suggested by the text on which he is there commenting.”

¹⁷⁴ John Finnis, *Aquinas: Moral, Political, and Legal Theory*, (Oxford [England]; New York: Oxford University Press, 1998), pp. 143-147.

¹⁷⁵ *Summa Theologiae*, II-II, Q. 58, Articles 12, 5, and 6.

is said to be just when it is related to some other by way of some kind of equality.¹⁷⁶

Saint Thomas upholds Peter Lombard in teaching that in regard to the marital act husband and wife are equals—not with the equality of measure, but with the equality of proportion, as two things are said to be equal that have equal relationships to something else.¹⁷⁷ In fact, Saint Thomas goes beyond the Lombard’s assessment to state that spouses are proportionately equals in the marital debt *and* in the management of the home: “But according to the second kind of equality, they are equals in both matters,”¹⁷⁸ because, although their responsibilities differ, they have the same relationship to the domestic community.

For this reason they enjoy a special kind of justice that is based on their particular relationship and directed to the good of the community that they form together:

A wife, though she is something belonging to the husband, since he stands related to her as to his own body, as the Apostle declares (Eph. V.28), is nevertheless more distinct from her husband, than a son from his father, or a slave from his master: for she is received into a kind of social life, that of matrimony, wherefore according to the Philosopher (*Ethic.* V.6) there is more scope for justice between husband and wife than between father and son, or master and slave, because, as husband and wife have an immediate relation to the community of the household, as stated in *Polit.* i.2.5, it follows that between them there is domestic justice rather than civic.¹⁷⁹

Far from being restricted to commercial exchange, justice is the virtue that reinforces and protects community—in this case the community of marriage. It treats the spouses as equal parties in a shared life that is furthered and built up by the payment of the marital debt.

C. The Marital Debt as a Path of Sanctification

By speaking in terms of debt, then, it is clear that Saint Thomas envisioned something wholly voluntary. Moreover, the act of paying a debt fulfills the virtue of justice and ennobles the marital act, making it virtuous despite the damage done to it by concupiscence. The nature of justice means that the spouses are endowed with an equality that we are unlikely to find under secular laws until very recently. But can the payment of this debt actually be a means of sanctification for the spouses?

Saint Thomas says yes:

¹⁷⁶ *ST*, II-II, Q. 57, Article 1, Corpus.

¹⁷⁷ *In IV Sent.*, Distinction 32, Article 3.

¹⁷⁸ *In IV Sent.*, Distinction 32, Article 3, Corpus. “Sed quantum ad secundam aequalitatem sunt aequales in utroque: quia sicut tenetur vir uxori in actu conjugali et dispensatione domus ad id quod viri est, ita uxor viro ad id quod uxoris est; et secundum hoc dicitur in littera, quod sunt aequales in reddendo et petendo debitum.”

¹⁷⁹ *ST*, II-II, Q. 57, Article 4, Corpus.

Every act in which a precept is fulfilled is meritorious, if it is done out of charity. But the marital act is this kind of act.

Omnis actus in quo impletur praeceptum est meritorius, si ex caritate fiat. Sed actus matrimonialis est huiusmodi . . . ¹⁸⁰

Since no act proceeding from deliberate will is indifferent . . . the marital act is always either a sin or it is meritorious in someone who has grace.

Cum nullus actus ex deliberate voluntate procedens sit indifferens . . . actus matrimonialis semper est peccatum, vel meritorius in eo qui gratiam habet. ¹⁸¹

The fulfillment of the divine precept, or rendering what is due, merits an eternal reward for those who have grace. Yet the economics of merit—which also suggest commercial exchange to modern sensibilities—have themselves something to teach us about Saint Thomas’s view of debt. Merit is in a certain relative way something that God “owes” the individual. Yet this debt only arises from God’s preceding gift of grace. ¹⁸²

The payment of a human debt resembles God’s justice only in an analogous way, for, among other reasons, we are not our own justice or our own charity. Yet in marital intimacy, the debt does arise from a preceding, voluntary gift. Saint Thomas draws a comparison with the religious life, in which the duty of a certain kind of servitude is also undertaken willingly:

Both states, namely religious life and marriage, contain something similar, namely a perpetual obligation; and therefore either state is something like servitude. But the obligation in marriage is not to the work of perfection, but to rendering the bodily debt.

Uterque enim status, scilicet religionis et matrimonii, aliquid simile habet, scilicet perpetuam obligationem; et ideo uterque status est quasi alicuius servitutis. Sed obligatio matrimonii non est ad opus perfectionis, sed ad reddendum carnale debitum. ¹⁸³

In both marriage and religious life, a person voluntarily submits himself to a perpetual duty. But a perpetual obligation undertaken of one’s own free will is a gift, for as Saint Thomas defines elsewhere, “a gift is properly an unreturnable giving . . . a thing which is not given with the intention of a return.” ¹⁸⁴ Indeed, the gift made in entering religious life may bear more resemblance to a “total gift of self,” since the three vows of poverty, chastity, and obedience involve giving up one’s belongings, power over one’s own body, and power over one’s own will. Yet Saint Thomas emphasizes that since the will is man’s most precious good, the vow of obedience, in a way, comprises the total gift of one’s self in

¹⁸⁰ *In IV Sent*, Distinction 26, Article 4, sed contra.

¹⁸¹ *In IV Sent*, Distinction 26, Article 4, corpus.

¹⁸² Cf. *In I Sent.*, D. 41, Q. 1, Art. 3, sc. “omne illud quod respicit meritum est aliquo modo debitum, et non omnino gratuitum.” Also *Summa Theologiae*, I-II, Question 114.

¹⁸³ *De Perfectione Spiritualis Vitae*, Capitulum 25.

¹⁸⁴ *Summa Theologiae*, I, Q. 38, Article 2, corpus.

its entirety, “because by the vow of obedience man offers something greater, namely his own will.”¹⁸⁵ And this kind of gift is a possibility for married Christians in paying the conjugal debt. For, as Saint Thomas explains when considering the virtue of obedience, the fulfillment of a duty or a command is no less meritorious by the fact that it is required:

A thing may be deemed gratuitous in two ways. In one way, on the part of the deed itself, because, to wit, one is not bound to do it; in another way, on the part of the doer, because he does it of his own free will. Now a deed is rendered virtuous, praiseworthy and meritorious, chiefly according as it proceeds from the will. Wherefore, although obedience be a duty [*debitum*], if one obey with a prompt will, one’s merit is not for that reason diminished, especially before God, who sees not only the outward deed, but also the inward will.¹⁸⁶

This is a reiteration of his earlier articulation of the same position:

A debt (or duty) does not diminish the *ratio* of merit except inasmuch as it diminishes the *ratio* of the voluntary, since it does carry a certain aspect of necessity. But if the debt is rendered voluntarily, there will be nonetheless as much merit as there is the *ratio* of willingness.

Debitum non diminuit rationem meriti nisi quatenus diminuit rationem voluntarii, secundum quod quamdam necessitatem importat. Sed si voluntarie debitum reddatur, nihilominus ibi erit tantum meriti quantum est ibi de ratione voluntarii.¹⁸⁷

Not only is the perpetual duty of rendering the debt something that must be undertaken in total freedom, but the actual rendering of the debt can be sanctifying to the spouse who gives with a ready will.

Love is the impulse behind any gift, since it moves the will to give: “love has the nature of a first gift, through which all free gifts are given.”¹⁸⁸ If this love is charity, then the gift is made out of a love for God and the desire for the sanctification of one’s neighbor—in this case, one’s spouse. The marital debt is founded on a precedent gift and springs from love whenever spouses engage in it for the sake of marital goods.

The chief difference ultimately in our reaction to Saint Thomas’s characterization of marital intimacy as debt while modern theologians characterize it as a gift, is a sense of compulsion in the first and generous love in the second. Yet it is clear upon closer consideration that compulsion in the beginning is one thing that would prevent this debt from even forming, since any coercion at the time of consent invalidates the marriage contract.

It is true that the notion of debt or duty carries a certain aspect of necessity. Yet Saint Thomas reminds us that if we consider carefully the notion of gift, it contains a similar

¹⁸⁵ *Summa Theologiae*, II-II, Q. 186, Article 8, Corpus.

¹⁸⁶ *Summa Theologiae*, II-II, Q. 104, Article 1, responsum ad 3.

¹⁸⁷ *In III Sent*, Distinction 30, Article 3, responsum ad 4.

¹⁸⁸ *Summa Theologiae*, I, Q. 38, A.2.

quality of permanence. Nor is the sense of permanence or necessity out of place in the marital pact, which is indeed a perpetual commitment or a “total gift of self.”

Conjugal relations for the sake of any of the goods of marriage are meritorious of eternal life in those who have grace—that is, they are sanctifying. While Saint Thomas largely limits his discussion of the marital debt to the language of justice, his theology reveals that justice can form a continuum with charity, for, like charity, justice looks to the good of one’s neighbor as directed to the common good. The marital debt arises from a previous gift of self, as God’s gift of merit presupposes His mercy. The correspondence between law and love continues throughout the married couple’s life together, for as Saint Thomas explains in his *Commentary on Romans*, love itself is a debt that can never be paid: “the debt of fraternal love is paid in such a way that it is always owing . . . because the debt of love is paid once in such a way that it always remains under the debt of a precept.”¹⁸⁹

¹⁸⁹ *Super Epistolam B. Pauli Ad Romanos*, Caput 13, Lectio 2, p. 1047.

3. THE MARITAL ACT AND ORIGINAL SIN

In Aquinas's theology, the conjugal act is inextricably linked with original sin. The effects of original sin on marital intimacy are among the main disadvantages to married life, for it is due to original sin that the body does not obey reason. It is due to original sin that the appetite and passion of concupiscence are corrupted and liable to turn inordinately to corruptible goods. The resulting lack of order and harmony within the human being acquires a certain importance in the marital act, also because it is this act that is the means of transmission of original sin to each new generation.

Aquinas clarifies this in the *Summa Theologiae*, where the objector posits that since lust is no worse than other sins, it has no need of a sacrament of its own. Aquinas answers that "there was a need for a special sacrament as remedy against venereal concupiscence because by this concupiscence, not only the person but also the nature is defiled: secondly by reason of its vehemence whereby it clouds the reason."¹⁹⁰ Thus the sexual act is both infected by original sin, and the means of spreading the infection. This also accounts for the overwhelmingly large number and frequency of sexual sins.

Yet even these considerations do not result in a negative view of sexuality for Saint Thomas. Rather, he sees in the marriage act the remedy to original sin and its effects at both the natural and sacramental levels.

The conjugal act has a soteriological function aimed at combatting the effects of original sin in several ways. Under the law of nature, the object of bringing children into the world within a permanent relationship dignifies the marriage act and furnishes a legitimate outlet to the passions that have been unsettled by original sin.

At the level of virtue, marital intimacy is essentially related to justice, because original sin is formally the loss of original justice. Engaging in conjugal intimacy out of the intention of fidelity or submission to each other is an act of justice, which directly counters the privation of justice that original sin caused in human relations. Where marital intimacy is an act of *mutuum obsequium*, it becomes a reversal of the disordering that resulted from the Fall. It is in these varied and subtle senses that Saint Thomas speaks of marriage, under the aspect of remedy for concupiscence, as working to the good of the spouses and their salvation.¹⁹¹

Yet, while it remains the most private and intimate of activities, the marital act has a relationship to the community that must not be underemphasized. At the biological level, the sexual faculty connects man to the species as a whole, for reproduction remedies the "defect of the entire human race"—death, original sin's most fundamental consequence.¹⁹² Aquinas never forgets the biological needs of the human animal, but he never allows those to define him exhaustively either.

¹⁹⁰ *ST*, III, Q. 65, A. 5.

¹⁹¹ *In Sent.* IV, D. 33, q. 2, a. 1, ad 4.

¹⁹² *In Sent.* IV, D. 31, q. 1, a. 1.

Although Saint Thomas is criticized for overemphasizing the relationship of marital intimacy to the Fall, it is important for us to recognize that marriage will never be served by denying the reality of original sin. Moreover, resistance to this fundamental aspect of human history and psychology will prevent us from seeing the conjugal act as Aquinas sees it, as a potential channel of grace. Marital intimacy that is undertaken humanly—engaging reason and will—stands to approach numerous spiritual goods. Observance of the marital debt orders the spousal relationship in equality; when offered as a remedy to concupiscence, the marital act practices concern for the good of the other rather than selfish seeking of one’s own pleasures. Pursuing the good of *proles* out of obedience to the commandment, or religion, or charity, offers practice in the ordering of man toward God. Seeking this good for the sake of building up the Body of Christ is a work of pure charity which orders the spouses both to God and to the community.

A modern reader might complain that Saint Thomas’ handling of marital intimacy seems entirely calculated to strip it of its mystery and beauty by reducing it to the coarsest level of human exchange. But a careful look at Saint Thomas’s account reveals that “fairest love” was very much at stake. Moreover, it is precisely because of “fairest love” that Aquinas’ account of the marriage debt has something to offer the 21st century marriage. The theme of justice in marital love will be considered further in the next chapter.

CHAPTER III: LOVE IN MARRIAGE

Underlying nearly all critiques or dismissals of Thomas's treatment of marriage is the perception that, while overemphasizing the juridical aspects of the bond, Saint Thomas undervalues the importance of marital love.¹⁹³ This position fails to understand that for Aquinas, not only are justice and love not mutually exclusive, but justice is actually integral and foundational to the deepest forms of love. This chapter will consider the kind of love that exists between the spouses, both at the natural and sacramental levels, and the critical role that justice plays in both marital friendship and marital charity.

It is certainly true that a direct reference to the love between the spouses is rare in Saint Thomas's works. Aquinas spends most of his text discussing the sacrament in predominantly juridical language. Yet even at a superficial level, it is a mistake to believe that love does not enter into Thomas's account of marriage. Even while delineating the legal technicalities of the marriage contract, Aquinas is fully aware of the necessity of love as an essential component of marriage. He argues that giving marital consent under compulsion or duress invalidates the marriage, because the "marriage signifies the union of Christ to the Church, which is made according to the freedom of love."¹⁹⁴ The Church's laws against consanguinity between the spouses "especially observe the reasoning of love (*rationem amoris*)," for they are ordered toward increasing friendship among relatives and strangers.¹⁹⁵ In upholding the sacramental nature of marriage, Aquinas gives an even more direct reference to the love at the foundation of marriage. Against the objection that marriage, which seems rather pleasant than painful, could not be conformed to the Passion of Christ from which all sacraments have their efficacy, Thomas answers, "Although marriage does not conform to the Passion of Christ in suffering, yet it does conform to it in the love by which he suffered for the Church in order that she might be joined to him as bride."¹⁹⁶

But some of the most illuminating arguments about married love actually deal with the friendship that exists naturally in a marriage, which discussion forms the heart of Thomas's analysis of marriage in the *Summa Contra Gentiles*. There, Aquinas defends unity and indissolubility as essential qualities of marriage by relying first on reason, without resorting to Scripture or magisterial documents. The friendship between the spouses occurs again and again as the fundamental reason for these essential qualities of marriage.

¹⁹³ Cf. Belmans, *Le sens objectif de l'agir humain*, p. 322.

¹⁹⁴ *In Sent. IV*, D. 29, art. 3, questiuncula 1, sed contra.

¹⁹⁵ *In IV Sent.*, D. 40, questio unica, art. 4, ad 7.

¹⁹⁶ *In Sent. IV*, D. 26, q. 2, art. 1, ad 3: "quamvis matrimonium non conformet passioni Christi quantum ad poenam, conformat tamen ei quantum ad caritatem per quam pro Ecclesia sibi in sponsam conjungenda passus est"

1. MARRIAGE AS GREATEST FRIENDSHIP

At the heart of this discussion, Thomas famously describes marriage as “the greatest friendship,” claiming,

The greater that friendship is, the more solid and long-lasting will it be. Now, there seems to be the greatest friendship between husband and wife, for they are united not only in the act of fleshly union, which produces a certain gentle association even among beasts, but also in the partnership of the whole range of domestic activity. Consequently, as an indication of this, man must even “leave his father and mother” for the sake of his wife, as is said in Genesis (2:24).¹⁹⁷

This high praise of the marital relationship is so well-known that it is easy to overlook its import. To understand what it means to call marriage the greatest friendship, it is necessary to look at what friendship entailed for Saint Thomas. His most extensive treatment of friendship occurs in his *Commentary on Aristotle’s Nicomachean Ethics*, Books 8 and 9. The fact that friendship forms the culminating theme of the classic work on morals indicates already the perspective from which Thomas understands it—a perspective that sees justice and love as radically linked.

In the *Ethics*, friendship is defined as “a virtue, or like a virtue” because it is a permanent habit of living with and doing good to another. Any friendship is founded on a *communicatio*, a shared good. Friendship in the fullest sense must be founded on the virtue of the members to be perfect and lasting. While some friendships are founded on the goods of usefulness or pleasure, Aquinas recognizes that these friendships are by definition imperfect; they are only analogously called friendships, since they end when these goods cease:

The philosopher does not deny that friendship is a virtue, but affirms that it is *either a virtue or with a virtue*. For we might say that it is a moral virtue about works done in respect of another person, but under a different aspect from justice. For justice is about works done in respect of another person, under the aspect of the legal due, whereas friendship considers the aspect of a friendly and moral duty, or rather that of a gratuitous favor, as the Philosopher explains. Nevertheless it may be admitted that it is not a virtue distinct of itself from the other virtues. For its praiseworthiness and virtuousness are derived merely from its object, in so far, to wit, as it is based on the moral goodness of the virtues. This is evident from the fact that not every friendship is praiseworthy and virtuous, as in the case of friendship based on pleasure or utility. Wherefore friendship for the virtuous is something consequent to virtue rather than a virtue.¹⁹⁸

¹⁹⁷ *Summa Contra Gentiles*, III-II, cap. 123, 6.

¹⁹⁸ *ST*, II-II, Q23, a3

This point is important for understanding Aquinas's claim that marriage is the greatest friendship. The reasons that he gives in the *Summa Contra Gentiles* seem rooted in pleasure (fleshly union) and utility (management of the home). Yet these goods would never suffice to qualify an association as a true friendship at all, let alone *the greatest friendship*. He specifies in his *Commentary on the Ethics*, "That [friendship] between good men, as good, being friendship in the primary and proper sense, while the remaining kinds are called friendship from a likeness to this."¹⁹⁹ It is clear that Saint Thomas has other aspects of marriage in mind which justify applying this superlative to the marital union.

If the essence of friendship is "living with and doing good to another," certainly spouses live more intimately with each other than any other associates. The kind of good that they do for each other, to constitute a true friendship, would have to go beyond the useful goods of providing for each other's bodily needs to the real good of virtue. We have begun to see in the previous chapter how the fulfillment of the marital debt can be an act of virtue.

Nevertheless, what distinguishes the marital friendship from the "gentle association" that is found between any animal mates, or the accomplishment of "the whole range of domestic activity" that could be expected from any capable servants, is a certain equality that exists between husband and wife. That this equality informs Aquinas's understanding of the marital relationship is evident both from his comments on Aristotle's account of friendship, and from the arguments that Aquinas gives for marital unity and indissolubility in the *Summa Contra Gentiles*. Equality, in turn, is the connecting point between friendship and justice.

A. Friendship and Justice

The important relationship between friendship and justice becomes apparent from the beginning of the discussion of friendship in the *Commentary on the Ethics*. Both friendship and justice are civic virtues, which means that each is a habit arising from deliberate choice, and each deals with relation to another. Moreover, friendship and justice both involve a mutual return of goods. But Saint Thomas states that equality and proportion are not found in the same way in justice and friendship, for

It pertains to friendship to use an equality already uniformly established, but it pertains to justice to reduce unequal things to an equality. When equality exists the work of justice is done. For that reason equality is the goal of justice and the starting point of friendship.²⁰⁰

¹⁹⁹ *Commentary on Aristotle's Nicomachean Ethics*. C.I. Litzinger, O.P., trans. Notre Dame, Ind.: Dumb Ox Books, 2005, 1594. Cf. *Summa Theologiae*, II-II, Q. 23, a3.

²⁰⁰ *Commentary on Aristotle's Nicomachean Ethics*, Book VIII, Lecture VII, 1632.

This is true because the close union at the heart of friendship “cannot exist between widely separated persons.”²⁰¹ That justice is ordered to friendship as to a greater good is also apparent from the fact that “legislators have greater zeal for maintaining friendship among citizens than even justice itself which is sometimes omitted, for example, in the infliction of punishment, lest dissension be stirred up.”²⁰² Moreover, “perfect justice preserves and restores friendship.”²⁰³ Thus justice exists for the sake of friendship, both in the polis and in the life of the individual.

The equality achieved by justice underpins Thomas’s arguments against polygamy and divorce in the *Summa Contra Gentiles*:

friendship consists in an equality. So if it is not lawful for the wife to have several husbands, since this is contrary to the certainty as to offspring, it would not be lawful, on the other hand, for a man to have several wives, for the friendship of wife for husband would not be free, but somewhat servile. And this argument is corroborated by experience, for among husbands having plural wives the wives have a status like that of servants.²⁰⁴

Theo Belmans notes how remarkable it is that Thomas’s fundamental argument against polygamy derives not from Saint Paul or from the Gospels, but from the philosophical requirements of friendship.²⁰⁵ Moreover, Aquinas is attentive that this friendship should surpass the “gentle association” of animals to attain the free and equal friendship of virtuous humans.

Saint Thomas argues against polygamy from other angles, but the justice and equality required by friendship remains his essential reason. For example, he quotes Aristotle’s comment that one cannot have a strong friendship with many people, so for a husband who has several wives “the friendship cannot be equal on both sides. So the friendship will not be free, but servile in some way.”²⁰⁶ Polygamy further impedes the freedom of the wife to enjoy the pleasures of conjugal relations at will, which is unfair in comparison to the husband.²⁰⁷

The higher justice required by a true friendship also figures into the arguments Aquinas gives against divorce. He points out that if a man were permitted to abandon his wife once she had lost the “beauty and fecundity” of her youth, “he would damage that woman contrary to natural equity.”²⁰⁸ Equity also dictates that since a wife is in a certain way subject to her husband, she would not have the right to divorce him, so if he had such a right it would be unfair to her and would turn marriage into a slavery instead of “an association of equals.”²⁰⁹

²⁰¹ *Commentary on Aristotle’s Nicomachean Ethics*, 1632.

²⁰² *Commentary on Aristotle’s Nicomachean Ethics*, 1542.

²⁰³ *Commentary on Aristotle’s Nicomachean Ethics*, 1543.

²⁰⁴ *SCG*, III-II, cap. 124, 4.

²⁰⁵ Belmans, *Le sens objectif de l’agir humain*, p. 306.

²⁰⁶ *SCG*, III-II, cap. 124, 5.

²⁰⁷ *SCG*, III-II, cap. 124, 1-2.

²⁰⁸ *SCG*, III-II, cap. 123, 3.

²⁰⁹ *SCG*, III-II, cap. 123, 4.

Friendship both depends upon the equality achieved by justice *and* gives rise to a new kind and level of justice, for “justice is differentiated according to the diversity of friendship. . . justice and injustice increase in proportion as they are done to closer friends.”²¹⁰ Saint Thomas develops this idea later in his description of the special “domestic justice” that exists between husband and wife:

A wife, though she is something belonging to the husband, since he stands related to her as to his own body, as the Apostle declares (Eph. V.28), is nevertheless more distinct from her husband, than a son from his father, or a slave from his master: for she is received into a kind of social life, that of matrimony, wherefore according to the Philosopher (*Ethic.* V.6) there is more scope for justice between husband and wife than between father and son, or master and slave, because, as husband and wife have an immediate relation to the community of the household, as stated in *Polit.* i.2.5, it follows that between them there is domestic justice rather than civic.²¹¹

B. The Shared Good at the Heart of the Greatest Friendship

The reason for the greater justice between husband and wife is their shared life as equals ruling the household. It is worthwhile to reflect a moment on the nature of this *communicatio*, for it is the reason that marriage is the *greatest* of friendships, since a friendship is greater according as it is based on a greater shared good. This fact illuminates the truly shocking character of Saint Thomas’s use of this superlative. He does not, like the Greek philosophers, deem the highest friendship the one that arises from a common search for truth. Even his community of Dominican confreres, which shared academic endeavors and spiritual practices, does not merit the designation “greatest friendship.”

The spouses enjoy a greater friendship than fellow philosophers or religious confreres for a number of reasons, each deriving from the Aristotelian definition of friendship. They live together more closely and “do good to each other” more directly than fellow religious, whose daily activities are directed more towards Christ than towards each other. While pursuers of truth share the highest good of the human intellect, the common pursuits of spouses encompass all the elements of the human being in the most intimate way. Conjugal union is the most intimate of bodily unions; it is a natural union based in man’s genus (and Aquinas’s regard for this aspect further proves that he does not have a manichean attitude towards sex). But there is a “reason for conjugal friendship which belongs to man alone;” marriage “occurs not only for the procreation of children but also for the functions needed in human living.”²¹² Thomas gives examples of spouses sharing the provision of all other bodily needs through the management of the household. But the “functions needed in human living” must also extend to the highest natural good of man, virtue; we have already

²¹⁰ *Commentary on Aristotle’s Nicomachean Ethics*, 1663.

²¹¹ *ST*, II-II, Q. 57, Article 4, Corpus.

²¹² *Commentary on Aristotle’s Nicomachean Ethics*, Book VIII, Lecture 12, 1721.

glimpsed in chapter 2 a few ways that this growth in virtue is possible in marriage. Because man will always be a *rational* animal, the fleshly union engages his rational soul, providing a chance to practice virtue in contradiction to the tugs of concupiscence. Aquinas comments that any “friends become better by working together and loving each other;”²¹³ this natural effect of friendship opens the possibility for the mutual sanctification that is an effect of sacramental marriage.

But does marriage, generically taken, offer any shared intellectual good, by comparison with a Platonic friendship or the friendship of fellow Dominican masters at the Sorbonne? Here again the importance of *educandi prolis* is at work as subtext. Spouses do not only share the entire range of domestic activity to provide for their own physical needs; they share the government of the household for the sake of rearing children to virtuous adulthood. The role of lawgiver is that of *agent* and *perfecter*. Aristotle construes marriage as a microcosm of aristocratic government—rule for the common good, divided among the best individuals. Among nations, the main disadvantage of aristocracy is that these honorable rulers have less power to do good than a single virtuous ruler would.²¹⁴ In the household, this is not a danger, since the spouses have an immediate relation to the community they govern. In fact, spouses are situated to be the consummate lawmakers, for they have the greatest impact on the virtue of the children they raise and the most effective relation to the community they rule.

All of these elements amount to a superlative common good shared by the spouses: they form the least corruptible, most efficient form of government with respect to their household; the community they direct is ordered toward the highest good of its members—virtue—and their relationship to it is disposed to have the greatest effect on those members’ virtue; their role as agents and perfecters of their children’s virtue engages their own intellects, wills, and passions in the practice of prudence.

Moreover, the direction of the home for the education of children in virtue is the shared good of the husband and wife. While a bishop or abbot may hold a greater office in their respective communities as governor and perfecter in spiritual things, bishops and abbots do not share this task in friendship with another. Secular rulers, on the other hand, may share the government of polities, but their effectiveness as legislators is necessarily diminished by their distance from their subjects. The married couple’s direction of the household for the common good of the family forms the foundation for the greatest friendship because it is directed toward the highest goods of the human being in the most intense ways.

It is clear that in calling marriage the greatest friendship, Saint Thomas included vastly more than romantic affection. Beside his vision of an enduring relationship that augments the virtue of both parties and engages every level of their persons, most modern ideas of marital love would pale in comparison. Yet marriage as “the greatest friendship” still only addresses marital love at the natural level. The real conjugal love for Saint Thomas is the love of charity.

²¹³ Commentary on Aristotle’s *Nicomachean Ethics*, Book IX, Lecture 14, 1951.

²¹⁴ Cf. *De Regno*, lib. I, cap. 3.

2. CHARITY IN MARRIAGE

While Thomas's understanding of friendship draws much from Aristotle, he does not conform to Aristotle's account in every way. For example, Aristotle states that the equality that friendship consists in renders a friendship between God and man intrinsically impossible.²¹⁵ Moreover, even among the most virtuous men, a friend would never will his friend the greatest good, that of divinization, because this would mean the loss of his friendship.²¹⁶ Aquinas must address both of these contradictions in his treatise on charity in order to prove that charity is essentially a friendship between man and God, and by charity one necessarily wills the highest good—God—to one's neighbor. These differences will reveal important truths about the nature and ordering of charity.

A. Marriage in the order of charity

In Question 23 of the *Summa Theologiae*, II-II, Aquinas defines charity as a friendship between man and God, which extends to others insofar as one loves them for God's sake, and wishes to share beatitude with them in heaven. The friendship between man and God is made possible by God's sharing of his life and happiness with man, which is the *communicatio* underlying this friendship. However, charity must comprise more than God's gift of the Holy Spirit; in order to be truly an act of the human will, charity depends on a created form empowering the human will to love perfectly. This habitual form, which is also a gift from God, enables the love of friendship between man and God to be mutual and, in a certain way, proportionate. Charity extends to other humans for God's sake,

As, when a man has friendship for a certain person, for his sake he loves all belonging to him, be they children, servants, or connected with him in any way . . . in this way, the friendship of charity extends even to our enemies, whom we love out of charity in relation to God, to Whom the friendship of charity is chiefly directed.²¹⁷

As we saw in part one of this chapter, friendship depends significantly on justice for its very existence, and it generates its own special justice. Since charity is in essence a friendship, charity will require justice as an essential part of it and will be accompanied by justice even at its highest levels. This will be evident from an examination of Thomas's question on the order of charity in the *Summa Theologiae*.

In the article referred to in Chapter 1, "Christian Marriage: Contract or Covenant?" Paul Palmer, S.J. takes Thomas to task for his ranking of spousal love beneath love of one's

²¹⁵ Commentary on Aristotle's *Nicomachean Ethics*, Book VIII, Lecture VII, 1635.

²¹⁶ Commentary on Aristotle's *Nicomachean Ethics*, Book VIII, Lecture VII, 1636.

²¹⁷ *ST*, II-II, Q. 23.

parents in the order of charity.²¹⁸ Saint Thomas has attracted much criticism and engendered much misunderstanding by this question. A cursory reading of Question 26 of the *Secunda Secundae* would lead the reader to believe that Saint Thomas expects charity to conform to the following progression:

- God
- One's own soul
- One's father
- One's mother
- Other benefactors
- Beneficiaries, including children
- One's own body and one's spouse

This order would seem to rank all others, including oneself, ahead of one's spouse. In article 11, Thomas expressly addresses the question of whether one should love one's parents more than one's spouse. He argues in the *sed contra* that a man should love his wife as his own body, his body less than his neighbor, and among neighbors, he should love his parents most. "Therefore, he ought to love his parents more than his wife."²¹⁹

But the text calls for a deeper reading at a number of levels. When Aquinas embarks upon the tricky task of ranking various human relationships, he considers the relationships *per se*, prescinding from the level of virtue or holiness in the individuals:

The reason is that virtue and vice may make such a difference in such like matters, that friendship may be diminished or destroyed, as the Philosopher remarks. Hence Ambrose²²⁰ says: *Good servants should be preferred to wicked children.*²²¹

Since the relationships are considered strictly speaking, he ranks them according as they relate to the two principles of charity: some people should be loved more because of their closeness to charity's *object*, God; others should be loved more because of their closeness to charity's *subject*, the human lover.

A person can be "close" to God through greater holiness, and this is the kind of goodness that will determine the order of charity in heaven. But a person can also deserve a higher place by resembling God in any character of good; for example, as a father or a benefactor has acted as "a principle of good to the man he has benefited, he has the character of a more excellent good."²²² The kind of closeness that relates a person to the subject of charity is the more familiar kind: the closeness of blood relatives, of friends and spouses, and of beneficiaries.

The two principles also give rise to two kinds of increase in love. The individuals closer to God should be willed a greater good. Since charity wills the same good to all—the

²¹⁸ Palmer, Paul F., S.J. "Christian Marriage: Contract or Covenant?" *Theological Studies* 33 (1972), pp. 643-644.

²¹⁹ *Summa Theologiae*, II-II, Q. 26, Art. 11.

²²⁰ The editor corrects the reference to Origen, *Hom. ii in Cant.*

²²¹ *Summa Theologiae*, II-II, Q. 26, Art. 10.

²²² *Summa Theologiae*, II-II, Q. 26, Art. 12.

enjoyment of beatitude—loving those “more” who possess an added excellence means willing them the deeper participation of Divine Beatitude that they deserve based on that excellence.²²³ Those with a “closer connection” to the lover will be loved with greater intensity of affection, for “the intensity of love is measured with regard to the man who loves, and accordingly man loves those who are more closely united to him, with more intense affection as to the good he wishes for them.”²²⁴

After explaining the greater honor due to parents, Aquinas cites four reasons that love is more intense for one’s children than one’s parents. Each of these reasons derives from considering one’s child as part of himself in some way. Similarly, beneficiaries elicit more intense love than benefactors because we love our own work, as a sign of our being, living, and acting; we love to see evidence of our own virtue; we prefer doing something to passively receiving benefits; and lastly, giving is more difficult than receiving, and we love better what has cost us more dearly.

These four descriptions of the relation of benefactor to beneficiary reach into the ontological foundations of love: we love our work because it is a sign to us of our *being*; our virtue illustrates to us our *goodness*; benefaction is *action*; lastly, the aspect of difficulty represents the *power* to strive for a prize that is so central to the human destiny. The parent-child relationship is the quintessential example of a relationship for the good of the one ruled; as such, children are the pre-eminent beneficiaries. Doing good (rather than having it done to one) is so much more appealing to the affections because its characteristics remind the giver of his goodness, his action, and his power. In short, by active giving a man appears more like God—indeed, in a way he becomes more like Him. Yet even this capacity to imitate and resemble Him is His gift, right down to the basic gift of one’s being; to forget this is to yield to the original temptation to desire to “become like gods.”

The latent danger in the more intense, spontaneous love that arises for those closer to the lover is that it could easily lose the character of charity. This possibility explains why Saint Thomas’ emphasis in the order of love of neighbor is on the more dutiful, less intuitive love that is owed to benefactors and parents. Rather than representing signs of our own power, benefactors are examples of our relation to a principle, reminders of our dependence, signs of our existential condition: “What do you have that you did not receive?” (1 Corinthians 4:7). As such they direct man’s mind to God, the essential object of charity. In his ranking of benefactors and principles above more intimate loves, Aquinas emphasizes that charity becomes idolatry as soon as it takes its gaze from the principle.

Yet he does not neglect the role of those closer to the subject in the cultivation of charity. In Question 24 on the subject of charity, he states that “charity increases by being intensified in its subject.”²²⁵ The only way that a form like charity, whose being consists in inhering in its subject, can grow is if “God makes it to have a greater hold on the soul.”²²⁶ How and when God increases the intensity of charity is a mystery of grace, but acts of

²²³ *Summa Theologiae*, II-II, Q. 25, Art. 7.

²²⁴ *Summa Theologiae*, II-II, Q. 26, Art. 7.

²²⁵ *Summa Theologiae*, II-II, Q. 24, Art. 5.

²²⁶ *Summa Theologiae*, II-II, Q. 24, Art. 5, ad 3.

charity may lead to this increase by disposing a person to act more readily out of love. Thus the importance of man's closest connections can be seen as regards his progress in charity:

it does not follow that what is more visible is more loveable, but that we meet with it before others . . . for since our neighbor is more visible to us, he is the first loveable object we meet with, because 'the soul learns, from those things it knows, to love what it knows not,' as Gregory says.²²⁷

If loving nobler neighbors teaches man to direct his heart toward the good, loving his closest neighbors teaches him to love fervently. Family members are the first 'loveable objects we meet with;' they afford the first occasions of practicing charity, and they continued to provide the most frequent opportunities to strengthen this virtue. When the force of this natural affection combines with the supernatural impulse of the Holy Spirit in willing eternal happiness of those closest, natural love is perfected and brought to its highest consummation. Meanwhile, supernatural love is strengthened by this natural intensity. This is the dynamic we have already glimpsed in the interaction of natural virtue and charity in the marital act.

Of all close relations, the spousal relation is the closest. The sources of this intimacy were discussed as part of the greatest natural friendship. In fact, Aquinas's explanation of domestic justice shows that the wife is closer than any other neighbor: since "marriage is a certain unity, just as a man is the same thing as himself,"²²⁸ she is closer to the man than anyone but himself.

Accordingly, Saint Thomas specifies that, while a man loves his parents more "as his principles and considered as a more exalted good,"

But on the part of the union, the wife ought to be loved more, because she is united with her husband as one flesh . . . Consequently a man loves his wife more intensely but his parents with greater reverence.²²⁹

Saint Thomas's ranking of parents above wife does not mean that in a famine one should feed one's parents at the expense of one's wife and children; nor does it mean that a man must take his parents' part rather than his wife's in a disagreement. These scenarios contradict the Scripture that Saint Thomas quotes so often: *Therefore a man must leave father and mother and cleave to his wife* (Gen. 2:24).

Moreover, his identification of the wife with the man's body indicates certain facets of her role in this order of charity. Aquinas actually devotes considerable space to defining the kind of charity that one should have for one's body. The body is to be loved as an "instrument of justice unto God," to be used for God's service.²³⁰ Obviously not everything that Saint Thomas says about the body can be applied to the wife: she is not an irrational instrument, nor is she destined to enjoy beatitude only by overflow from her husband.

²²⁷ *Summa Theologiae*, II-II, Q. 26, Art. 2, ad.1.

²²⁸ *In IV Sent.*, Distinction 41, art. 1, questiuicula 1, ad 1: "matrimonium, quod est unitas quaedam; sicut homo sibi ipsi est idem. . . ."

²²⁹ *Summa Theologiae*, II-II, Q. 26, Art. 11.

²³⁰ *Summa Theologiae*, II-II, Q. 25, Art. 5.

Rather, the metaphor serves to underscore the radical unity of the married couple. The wife, related to her husband as his body, acts with him as united principle in the exercise of charity. The ranking of the parent above the spouse in the order of charity is actually a testament to the unity of the spouses: as a united principle the two may sacrifice together for the good of their neighbors.

Saint Thomas relegates the wife to the lowest place in the order of charity precisely because the union of the spouses is so strong; because love is intense between them, it needs to be trained to where it is less intense, more owed. Meanwhile, the intensity of affection between the spouses acts as a school for charity. This function of marital love represents the supernatural fulfillment of Aristotle's conclusion that a man needs virtuous friends in order to practice and increase his own virtue. It also corresponds to the modern understanding of marriage's role in the mutual sanctification of the couple.

Those who have the closest bonds excite the greatest affection, but those above us remind us of the justice that underlies charity: "the love of the beneficiary for the benefactor is more of duty . . . On the other hand, the love of the benefactor for the beneficiary is more spontaneous."²³¹ But in fact, the notion of debt is never far away from any of the varieties of charity that Saint Thomas ascribes to our neighbors. For example, as regards children and parents, "The debt due to a principle is submission of respect and honor, whereas that [debt] due to the effect is one of influence and care."²³² Even those more spontaneous and intimate loves are sketched in terms of obligation: "in this life, a man, by the inclination of charity, loves more those who are more closely united to him, for he is under a greater obligation to bestow on them the effect of charity."²³³

Debts are not outside the range of charity. Our image of spontaneous charity, overflowing from a loving heart must not neglect order, duty, debt, and justice. This is precisely the reason for ranking the parents ahead of the spouse in the order of charity: the deliberate, willed love of charity must be trained to aspire to the greater, rational good. The fundamental reason for willing those closer to God a greater good is that "it belongs to charity to wish God's justice to be maintained."²³⁴ Matthew Levering draws out the dependence of charity on justice in his article, "Juridical Language in Soteriology: Aquinas' Approach":

the "justice" that God wills for rational creatures is not an impersonal or dryly legalistic state of "being-made-righteous." Rather, God wills that rational creatures intimately share in his justice by sharing perfectly in his divine will: in other words, by embodying not merely human justice, but *divine* charity. The theological virtue of charity, for Aquinas, is friendship with God (for God's own sake), based on the supernatural fellowship or communication with him that he gives us by the movement of the Holy Spirit. Without the moral virtue of justice, a person could not possess such friendship. If we be

²³¹ *Summa Theologiae*, II-II, Q. 26, Art. 12, ad 2.

²³² *Summa Theologiae*, II-II, Q. 26, Art. 9, ad 1.

²³³ *Summa Theologiae*, II-II, Q. 26, Art. 12.

²³⁴ *Summa Theologiae*, II-II, Q. 26, Art. 7.

have unjustly toward our neighbor (by lying, stealing, gossiping, etc.), then we cannot pretend to have charity for God. . . injustice strikes at the root of all communion.²³⁵

Moreover, some of the most compelling evidence of the intertwining of charity and justice is that a failure in charity does not in itself destroy charity's presence in the soul, but a failure of justice—a transgression of the Decalogue—would drive charity out of the soul, “since whatever is contrary to His commandments is manifestly contrary to charity, and therefore by its very nature is capable of destroying charity.”²³⁶

Paul Palmer's complaint about the ranking of the spouse in the order of charity arises from a deeper misunderstanding of the nature of charity. Palmer pits *Gaudium et Spes* against Aquinas to draw a contrast between marital love and charity:

Marital love is not Christian charity (*caritas*), although the law of charity demands that the love of husband and wife be marital or conjugal. Nor is marital love to be confused with love of one's neighbor, and even of one's enemy. Married love is as exclusive as charity is inclusive, for the simple reason that marital love is covenant love.²³⁷

In contrasting charity's “inclusivity” with marriage's exclusivity, Palmer fails to grasp the very points Aquinas tried to convey in the order of charity. Charity is a deliberate, rational love; it is an enduring love which derives its longevity from the habit of the will and the mind's direction of this love to God above all, and other things in a certain relation to him. In directing the love of charity where the affections do *not* tend, Aquinas means to teach us that loving God involves an “exclusivity” surpassing any human affection. Indeed, Palmer should have recognized that the love of God is the archetypal covenant love.

The danger of the modern tendency to focus on the love of the spouses is the risk of founding the institution of marriage on an emotion, which, by its very definition, will change. Yet does accepting this fact mean that Saint Thomas does indeed discount the love between the spouses, as his 20th-century critics complain?

To answer this criticism, we will consider the discovery of Frère Marie Leblanc, OSB, whose article “Amour et procréation dans la théologie de saint Thomas,” traces a previously unremarked development in Thomas's thought.²³⁸

B. The union of the spouses

Frère Leblanc confines his study to only a few of Saint Thomas's works (the *Sentences Commentary*, *Summa Contra Gentiles*, *Summa Theologiae*, *In Mattheum*, *In*

²³⁵ Matthew Levering, “Juridical Language in Soteriology: Aquinas' Approach,” *Angelicum* 80/2 (2003), p. 321.

²³⁶ *Summa Theologiae*, II-II, Q. 24, Art. 12.

²³⁷ Palmer, page 644.

²³⁸ M. Leblanc. “Amour et procréation dans la théologie de saint Thomas,” *Revue Thomiste*, XCII, (1992) 433-459.

Ephes. and *In I Cor.*) and to only the themes of love and procreation, not all of marriage. He argues that, while Saint Thomas maintained the primacy of procreation as an end of marriage throughout his career, his understanding of marital love underwent a subtle evolution.

Through what Frère Leblanc terms “les méandres” of Aquinas’s earliest work, he defines marriage, as we have seen in chapter 1, as a *conjunctio*:

<p>Since by marriage two people are ordered to one single generation and education of children, and therefore to one single domestic life, it is clear that in marriage there is a <i>conjunctio</i>, because of which “husband” and “wife” are said; and such a <i>conjunctio</i> by the fact that it is ordained to some one thing, is marriage. However, the <i>conjunctio</i> of bodies or of souls is consequent upon marriage.</p>	<p>cum per matrimonium ordinentur aliqui ad unam generationem et educationem prolis, et iterum ad unam vitam domesticam; constat quod in matrimonio est aliqua conjunctio, secundum quam dicitur maritus et uxor; et talis conjunctio ex hoc quod ordinatur ad aliquod unum, est matrimonium; conjunctio autem corporum vel animorum ad matrimonium consequitur.²³⁹</p>
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The union or *conjunctio* derives from marriage’s ordering to procreation. Leblanc notes that “dans cette *conjunctio* qui est d’ordre à la fois spirituel et matériel apparaît un élément affectif; saint Thomas parle d’un *uxorius affectus*, mais comme en passant et à propos d’une question accidentelle.”²⁴⁰ While Leblanc is careful to point out that the secondary end of marriage is no less essential for being secondary, nevertheless, he detects a certain “maladresse” or “hésitation de pensée” in Aquinas’s attempts in the *Sentences Commentary* to explain the relation of the two ends to each other, and to reconcile these ends with Augustine’s three goods: “Le lien affectif des époux entre eux, bien que clairement affirmé, paraît en même temps partiellement occulté.”²⁴¹

The *Summa Contra Gentiles* brings a certain precision and developing of the themes found in the *Sentences Commentary*. We have seen Saint Thomas’s emphasis there on the friendship and equality of the spouses. Leblanc notes another shift in the *Summa Contra Gentiles*:

Il laisse de côté le langage de la finalité première et des finalités secondes. L’ordination du mariage à la procréation et le lien d’amitié intense entre les époux sont tous deux nettement affirmés; ils sont l’un et l’autre des biens de mariage, mais ne sont pas dits deux finalités. Autrement dit, la relation de l’un à l’autre n’est pas clarifiée.²⁴²

Leblanc credits this “prise de conscience” to Aquinas’s study of friendship in the *Commentary on the Nicomachean Ethics*, as well as his meditations on Genesis, the Gospel

²³⁹ *In Sent. IV*, Distinctio 27, question 1, article 1, questiuncula 1.

²⁴⁰ Leblanc, page 437.

²⁴¹ Leblanc, page 444.

²⁴² Leblanc, 448.

of Matthew, and the epistles of Saint Paul. While in his Scriptural commentaries Saint Thomas continues to attribute the same purposes to the marital act, he no longer uses the language of primary and secondary *end* in marriage. Meanwhile, the mutual love of the spouses comes to the foreground through his study of Scripture.

In the commentary on Matthew 19:4, Aquinas gives two reasons that God willed “a multitude of men should arise from a man and a woman”: “to signify that the form of matrimony was from God. Likewise, so that they would love one another more.”²⁴³

In the Ephesians commentary, Saint Thomas details three aspects of the *conjunctio*, following a different order of emphasis than he has used before. The spouses are united first by the *affectus dilectionis* between them; secondly by their shared life (*conversatio*); and thirdly by their carnal union. Leblanc points out that this explanation represents a change for Saint Thomas from his earlier treatment of the marital union. In the *Commentary on the Sentences*, the physical union of the couple for the sake of procreation is given as the chief reason for the *conjunctio*, and the shared life of the couple exists in service to the *bonum prolis*. But since the text of Ephesians 5 takes as its principle marriage’s representation of Christ’s love for the Church, the love between the spouses is ranked first here, and the physical union last.

The question we have just discussed on the order of charity in the *Summa Theologiae* offers a similar subtle change in nuance. Saint Thomas closes the article by specifying that in loving one’s wife *as* one’s own body, the comparison does not indicate “equality of love”—ranking the wife as equal to the body—but rather “motive of love,” “for the principal reason why a man loves his wife is her being united to him in the flesh.”²⁴⁴ Leblanc draws the distinction between Aquinas’s use of this metaphor as compared with his analysis in the *Commentary on the Sentences*:

Dans le commentaire des *Sentences*, *unum corpus* se rapporte à “l’acte de la génération en vue duquel on prend femme (*uxor in actum generationis assumitur*) » [*In Sent. III*, d 29, a 7, ad 3] ; c’est pourquoi l’amour pour l’épouse est amour de bienveillance, du même degré que l’amour pour les enfants. Dans la *Somme* le *una caro* se rapporte à la *conjunctio* même de l’homme et de la femme sans que référence soit faite à l’acte de génération ; l’intensité de l’amour de l’homme pour son épouse vient de cette union elle-même.²⁴⁵

But the subtle evolution toward a greater emphasis on the bond of love between the spouses reaches its most explicit expression later in the *Summa Theologiae*. Since the portion on marriage in the Supplement was constructed by Aquinas’s students from his *Commentary on the Sentences* texts, we cannot know how Saint Thomas might have altered his approach to marriage. But Leblanc has discovered an exciting modification in the portion of the *Summa* that Aquinas did complete, his discussion of the marriage of Joseph and Mary in the *Tertia Pars*.

²⁴³ *In Mattheum*, cap. 19, 1550.

²⁴⁴ *Summa Theologiae*, II-II, Q. 26, Art. 11, ad 3.

²⁴⁵ Leblanc, page 454.

To begin with, Leblanc underscores that everything essential to marriage remains unchanged in Thomas's thought: its role as an office of nature, sacramental sign of Christ and the Church, and remedy for concupiscence. But in what touches the bond between the spouses, something new emerges. Rather than speaking in terms of primary and secondary ends of marriage, Saint Thomas speaks of primary and secondary *perfections*—the perfections that arise from the form and from the end of a thing:

Now perfection of anything is twofold; first, and second. The first perfection of a thing consists in its very form, from which it receives its species; while the second perfection of a thing consists in its operation by which in some way a thing attains its end. Now the form of matrimony consists in a certain inseparable union of souls, by which husband and wife are pledged by a bond of mutual affection that cannot be sundered. And the end of matrimony is the begetting and upbringing of children: the first of which is attained by conjugal intercourse; the second by the other duties of husband and wife, by which they help one another in rearing their offspring.²⁴⁶

This distinction allows Saint Thomas to explain how the marriage of Mary and Joseph was a true marriage, despite the absence of physical union.

The new categories of first and second perfection preserve the primacy of procreation as an end of marriage, but also emphasize the bond of friendship as essential to what marriage is. Leblanc explains Aquinas's abandonment of the terms primary and secondary end:

Si [cette catégorie philosophique] peut se révéler encore apte à désigner le don de la vie à une descendance comme fin première, elle est désormais inapte à caractériser le lien d'amitié entre les époux, ce lien, vu son importance, ne paraît plus pouvoir être caractérisé comme "second"; de plus, il n'est pas à proprement parler une "fin" du mariage mais la réalité elle-même constitutive du mariage.²⁴⁷

In the *Commentary on the Sentences*, Aquinas defined marriage as a *conjunctio* of man and woman, ordered to the *bonum proles* and a shared domestic life; the *conjunctio corporum vel animorum* was a consequence of this original union.²⁴⁸ But in the *Summa Theologiae*, this *conjunctio animorum* is deemed the essence of marriage, because it is the perfection of the form of marriage.

This vision of marriage as a union of souls brings an ordering to the variety of expressions Saint Thomas used earlier for the secondary end: *fides*, *mutuum obsequium*, *communicatio operum*, etc. Now the *fides* of the couple is seen as deriving from the form of marriage, while the mutual service is part of the perfection of the end. Moreover, it gives the union of hearts and the aim of procreation what Leblanc calls "une priorité réciproque,

²⁴⁶ *Summa Theologiae*, III, Q. 29, Art. 2.

²⁴⁷ Leblanc, page 455.

²⁴⁸ *In Sent. IV*, Dist 27, q. 1, art. 1, questiuncula 1.

tout en établissant entre eux un lien structurel.”²⁴⁹ This reciprocal priority makes sense of the Genesis account of the union of man and woman as helpmeets prior to the command to increase and multiply. Saint Thomas adumbrated this relationship in his commentary on Matthew 19: 4 (1550). Although the designation of the two ends of marriage always precluded reducing marital love to the level of a means to the end of procreation, the terms formal and final perfection make their relationship and interdependence explicit and metaphysically grounded.

In this gentle evolution, Frère Leblanc suggests, Saint Thomas anticipated the shift in language that occurred in Vatican II and *Humanae Vitae*. Yet a careful adherence to his philosophical terms could prevent the misinterpretations of doctrine that have ensued: the tendency to equate the two ends of marriage such that the two seem to be in competition with each other. Leblanc points out that the inevitable result of speaking of primary and secondary ends is the weakening of the secondary end, which is undoubtedly the reason for the current resistance to this terminology. Moreover, ranking both ends as principal and equal risks what Leblanc calls “une destructuration du mariage, car une réalité ne peut avoir, métaphysiquement parlant, qu’une fin principale.”

Underlying Saint Thomas’s treatment of marital love is the assumption that marriage consists in a radical unity between husband and wife. Leblanc’s research has shown that Saint Thomas refined his expression of this idea throughout the course of his career. The language of first and second act, or first and second perfection, prevents two ends from being pitted against each other and clarifies their relationship. Union is not an end that marriage accomplishes, it is the reality that marriage is. The procreation and education of children is what marriage does because of what it is.

The radical unity of the spouses is the source of Aquinas’s ranking of the wife beneath the parents in the order of charity. This unity means that the husband loves his wife with an intensity surpassing all other relationships. But it also means that the husband counts on his wife to be joined with him as closely as his own body in serving others, and in paying honor to those above him.

This unity also provides the grounds for calling marriage at the natural level “the greatest friendship.” The spouses are united not only in sexual intercourse but in all the activities that pertain to human living and virtue. Their shared service to the home and the rearing of children unites all their faculties in the common pursuit of the highest natural human goods.

Yet in each of these examples we have seen how the intimate bond of the spouses with each other is ultimately ordered *ad extra*, requiring a united service to the household, to the children, to more distant neighbors in the Church and in the polis. This is the interchange that accounts for marriage’s place in the law and among the sacraments. The intimate community that the spouses form between themselves is for the sake of the larger community: the world and the Body of Christ. These themes will be addressed in the next chapter.

²⁴⁹Leblanc, page 456.

CHAPTER IV: MARRIAGE AND LAW

The fundamental issue for modern readers of Aquinas on marriage is whether the juridical has any place in a theological treatment of this institution. We have seen that the legal and moral due is not only essential to marriage but indispensable precisely to conjugal love.

Yet the integral relationship that law itself has to marriage remains to be addressed. One difficulty in understanding the importance and beauty of law for Saint Thomas lies in the modern tendency to associate law with restrictiveness, oppression, and domination. In our study of the conjugal act, we noted how Aquinas's description of handing over one's body to the power of another evokes the notion of slavery. But the problem lies deeper. To modern sensibilities, the entire realm of law evokes this comparison. Too often law is viewed as shackles and penalties. Even when law is seen as a means to sculpting a virtuous populace, we consider these virtues to be attainable only through legal constraints and punishment. Let us look briefly at what slavery actually entails for Saint Thomas, in order to show how different his vision of law is from ours.

1. SLAVERY IN CONTRAST WITH LAW

The definition of a slave, according to Saint Thomas, is a person who is used as an instrument by another—who does not act out of his own rational will but the upon the will of another.²⁵⁰ Aquinas also describes the slave as a “living tool; the slave’s actions are all for the master’s good, not for his own benefit or for a shared good.”²⁵¹

Interestingly, references to slavery arise several times in Thomas’s treatment of marriage. For example, he argues that parental consent is not necessary for a marriage to be contracted since

a girl is not in the power of her father like a slave, so that she does not have power over her own body, but like a daughter to be educated; and thus according to the fact that she is free, she can give herself into the power of another without the consent of her father, as also some man or woman may enter religious life without the consent of parents, since the person is free.

puella non est in potestate patris quasi ancilla, ut sui corporis potestatem non habeat, sed quasi filia ad educandum; et ideo secundum hoc quod libera est, potest se in potestatem alterius absque consensu patris dare, sicut etiam potest aliquis vel aliqua intrare religionem absque consensu parentum, cum sit persona libera.²⁵²

The comparison rests on the prior, though unstated, premise that marriage results from the free consent of both parties, and to the extent that either consent is not free, the marriage is invalidated.

In the simile quoted in chapter 2, Aquinas compares marriage, and religious life, to a state of slavery voluntarily assumed:

Both states, namely religious life and marriage, contain something similar, namely a perpetual obligation; and therefore either state is something like servitude. But the obligation in marriage is not to the work of perfection, but to rendering the bodily debt.

Uterque enim status, scilicet religionis et matrimonii, aliquid simile habet, scilicet perpetuam obligationem; et ideo uterque status est quasi alicuius servitutis. Sed obligatio matrimonii non est ad opus perfectionis, sed ad reddendum carnale debitum.²⁵³

The physical aspect of marriage—transferring power over one’s body to another—brings about several references to slavery in relation to the conjugal act. For example, in inquiring whether the marital debt is binding upon spouses as though commanded by a

²⁵⁰ *Summa Theologiae*, II-II, Q. 19, (On servile fear). See also *In Sent. IV*, Dist. 36, question 1, art. 4, corpus.

²⁵¹ *Commentary on the Nicomachean Ethics*, Book 8, Lecture 10, 1699.

²⁵² *In Sent. IV*, Dist 28, Q. 1, art. 3, ad 1.

²⁵³ *De Perfectione Spiritualis Vitae*, Capitulum 25.

precept, Saint Thomas responds categorically, “as a slave is in the power of his lord, so also is one spouse in the power of the other.”²⁵⁴ This in turn is the reason that a state of servitude that is unknown to one’s spouse is an impediment to marriage, since the commands of the slave’s master might prevent his rendering of the marital debt. In this situation, two people have a claim over the slave’s body, his master and his spouse.²⁵⁵

Furthermore, the conjugal act itself is compared to slavery. In one of Aquinas’s more startling statements, he comments on I Corinthians that marriage is not good for a man because, “as to the body . . . a man subjects himself to a woman by marriage and makes himself a slave out of a freedman. This is the most bitter of all servitudes.”²⁵⁶

After calling marriage the greatest friendship, in part because of conjugal intimacy, the condemnation of the conjugal act as the “bitterest of all servitudes” comes as quite a shock. But here the definition of slavery can make sense of this strong statement. Earlier in the same passage, Saint Thomas has quoted Augustine’s comment that “Nothing so casts a man down from the citadel of his power as that contact of bodies without which a wife cannot be had,”—referring to the eclipse of reason that occurs in the marital act. It is the same quotation he uses later in the *Summa Theologiae*, to address whether any venereal act can be without sin. There, Aquinas qualifies that conjugal intimacy does not prevent virtue, just the highest perfection of virtue. The I Corinthians commentary focuses on the same distinction, for it is a text justifying Saint Paul’s statement that it is better to remain continent than to marry, but it is better to marry than to burn. To clarify this, Saint Thomas says later in the commentary that “it is good to marry, although it is a lesser good. But to burn is an evil. Therefore it is better . . . that a man should have the lesser good than incur the evil of incontinence.”²⁵⁷

But in calling the marital act the most bitter of slaveries, Aquinas’s seemingly harsh words refer to the fact that during the act a man’s lower powers do not obey reason; he is being governed by his lowest faculties. It is bitterer than any other slavery because even in ordinary human bondage a man is at least subject to another rational being. In this slavery, a man’s rational will is not supplanted by the rational will of another, but by his own subrational faculties.

Yet it is the contrast that Saint Thomas draws between marriage and slavery that reveals the most about marriage and its relation to law. In the passages noted in chapter 3, Saint Thomas argues that marriage must be indissoluble and monogamous, or else the wife risks becoming a slave rather than a partner.²⁵⁸ This occurs because the husband of many women does not have time to form equal friendships with each. A similar point is made in the *Commentary on the Sentences*, where Aquinas says that the patriarchs’ slave-girls were like wives as far as the primary end of matrimony went, but not the secondary end, for “the

²⁵⁴ *In Sent. IV*, dist 32, Q. 1, Art. 1, sed contra: “sicut servus est in potestate domini sui, ita et unus conjugum in potestate alterius.”

²⁵⁵ *In Sent. IV*, dist 36, articula 1-3.

²⁵⁶ *In Cor I*, Caput 7, Lectio 1, 314.

²⁵⁷ *In Cor I*, Caput 7, Lectio 1, 335.

²⁵⁸ Cf. *SCG III-II*, 124, paragraphs 4 and 5.

condition of servitude is opposed [to union], since they could not be at the same time partner and slave-girl.”²⁵⁹

The most illuminating of these arguments occurs in the *Summa Contra Gentiles*:

Again it seems obviously inappropriate for a woman to be able to put away her husband, because a wife is naturally subject to her husband as governor, and it is not within the power of a person subject to another to depart from his rule. So, it would be against the natural order if a wife were able to abandon her husband. Therefore, if a husband were permitted to abandon his wife, the society of husband and wife would not be an association of equals, but instead, a sort of slavery on the part of the wife.²⁶⁰

In this text, Saint Thomas shows that the relationship of husband and wife does indeed involve subjection and government, yet it remains an association of equals. This distinction brings into relief the necessity of government among free equal persons, which is one of the assumptions behind Aquinas’s whole philosophy of law. Though the wife is “subject to her husband as governor,” this subjection does not entail domination or oppression. Indeed, as was quoted above, the condition of servitude is opposed to partnership. Saint Thomas conveys the same principle in the *Commentary on the Sentences* where he states that “the subjection of slavery is opposed to freedom, for slavery is when someone rules for his own utility, using those subject to him.”²⁶¹

If modern sensibilities tend to consider the juridical as restrictive and coercive, they misunderstand the notions of law and freedom according to Saint Thomas. Elsewhere in the *Summa Contra Gentiles*, he distinguishes between the kind of rule that amounts to slavery, and the rule of free men:

One who holds dominion over his own acts is free in his activity, “for the free man is he who acts for his own sake.” But one who is acted upon by another, under necessity, is subject to slavery. So, every other creature is naturally subject to slavery; only the intellectual creature is by nature free. Now under every sort of government, provision is made for free men for their own sakes, but for slaves in such a way that they may be at the disposal of free men. And so, through divine providence provision is made for intellectual creatures on their own account, but for the remaining creatures for the sake of the intellectual ones.²⁶²

Slavery is differentiated from the subjection of free citizens in two ways: first, a slave is ruled for his master’s good, while a citizen is ruled for the common good—a good that includes his own personal good; and secondly, a slave works the will of another, while a free man acts from his own reason and will. The root of human freedom in the reason of

²⁵⁹ *In IV Sent*, Distinction 33, question 1, article 3, questiuncula 3, ad 2: “Erant enim uxores quantum ad principalem et primum finem matrimonii, sed non quantum ad illam conjunctionem quae respicit secundarium finem, cui conditio servitutis opponitur, cum non possit simul esse socia et ancilla.”

²⁶⁰ *SCG*, III, 123. 4.

²⁶¹ *In Sent. IV*, DiSt 24, Q.1, art. 1, qc. 1, ad 1: “subiectio servitutis repugnat libertati; quae servitus est quando aliquis dominatur ad sui utilitatem subjectis utens.”

²⁶² *SCG*, III:II, cap. 112.4.

the free man is evident in the words of Christ, “I do not call you slaves but friends, for a slave does not know what his master is doing” (John 15:15). This rational self-governance of the governed free man which consists in ‘knowledge of what the Master is doing’ occurs precisely through law.

2. LAW IS TRUE FREEDOM

Modern critics of Saint Thomas often reject his juridical approach because their concept of law entails something constricting and prohibitive. Palmer, for example, emphasizes the origin of the word “contract” in contrast with the idea of marriage covenant: “Contract in its verbal form (*contrahere*) means to draw together, to restrict, to diminish, to limit, for example, the terms of the contractual agreement.”²⁶³ Indeed, in his discussion of human law, Saint Thomas himself explains law as that which restricts and coerces—the *wicked*.²⁶⁴ Yet while human law is the limit of most modern readers’ conception of law, to Aquinas it represented the palest, weakest participation in the true reality of law, and that law most likely to fall short of law’s true meaning.

According to Thomas’s famous definition, law is a dictate of reason about action to be taken for the common good, formulated by a competent authority and promulgated to the people bound by it.²⁶⁵ This definition comprises the four causes of law: the efficient cause is the legislator; the end of law is the common good of the community ruled; law is formally a dictate of practical reason, and law acquires material existence when it is promulgated to the populace. Yet this definition applies so well to human civil law that it is easy to forget the wide range of reality that it encompasses.

Law for Saint Thomas was first and foremost the plan for the universe in the mind of God—the Eternal Law. All other laws, to the extent that they are laws, are participations of the original law that is God’s providence. By natural law, human beings are given an ennobling participation in the Eternal Law, because in it we are given the ability to discern for ourselves the laws written into creation:

Now among all others, the rational creature is subject to Divine providence in the most excellent way, insofar as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called natural law...the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of Divine light.²⁶⁶

Other creatures participate in the Eternal Law only passively by being ruled by it as they are moved according to the natures that God gave them. Only the rational creature has the privilege of active participation by understanding and choosing to act in accord with providence. Natural law is our chance to govern ourselves rationally according to God’s plan, to be co-operators with the divine legislator.

²⁶³ Paul Palmer, SJ. “Christian Marriage: Contract or Covenant,” page 619.

²⁶⁴ *Summa Theologiae*, I-II, Q. 96, art. 5.

²⁶⁵ *Summa Theologiae*, I-II, Q. 90, art. 1-4.

²⁶⁶ *Summa Theologiae*, I-II, Q. 91, Art 2.

Law is such a *unifying* and *elevating* concept for Saint Thomas that he sums up the Paschal Mystery, the Gospel, and the sacraments under the title the *New Law*. The life of grace is a divine law because it makes known to man what he should do and it is ordered to the highest common good of the human race, eternal happiness. Moreover, the new dispensation is the most perfect of the laws that man participates in, because it includes the grace that makes its fulfillment possible.

In keeping with the words of Christ in John 15:15, law raises man from the level of slaves to the level of friends: "Every law aims at establishing friendship, either between man and man, or between man and God."²⁶⁷ As man's opportunity to understand and cooperate in God's plan for the economy of salvation, it is arguable that law makes man more godlike than anything else. By obeying and formulating laws, man imitates and assists the divine work of governing the universe, and propels himself, by his own actions, toward his own good.

A. Aquinas's Account of Marriage Seen from a Juridical Perspective

Up to this point we have looked primarily at contemporary scholars who criticize Saint Thomas's treatment of marriage for being too juridical. We have seen that, under the conscious or unconscious influence of modern philosophy, these attitudes arise from underrating the importance that law holds in Aquinas's thought.

However, there is another area of recent research which appreciates Saint Thomas's juridical theory as protecting and upholding the peace of the community and the rights of the individual. Since marriage represents such an important institution to communities as well as individuals, these new natural law theorists invariably find themselves addressing conjugal issues. The field of natural law theory is especially vast and would take us somewhat far afield from our topic if we were to explore it with the depth that it deserves. For our purposes, we will refer only briefly to two scholars who discuss marriage in Saint Thomas from a juridical perspective. A very brief acquaintance will reveal that also among this latest generation of natural law theorists, Aquinas's teaching is subject to misinterpretation. Scholars of Saint Thomas's juridical writings are just as likely to underestimate the importance of the spiritual in law (and in marriage in particular) as theologians are to miss the spiritual character of law for Aquinas.

John Finnis, for example, espouses a legal and political theory drawn from Saint Thomas, which he uses to defend permanence and monogamy in marriage.²⁶⁸ Nevertheless, Finnis's understanding of Aquinas's jurisprudence remains tethered in the natural world.

²⁶⁷ ST I-II, Q. 99, A. 1, ad 2.

²⁶⁸ See Finnis, "Marriage: A Basic and Exigent Good" (*The Monist* 91.3[2008]: 388) and "Law, Morality, and 'Sexual Orientation'" (Printed in *Same Sex: Debating the Ethics, Science, and Culture of Homosexuality*. John Corvino, ed. Lanham, Md: Rowman & Littlefield, 1997, pp. 31-43.), and "The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observations" (*American Journal of Jurisprudence* 42 (1998), pp. 97-134).

This fact is to a certain extent understandable given that, as Jean Porter explains, he is translating and justifying Saint Thomas's natural law theory for a modern audience which may not be open to the fulness of Aquinas's cosmology.²⁶⁹ In doing so, Finnis is following Thomas's own advice, which he quotes from Aquinas's response to the quodlibetal question, "Should academic arguments be made from reason or from authority?":

Any activity is to be pursued in a way appropriate to its purpose.
Disputations have one or other of two purposes.

One sort is designed {ordinatur} to remove doubts about *whether* such-and-such is so. In disputations of this sort you should above all use authorities acceptable to those with whom you are disputing; with Jews, for example, you should appeal to the authority of the Old Testament; with Manichees, who reject the Old Testament, you should use only the New; with Christians who have split off from us, e.g. the Greek [Orthodox], who accept both Testaments but reject the teaching of our [Catholic] saints, you should rely on the authority of Old and New Testaments and of those church teachers {doctores} they do accept. *And if you are disputing with people who accept no authority, you must resort to natural reasons.*²⁷⁰

Finnis can hardly be faulted for taking this approach, given the fact that his readers need to be convinced of the very most fundamental aspects of marriage. As a legal theorist and political philosopher, he engages jurists and academics who deny the very fact that marriage exists only between a man and a woman. Given such a context, it is hardly surprising that his description of Aquinas's teaching on marriage never touches on the sanctifying power of the sacrament. He typically translates Saint Thomas's designation of marriage's two-fold end as "the actualisation, expression and experience of marriage." In an earlier article on marriage, he explains marriage from a natural law perspective in the following way:

Why are sex acts . . . unreasonable unless marital? Implicit in Aquinas' often misunderstood work is a rarely recognised train of thought, substantially as follows.

Marriage, in which a man and woman would find their friendship and devotion to each other fulfilled in their procreation, nurture, protection, education and moral formation of their children, is an intrinsic, basic human good. Sexual intercourse between the spouses, provided it is authentically marital, actualises and promotes the spouses' mutual commitment in marriage (their marital *fides*). But my sex act with my spouse will not be truly marital—and will not authentically actualise, and allow us in a non-illusory way to experience, our marriage—if I engage in it while I would be willing in some circumstance(s) to engage in a sex act of a non-marital kind . . . To regard any of such types of sex act as morally acceptable is to regard one or more of them as something I might under some circumstances engage in, and this state of mind undermines the marital character of my sex acts

²⁶⁹ Jean Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids, Mich: William B. Eerdmans Pub. Co, 2010), p. 66-68.

²⁷⁰ Finnis's translation of Quodl. IV (Mar.-Apr. 1271) q. 9, a. 3c, with Finnis's emphases added, from *Aquinas: moral, political, and legal theory* (Oxford: Clarendon Press, 1998), pp. 11-12.

with my spouse. In short, the complete exclusion of non-marital sex acts from the range of acceptable human options is a pre-condition for the truly marital character of any spouses' intercourse.

Moreover, without the possibility of truly marital intercourse the good of marriage is seriously impaired... For it disintegrates the intelligibility of my marriage; our sex acts no longer truly actualise and enable us authentically to experience our *marriage*; they are unhinged from the other aspects of our mutual commitment and project. And this unhinging or disintegration threatens—runs contrary to—both of the goods inherent in the complex basic good of marriage: not only the good of friendship and *fides* but also the good of procreation and of the children whose education etc. so depends on the context of a *good* marriage. So any kind of assent—even if conditional—to non-marital sex is unreasonable. (Indeed, all sexual immorality, including all willingness to treat it as a potentially acceptable option, is contrary to love-of-neighbour, i.e. of children). And so it is immoral and out of line with human nature (and, Aquinas adds, with God's intentions about human conduct).²⁷¹

Finnis must be given credit for a remarkable translation of Saint Thomas's teaching on marriage into contemporary idiom. When we consider that he was writing in the context of a debate over the morality of homosexual relations, it is not surprising that God is relegated to a parenthetical mention at the end of the discourse. This was an attempt to use natural reason alone in order to make some basic truths of natural law convincing to those who accept no authority. But in fact, what results is not a vision of marriage that eclipses non-marital relations in its wisdom and beauty, but rather a somewhat squalid picture of marriage. Yet it will be impossible for Finnis to give a truly inspiring and attractive account of traditional marriage doctrine—or an accurate representation of Aquinas's teaching—as long as he sets God to the side in the argument.

The reason for this failure comes from ignoring the essentially theological meaning that law holds for Saint Thomas. Natural law comes from God as the creator of human nature, and it is ordered toward God as the common good;²⁷² it is by definition a participation in the Eternal Law, divine providence. Finnis cannot hope to accurately represent Saint Thomas's teaching on marriage even from a purely juridical perspective while his purview remains so limited to the sociological realm. Russell Hittinger points out the danger in this pervasive error:

The thought of Thomas Aquinas has, of course, become nearly synonymous with "Catholic" doctrine of natural law. It would take volumes to dispel the modern misperceptions and misrepresentations of his natural law theory. Many misperceptions are due to the fact that . . . those discussions in Thomas are often lifted out of context and debated as if they were independent of theology, natural or revealed.

²⁷¹ Finnis, "Law, Morality, and 'Sexual Orientation'," pp. 38-39.

²⁷² See Lawrence Dewan, "St. Thomas and the Divinity of the Common Good," pp. 211-233; and Stephen Brock, "The Primacy of the Common Good and the Foundations of Natural Law in St. Thomas," pp. 234-255; in *Ressourcement Thomism: Sacred Doctrine, the Sacraments, and the Moral Life* (Levering and Huetter, eds.; Catholic University of America Press: Washington, D.C., 2010).

I have no intention of trying to dispel all these misperceptions at their proper level of detail and complexity. Two general points, however, need to be made. First, nowhere does Thomas *define* natural law in anything but theological terms. Indeed, in answer to the objection that for there to be both an eternal law and a natural law was a needless duplication, Thomas responds: “this argument would hold if the natural law were something diverse from the eternal law, whereas it is nothing but a participation thereof.” Natural law is never (and I must emphasize *never*) defined in terms of what is first in the (human) mind or first in nature.²⁷³

As Hittinger insists, any account of Aquinas’s law theory that ignores law’s divine origin and orientation neglects its most essential defining features. Such a treatment strips natural law of its efficient cause, its final cause, and its formal cause; when pared down to its subject matter alone it loses coherency and authority and becomes one human argument among many. Hittinger draws out the necessary result of

... the tendency of contemporary readers to interpret magisterial discourse about natural law without the doctrine of providence—that is, without the principles that would allow us to think of natural law as “law.” From this follows the impression that talk about natural law is a rhetoric designed to achieve consensus about matters of public policy, or, worse still, conclusions grounded in Church authority.²⁷⁴

To be sure, Finnis’s object is not to interpret magisterial documents, but to engage opponents who do not accept the Church’s authority. Nevertheless, his account of Aquinas in any area of jurisprudence will be gravely inadequate unless he recognizes that law is necessarily and essentially theological for Saint Thomas. Perhaps Finnis only employs Aquinas’s theories for the sake of a persuasive argument, without hoping to expose the deeper meaning and consequences of this portrayal of marriage. Yet it is revealing that Finnis’s colleague, Jean Porter, employs Saint Thomas’s natural law principles to argue *in favor of* homosexual “marriages”.²⁷⁵

The problems with Porter’s account of Saint Thomas’s legal theory are many and varied.²⁷⁶ Fr. Kevin Flannery has addressed specifically the errors in Porter’s reasoning in her most recent book, where she sees an “underdetermination” in the conclusions drawn from natural law precepts, which would open a possibility of drawing other conclusions pertaining to human sexuality, contradictory to those drawn by Saint Thomas.²⁷⁷ In an article addressing Porter’s arguments for sexual license and homosexuality in an earlier work, Fr. Lawrence Dewan points out Aquinas’s correlation of the principles of reason that

²⁷³ Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (Wilmington, DE: ISI Books, 2003), pp. 8-9.

²⁷⁴ Hittinger, p.16.

²⁷⁵ Jean Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids, Mich: William B. Eerdmans Pub. Co, 2010).

²⁷⁶ See Lawrence Dewan, “Jean Porter on Natural Law” in *Wisdom, Law, and Virtue: Essays in Thomistic Ethics*, (New York: Fordham University Press, 2008).

²⁷⁷ Kevin L. Flannery, “Marriage, Thomas Aquinas, and Jean Porter,” (*Journal of Catholic Social Thought*. Vol 8(2011):2, pp. 277-289).

“are in function of nature” in both speculative and practical matters; Fr. Dewan concludes, “The harm that is being done by such sins is to the very possibility of right judgment concerning our lives.”²⁷⁸ He quotes Saint Thomas’s explanation of the seriousness of sexual sins from the same article:

in sins against nature, in which the very order of nature is violated, injustice [*iniuria*] is done to God himself, the one who orders nature. Hence, Augustine says, in *Confessions* 3 [chap. 8; in *PL* 32:689]: “...In fact the social relation itself [*ipsa societas*] that we ought to have with God is violated when that same nature of which he is author is polluted by perversity of sexual passion.”

Dewan summarizes, “Thomas thinks of human well-being as indissociable from the relation to God; thus the first commandment of the Decalogue, laying the foundation for human goodness, must bear on the ultimate end of the human will, which is God.”²⁷⁹ Porter also falls into error when she attempts to employ natural law without attending to its author or end.

A thorough treatment of the new natural law theorists would take us very far from our subject. For our purposes it is enough to note that the very fact that “natural law” can be used to argue to diametrically opposite accounts of marriage shows how rudderless this theory becomes when isolated from Saint Thomas’s full definition. As Hittinger remarked, removing God from natural law leaves us “without the principles that would allow us to think of natural law as ‘law’,” and reduces it to a rhetorical tool.

Although considering Finnis’s and Porter’s accounts of marriage in detail lies beyond the scope of this paper, it suffices to show that, just as theologians of marriage have misunderstood the essentially theological nature and ordination of law for Saint Thomas, so too have jurisprudents themselves. As Joseph Koterski writes,

Despite attempts of various kinds since the Enlightenment to sever, or at least to ignore, the connection between the natural moral law and God as its ultimate source, natural law theory is necessarily theological. This is not to say that one cannot come to know any number of moral precepts (for instance, that murder is wrong, or that promises should be kept, or that parents should be honored) without explicitly invoking God or having any particular theories about morality in mind. To say that would be to ignore one of the most compelling features of natural law theory—that its most fundamental directives will be readily obvious to anyone of open mind and good will who reflects on human conduct, without any need to study natural law theory. But it is to say that when we are discussing not some particular precept of the natural moral law but natural law theory, considered precisely

²⁷⁸ Lawrence Dewan, “Jean Porter on Natural Law,” pp. 264-265; the passage Fr. Dewan quotes is from *ST*, II-II, q. 154, art. 12, corpus.

²⁷⁹ Lawrence Dewan, “Jean Porter on Natural Law,” pp. 265.

as a theory for explaining the nature of morality, natural law theory is ineluctably theological.²⁸⁰

²⁸⁰ Joseph W. Koterski, S.J. "A Reading Guide for Natural Law Ethics," *Ressourcement Thomism: Sacred Doctrine, the Sacraments, and the Moral Life, Essays in Honor of Romanus Cessario, O.P.* (Edited by Reinhard Huetter and Matthew Levering. Washington, D.C.: Catholic University of America Press, 2010), p. 256.

3. MARRIAGE AND LAW

According to Saint Thomas's broader conception of law, sacraments are an aspect of divine law, under the New Law. This fact makes more sense of Thomas's constant use of juridical categories in his analysis of marriage. For him, law cannot be divided against sacraments.

This interconnection can be seen in many characteristics of the life of grace. Both sacraments and law require sensible and external signs; both are ordered to the good of the community through the perfection of the individual. Aquinas's thorough treatment of the conditions for marital consent reminds us that, like the sacraments, legal action deals with internal realities mediated through signs and words; like the sacraments, juridical works are public for the sake of the community. Civil law is like a natural sacrament: it is a sign of God's providence—albeit veiled—and our participation in His plan for our salvation.

Yet human law is not only a natural preparation for the sacraments of the Church. Saint Thomas's honoring of natural marriages and Old Testament marriages reflects his respect for natural law and for the Old Law, for these are also participations in Eternal Law, though imperfect ones damaged by original sin. Similarly, despite its imperfections and limitations, human law, in representing rational self-governance, makes man a co-worker with God in the divine rule of the universe.

A. Marriage as the intersection of procreation and law

Law represents one of man's highest participations in divine action. But if any other human activity could compete for this dignity, it would be procreation.

In a surprising response in his treatise on the creation of man, Aquinas determines which bears most the image of God, human or angelic nature. Although the angels resemble God more in having a more perfect intellectual nature, he says,

we observe in man a certain imitation of God, consisting in the fact that man proceeds from man, as God from God. . . in these and the like things the image of God is more perfect in man than it is in the angels. But these do not of themselves belong to the nature of the Divine image in man, unless we presuppose the first likeness, which is in the intellectual nature; otherwise even brute animals would be to God's image.²⁸¹

Because of his rational nature, man's procreation makes him even more to the image of God than an angel. Unlike angels, humans can reproduce; unlike animal reproduction, human reproduction is the generation of a person by a person. While animals generate

²⁸¹ *ST*, I, Q. 93, Art. 3.

animals by sexual reproduction, man's reproduction is *procreation* only because it occurs in the context of rational self-governance—in the context of law.

The intersection of law and procreation is marriage. This statement should no longer evoke notions of animal breeding regulated by draconian ordinances. By now it should be clear that Saint Thomas had in mind something potentially divinizing in his vision of both procreation and of law. With these themes in mind, we can see how weighted every word is in this statement of Aquinas:

generation is the only natural act that is ordered to the common good...As a result, since law is established for common good, those matters which pertain to generation must, above all others, be ordered by laws both divine and human. Now, laws that are established should stem from the promptings of nature, if they are human; . . .But, if they are divine laws, they not only develop the prompting of nature but also supplement the deficiency of natural instinct, as things that are divinely revealed surpass the capacity of human reason. So, since there is a natural prompting within the human species, to the end that the union of man and wife be undivided, and that it be between one man and one woman, it was necessary for this to be ordered by human law. But divine law supplies a supernatural reason, drawn from the symbolism of the inseparable union between Christ and the Church,...And thus, disorders connected with the act of generation are not only opposed to natural instinct, but are also transgressions of divine and human laws.²⁸²

Marriage has an essential relation to each and every kind of law: as an office of nature, its essential qualities are discernible by reason under natural law; as relating to the human community it is regulated by human law; as representing Christ and the Church, it is regulated by divine law, both old and new. But the fundamental reason that marriage, “above all other matters” is ordered by each of these laws is that “generation is the only natural act that is ordered to the common good.” The interconnection between law and generation arises because both law and generation are ordered to the common good.

B. Marriage and the common good

Before discussing the role of marriage in the common good, we should review what the common good consists in for Saint Thomas. We tend to think of common goods as possessions that are divided among all the members of the community. Yet anything that can ultimately only be enjoyed by one individual is, properly speaking, a private good. Food that is shared, or money that is condivided among many, or even public property like roads or libraries, cannot truly be held in common, for any piece that is possessed or used by one member can thereby not be possessed by another. A true common good is only increased by more members sharing in it, and it is not enjoyed by any members of the

²⁸² SCG III-II.123.7

community, unless all members share in it equally.²⁸³ Thus it becomes clear that true common goods must be immaterial. Goods like justice,²⁸⁴ order, or peace are things that every member of the community possesses more as more members of the community possess it. This fact shows that a true common good is the good of each member.

Moreover, the common good of any community is ordered to the larger common good of the communities to which it belongs. The internal order of the army is for the sake of victory; the victory of the army is for the sake of the peace of the nation that it defends. The common goods aimed at by civil law are civil goods like peace and justice in the polis. But these goods in turn must conduce to the “intelligible and heavenly good” aimed at by divine law.²⁸⁵ All laws are subsumed under the Eternal Law, which moves all things to the final end of the universe.

We can now see that when Saint Thomas speaks of human generation as ordered to the common good, his vision must go far beyond the notion of numerical population increase. Likewise, his philosophy of law rises above the restrictions and compulsion that are the recalcitrant’s only experience of law. Both law and procreation are ordered to the common good of the universe: they are both active, pivotal human participations in God’s providence.

C. The Common Good of the Universe

It is the paramount importance of the common good for Saint Thomas that differentiates his analysis of marriage from many current attempts to develop a theology of marriage. We have seen that a misconception of the common good underlies each of the erroneous interpretations of Aquinas that we have discussed.

In chapter 1, Palmer criticized the juridical treatment of marriage, because in his view legal contracts are “used of buying and selling, lending and leasing, of hiring and engaging the services of another”—in other words, contracts have to do with private goods.²⁸⁶ He neglected the nature of human law as ordered to the common good, and the particular nature of the marital contract as intrinsically related to the community and to God. Meanwhile, DeBroglie construed the personal pleasures of marriage as the incentive that attracts couples to serve the common good unknowingly. According to this schema, married couples embark upon matrimony for the sake of romantic affection and personal fulfillment, but as

²⁸³ When using words like “equally,” we must resist the temptation to think in terms of quantity; this would be to imagine peace or fellowship as private goods. All members of a peaceful community share in its peace “equally” in the sense that no one is excluded from sharing the common peace, not in the sense that each possesses an equal amount of peace.

²⁸⁴ Justice can be considered a common good where it is understood as informing the community, through just laws, justly made and enforced. An individual’s personal virtue of justice is obviously not a common good, although a community of individuals who were each personally just would certainly enjoy justice as a common good of the polis.

²⁸⁵ *ST*, I-II, Q. 91, Art. 5.

²⁸⁶ Palmer, “Christian Marriage: Contract or Covenant,” page 619.

long as they obey the laws of the Church in doing so, they will contribute to the perpetuation of the species while they pursue their own aims. It is mystifying to guess how DeBroglie's common good yields any good to the individuals of the community; meanwhile, the Church as lawgiver seems to seek the multiplication of souls rather than their salvation, in DeBroglie's conception. Moreover, by being induced to serve the common good unconsciously, the married couple is reduced to the level of irrational creatures, who serve the ends of providence by acting out of their natures without intention. This unwitting, automatic action strips away the rational creature's privilege of deliberate obedience to law and freedom to act toward his own good.

In chapter 2, Milhaven confused the good of the spouses with the pleasure of the spouses. In contrast to this, Aquinas considers the purpose of the marital act as either a remedy for concupiscence or for the generation of children. Either purpose can constitute an act of virtue for the spouses, which may conduce to their individual attainment of the ultimate good. But even from a temporal perspective, approaching marital intimacy as an opportunity to bear the spiritual burdens and temptations of one's spouse represents a shared good of a higher and more enduring kind than the unitive possibilities of shared pleasure that Milhaven would settle for.

Milhaven fears that an emphasis on procreation will deprive the spouses of the personal good of sexual pleasure. Yet the shared pleasure in a common activity is only the slightest of the shared goods that Aquinas envisages for the couple. And in point of fact, experiencing pleasure in a shared activity is still only a private good, since each person's pleasure can only be enjoyed by him alone.

In chapter 3, we saw that the shared good of the household community was the source of what Aquinas calls "the greatest friendship." Marriage merits this superlative because managing the household together engages the spouses at the physical, moral, and intellectual level in a shared pursuit of the highest natural goods, such as order, virtue, and peace. Yet this direction of the home is for the sake of an even higher common good, the raising of children to virtuous adulthood. This aim of the parents in their childrearing will ultimately benefit the larger community—the polity or the Church—by producing virtuous citizens which, in turn, increases the justice and charity of these communities. At the level of supernatural charity, Saint Thomas reiterates that the love between the spouses must be turned *ad extra*, making them into a united principle in the service of others. Even where no children are mentioned, the spouses' love is an intrinsic common good that is ordered to extrinsic common goods.

In Chapter 4, we have seen that even approaching Aquinas's teaching on marriage from a juridical perspective, Finnis and Porter do not attain an accurate picture of his doctrine as long as they neglect the importance of God in the account of law. One reason for this is that law is by definition ordered to the common good. Lower laws may be aimed at lower common goods, but every common good is subsumed under a larger one, until ultimately all common goods are ordered to the supreme common good of the universe, which is God. The earthly common good toward which a civil law is ordained must respect the higher common good to which it is ordered, or it will not retain the *ratio* of law.

If the common good seems to play what Michael Waldstein calls “an architectonic role in St. Thomas”²⁸⁷ that is because it is the end of every created thing in the universe. What is difficult for us to realize is that it is also the *good* of every created thing in the universe—it is not a greater good to which some creatures are sacrificed, but the shared good of all creatures, enjoyed most especially by rational creatures.

The juridical is integral to marriage in every respect, not as a necessary evil, but as a result of the nature of man and his ordering to God. Aquinas recognized that human reproduction goes beyond the physical increase of population; because we are rational animals, all our deliberate acts have eternal ramifications. Human reproduction merits the name “procreation” because it is the only reproductive act that results in the creation of an immortal, rational soul. Nevertheless, it is not only the generation of a child that constitutes procreation, but the rearing and education of that child to virtuous adulthood and the sanctity that will enable that child to enjoy the rewards of eternal life.

All the aspects of married life—from forming a lifelong compact of faithful co-operation, to engaging in marital intimacy, to rearing and educating children, to the married couple’s relationship to the larger community—depend upon a rational self-governance that participates in divine reason. This is none other than law. Law is the principle that unites the rational creature to God and the community even before and apart from the person’s experience of sanctifying grace. As Matthew Levering writes, “For Aquinas, juridical categories, correctly understood, are the very means by which our intrinsic (and therefore personal) relationship to God, in the intimate union of holiness, is most truly expressed.”²⁸⁸

²⁸⁷ Michael Waldstein, “The Common Good in Saint Thomas and John Paul II” *Nova et Vetera*, Eng. Ed. Vol. 3 No. 3 (2005) p. 569.

²⁸⁸ Matthew Levering, “Juridical Language in Soteriology: Aquinas’ Approach” (*Angelicum* 80/2 [2003]) p. 318.

CONCLUSION

Much of the reason that Saint Thomas's marriage theology has been set to the side in recent years arises from a certain discomfort with his use of juridical language to describe marriage. However, the charge that Aquinas's account of marriage is too juridical to adequately convey its sanctity arises from a misunderstanding of the juridical in Saint Thomas.

Marriage is unusual in that it spans time: it was established at the creation of man, it remained part of human life after our lapse into sin, it was elevated to the level of one of the seven sacraments by the redemption, and it represents an eschatological foreshadowing of the end times. Because it pertains to man's nature also apart from grace, it gives us a glimpse of the soteriological and eschatological importance of law. Everywhere that marriage is, there is law, because law and marriage both fulfill the same function: both are human activities that order (and even unite) man to God. Both law and marriage emanate from the same lawgiver and are both ordered toward the same end. Eternal law predates creation, and orders within it all of history, culminating in the Paschal Mystery.

Law makes sense of the complex tangle that is the history of marriage. The reason that valid marriage could exist in paradise, under the Mosaic law, as one of the seven sacraments of the Church and validly among the unbaptised to this day derives from marriage's relationship to the law that orders the universe. Marriage parallels the presence of law at every level. It has accompanied man from his creation, regulated by civil law in every society. As God refined man's faculties through the Old Law, and healed them in the New Law, He concomitantly instructed man further in the nature of marriage.

One reason for the ineluctable link between marriage and law arises from their relation to human nature.

Marriage, Law, and Human Nature

We, under the influence of modern philosophy, have lost the sense of *nature*. This failure plays a role in all the mistaken understandings we have addressed. Although the nature of many things (the nature of human action, or the nature of pleasure, for example), and the very idea of nature itself all feature in a complete understanding of marriage, the root problem is a failure to understand the *nature of the human being*.

The juridical is intrinsic and essential to marriage, not as a necessary evil, but as a result of human nature. Humans are rational animals. Our rationality means that we are in the image of God and graced with the freedom to govern our own actions. Our animality

means that we can reproduce creatures like ourselves, who require our care and instruction as they mature in their own rationality. Our ability to form a lifelong, indissoluble, and exclusive union for the protection of this project derives from our intellectual souls. The nature of the rational animal is the reason that the sacrament of marriage depends on a legal contract.

The rational nature of the human soul also underlies the relationship between the two ends of marriage. Our rational nature means that humans learn little by little; it means that knowledge comes to us through instruction and virtue is formed in us by repeated acts. Thus the shared generation of children entails a lifelong cooperation between the parents in order to raise those children to the virtue that is worthy of their human dignity. If we try to apologize for marriage's procreative end by directing the intentionality of the couple to the private goods they will derive from their friendship, we promote a Cartesian understanding of human action, which divides body from soul and activity from the choice that initiates it. Moreover, such an account deprives man of the rational animal's crowning privilege: *to act deliberately for his end*. In contrast to DeBroglie's depiction, the spouses who undertake the shared project of the worthy education of their children, aware of its political and eternal ramifications, illustrate in their union the greatness of marriage as a truly human endeavor, as well as a possible means of sanctification.

Aquinas's approach to marital intimacy delves deeper into the constitution of the human soul. When any human faculty attains the end it was made for, pleasure is the experience accompanying this fulfillment. Pleasure for Aquinas is not limited to bodily sensual pleasures, but extends as well to the fulfillment of any faculty, including the intellect. Contemporary attitudes toward marriage that focus on the pleasure accompanying a faculty's fulfillment while trying to exclude the fulfillment itself become caught in a contradiction. Contemporary readings of Saint Thomas that construe pleasure as a mechanism attached to certain behaviors by God in order to induce humans to act gravely misunderstand that nature is an internal principle of acting.

Rather, the human spouse's ability to engage in conjugal acts out of an intention that goes beyond his own gratification reveals further the privilege of self-rule. Christian spouses are offered the additional grace of being able to engage in these acts out of charity or justice, thereby meriting eternal life for themselves and assisting the spouse to avoid sin and remain in grace. Our rational nature is the reason that conjugal relations can constitute a "gift of self" that truly benefits the receiver.

Man's nature as a rational animal allows him to act deliberately for a good that goes beyond his own private good. The rationality of the married couple is the reason that their friendship can be the "greatest friendship." A certain justice between the man and the woman, which is the foundation of friendship, allows marriage to be the greatest friendship, even when the marriage is not a sacrament. Beyond the "pleasant association" that results from their physical relationship at the animal level, the couple's shared rational government of their home is ordered to a common good that itself directly impacts the common good of their larger community.

When the friendship between the spouses is transformed by Christian charity, even finer facets of human nature become relevant. The aspect of justice as rational ordering or

rendering what is due is what makes marriage a school for charity. The intensity with which love grows in the soul of the human lover must be ordered by his reason if love is to continue to drive him toward the good. The spousal cooperation reaches its highest expression when the couple is united in directing their charity toward God, and toward others through Him.

The order of charity reveals one of the highest ways that marriage is oriented to the common good. While every creature acts for the common good of the universe by nature, the rational nature of the human being means that he can envisage the common good deliberately in his actions. Every law, to the degree that it is a law, is ordered to the common good. Yet common goods exist in a hierarchy ordered by the Eternal Law to the Universal common good. The common good of each community, aimed at by the law governing that community must ultimately be ordered to the common good of the universe.

The parents' direction of the home aims at a domestic common good, but in turn that common good is subsumed in the common goods of both the polis to which the household belongs and where the marriage is sacramental, in the common good of the Body of Christ.

Marriage, even when not a sacrament, provides a platform in which human spouses can intelligently act for the common good. Even as a natural institution, marriage has public elements that reveal its ordination to the public good. The common good of the marital union, which is ordered to the good of the household and the larger communities of polis and Church, furnishes a very accessible example of the subsidiarity of common goods. Spouses acting for the good of their marriage can see the ramifications of their actions for the good of each larger community to which they belong. Law in all its aspects—from the natural law to human civil law, to the personal virtue of justice—allows the human being to order his actions deliberately to a good that transcends his private goods.

Aquinas does not discuss marriage in legal categories because of a lack of understanding of the dignity and beauty of the human person, but just the contrary. The privilege not only of obeying but of making law raises man above the animals, divinizing him and making him a cooperator in divine government.

Law for Aquinas represents, as it were, the other arm by which God works his mercy. It is the mode by which God involves us in divine providence. Natural law has been referred to, as Russell Hittinger reminds us, as “the first grace,” for it was given to man to engage him in his own salvation before and apart from grace.²⁸⁹ An even greater participation in the rule of the universe belongs to the Christian, who “sees what his master is doing” by the light of grace and the human faculties healed by the Paschal Mystery.

²⁸⁹ Russell Hittinger tells in his book by the same title that the use of the term “the first grace” to describe natural law comes from “the letter of a presbyter named Lucidus who recanted of certain doctrines condemned at the second Council of Arles (a.d. 473). Lucidus and others in southern Gaul taught that after the sin of Adam no work of human obedience could be united with divine grace, that human freedom was not weakened or distorted but totally extinguished . . . In the letter of retraction, the natural law is mentioned twice. The natural law is said to be the “first grace of God” (*per primam Dei gratiam*) before the coming of Christ (*in adventum Christi*). Lucidus also affirmed that, according to Romans 2:15, the natural law is “written in every human heart.” (Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World*. Wilmington, Del: ISI Books, 2003, p. xi.)

Law gives man a divine orientation. It does not coerce or suppress him (except to the degree that he has departed from the rule of reason). While Porter and Finnis value Aquinas's account of natural law, they miss the same truth that scholars miss in Aquinas's marriage theology: the truth that law is intrinsically and essentially a path to sanctity for Saint Thomas.

Viewing marriage with Saint Thomas through a juridical lens is not a desacralization of marriage. Rather, it is evident that Aquinas finds the Trinity in the origin, essence, and end of marriage in each of the aspects of marriage we have considered. We have seen the ways that law and marriage are rooted in human nature. Now let us look at the ways that law and marriage are ordered to the divine.

Marriage, Law, and Divinity

Marriage and law are both rooted in the constitution of the rational animal. Because of man's material and rational nature, he can participate in divine providence in a way not given to the rest of the material world, and in a way not shared by angels. The natural law, the human law that results from it, and every individual act of prudence derived from man's participation in divine reason are a cooperation in the God's governance of the universe. Moreover, this participation is only possible because of the image of the Trinity that man bears in his reason and will. Lawrence Dewan emphasizes the divinizing character of natural law as follows:

Our moral sense not only "seems" godlike. It is godlike.

Long before any modern view of morality as transcendent or sacred, there is the sort of medieval Scholastic thinking that one finds in the works of Thomas Aquinas. Consider the prologue to the *prima secundae* of the *Summa theologiae*—the presentation of the whole of morals, precisely in the light of the human being as the image of God, and this in function of man's ability to determine his own actions. And although there is obvious and profound continuity between the animal world and the human world, there is, for Thomas, an infinite difference. Consider the chapters of SCG 3.111-3.113, which precisely introduce the treatises on law and grace. The argument is that providence, although it is concerned with all creatures, has a special character as regards the rational creatures. Furthermore, basing himself on the condition of the intellectual nature, Thomas in chapter 112, teaches that the rational creatures are cared for for their own sake, whereas the nonrational creatures are cared for for the sake of the rational....The position of the human being is such that the human soul is the goal of all matter, but the human soul requires special creation by God for each individual, beyond ordinary natural generation.²⁹⁰

²⁹⁰ Lawrence Dewan, "Jean Porter on Natural Law," published in *Wisdom, Law, and Virtue: Essays in Thomistic Ethics* (New York: Fordham University Press, 2008), pp. 248-249.

Father Dewan's comments touch on one important consequence of human rational nature for marriage. Human generation is *procreation* because it involves human cooperation in this individual creation of an immortal soul, existing in the image of God. Man's intellectual nature means that he can govern his actions in imitation of God; when these actions extend to the perpetual contract of marriage and the choice to engage in conjugal relations, they may have "infinite" consequences that reach beyond the spouses' personal trajectories. Because of man's rational nature and his resulting privilege of self-governance, the generation of human offspring remains incomplete unless those offspring are brought up in virtue, and, in a sacramental marriage, with faith. The juridical aspects of the marriage contract represent our attempts to live up to this privilege which, even more than any other human act, carries eternal ramifications. The deliberative action which is ours because we are made in the image of the Trinity must be applied above all to the actions that bring new images of the Trinity into the world.

Even where conjugal relations are not considered under the aspect of a procreative act, the Trinity remains present as source and goal of spousal action. As a remedy for concupiscence, marital intimacy reveals the mercies that the Eternal Law also extends to those outside sanctifying grace—whether under the old dispensation or engaged in a natural marriage. Yet within a sacramental marriage, the exercise of marital fidelity in the conjugal act offers spouses the chance to act simultaneously out of justice and charity. The marital "duties" arise from a prior gift of self in the marriage pact. This "irrevocable giving" recalls Saint Thomas's treatment of the Holy Spirit as Gift, and his statement that "in any giving, the first gift is Love." The love that precipitates the spouses' commitment to each other is fortified by the actions reinforcing marital fidelity—actions of giving what is due, of justice.

The combined impact of this love, obedience, and justice in marital intimacy works directly in contrast to the effects of original sin—a perverted concupiscence and the disordering of male-female relations. The sanctification accomplished by marriage occurs not only in the gift, but specifically through the "paying of the debt," which has the potential to become an ecclesial and eschatological act insofar as one spouse is laying himself down to assist the other to remain in grace. Thus, "paying what is due," the quintessential act of justice, can act in reparation for the loss of original justice. Yet these spousal intentions are only capable of countering the effects of original sin because of their resemblance and relation to the Paschal Mystery, in which the Son of God laid himself down out of love and obedience: "Who, though he was in the form of God, did not regard equality with God something to be grasped. Rather he emptied himself, taking the form of a slave . . . becoming obedient to death, even death on a cross" (Philippians 2:6-8).

The Trinity is the end-goal of charity. The sanctifying power of marriage and the way it specifies the universal call to holiness is evident in Saint Thomas's ranking of the spouse in the order of charity. Though the spouses enjoy the "greatest friendship" in regard to the responsibilities they share with respect to the household, in relation to those outside it they form a single principle of love and duty. The husband's love for his wife is "most intense" since she is the closest to him, but this closeness is for the sake of training the spouses' hearts in greater love.

The juridical is integral to marriage under its every aspect, not as a necessary evil, but as essential to love in its fullest complement.

Law is sanctifying in being ordered to the common good, for each common good has an ordering to a higher common good. God is the common good of the universe, the common good to which every common good is ordered. The Trinity is the eternal legislator, conducting all things to this universal common good through His law.

However, we will not be able to tease apart too precisely the ways that marriage and law are rooted in human nature from the ways that they are rooted in the divine, and for good reason. Marriage and law were both intended as means of *uniting* man with God. Moreover, to see human nature as an independent cause in itself, isolated from God's action, would be to fall prey to the original sin and to the errors of modern philosophy. Human nature is an image of the Trinity, as well as bearing the creature's trace of its creator; all God's gifts to humankind were given for the sake of bringing man back into union with him. Law and marriage illustrate this truth in a particularly rich way.

"Marriage has its cause in us" because God willed from the beginning to give into human hands the power to form this sign of his love and his wisdom. By elevating this human relationship to the heights that it can attain through deliberate intention of the common good—through law—God gave us the possibility of symbolizing His redemption of mankind while actively assisting to bring others into it. Marriage contains a reflection of the Trinity, not like a mirror reflection, but as a prism reflects the light split into various colors. When regarded through the prism of law, the many dimensions under which marriage represents and actualizes God's salvation of man shine forth.

APPENDIX: TRANSLATION OF *IN SENT. IV*, 26-42

PREFACE TO THE TRANSLATION OF AQUINAS'S TREATISE ON MARRIAGE

With a few exceptions, academic articles on Aquinas's marriage theology have relied increasingly on the *Supplement* to the *Summa Theologiae* in recent decades. Some authors include references to the original passages cited in the *Commentary on the Sentences*, but nevertheless they quote from the more accessible text, which Saint Thomas did not compose. Although the text of the *Supplement* is materially the same as that of the Treatise on Marriage in the *Commentary on the Sentences*, it does omit sizeable excerpts.

Moreover, the one innovation that the Supplement makes on Aquinas's treatment of marriage is its presentation of themes in slightly altered order. Since Saint Thomas was obliged to follow Peter Lombard's outline in his *Commentary on the Sentences*, readers of the Supplement might assume that its questions follow the order that Aquinas would have chosen himself. However, such an assumption lacks any documentation.

In fact, the more scientific editors of Aquinas's works in recent decades are vociferous and unanimous in their denunciation of the Supplement as a poorly-compiled amateur work. In his "Catalogue of St. Thomas's Works," Ignatius Eschmann inveighs against "the so-called *Supplementum*, put together with scissors and paste from pieces cut out of Aquinas's writings on the Sentences (especially Bk. 4)."²⁹¹ Meanwhile, Clément Suermondt argues in his introduction to the critical edition of the Leonine, that

I would never want to attribute the Supplement to that dearest companion of Saint Thomas, Brother Reginald of Piperno, as is commonly done today on the sole authority of the catalogue mentioned of Stams, even though it is otherwise not immune to obvious errors.²⁹²

The most compelling reason for discrediting this long-enduring legend is that studies have shown the author of the Supplement "to have been a man devoid of serious learning, a most neglectful scribe, to the point that the study of his analyses had already shown him unequal to meeting this most difficult task, I might even say completely inept."²⁹³

²⁹¹ Ignatius T. Eschmann, "A Catalogue of St. Thomas's Works." In E. Gilson, *The Christian Philosophy of St. Thomas Aquinas*, trans. L.K. Shook, (University of Notre Dame Press: Notre Dame, IN; 1956), p 388.

²⁹² "Supplementum adiudicare omnino non vellem carissimo socio S. Thomae, fratri Reginaldo de Piperno, ut communiter hodie fit ex sola auctoritate noti catalogi Stamsiensis, etiam ceteroquin non immunis ab erroribus manifestis." *De Textu Critico Leonino Summae Theologiae*, (Torino: Marietti, 1948), p.xii.

²⁹³ "fuisse hominem eruditionis expertem (cf. Praef. Suppl. Tom. XII, p. xx b), scriptorem negligentissimum (cf. l. c. p. xiii, n. 33-44), quemadmodum studium analysium eum iam revelaverat huic muneri perdifficili

In the introduction to the Leonine edition, similar reasoning is used to disqualify Peter of Auvergne as the author of the *Supplement*:

he shows signs of good acumen, which is in complete opposition to the slipshod work of the Supplement. The author acts so negligently and so hastily, and gives such an ignorant analysis, that for this reason alone we could not believe the Supplement to have been compiled by Peter of Auvergne.²⁹⁴

The Leonine editors go on to entertain the possibilities of other authors, including Henry of Gorcum, but the reality that emerges is that the resolution of this question would take a work of archeology. Moreover, its importance to the study of Saint Thomas's marriage theology is doubtful.

Instead, we would like to direct attention back to the treatise on marriage in the *Commentary on the Sentences*. Although it was written in Saint Thomas's youth, the arguments that were repeated from it in later works suggest that his teaching on marriage underwent few if any substantial changes (with due regard for the development discovered by Frère Marie Leblanc and discussed in Chapter 3).

However, in order that such a translation be truly accessible to modern anglophone readers, we should address a few historical and linguistic peculiarities of the text.

A. On Saint Thomas's Use of Language

In the Preface to his translation of Plato's *Republic*, Allan Bloom holds up as an ideal for translators

the accuracy of William of Moerbeke's Latin translations of Aristotle. These versions are so faithful to Aristotle's text that they are authorities for the correction of the Greek manuscripts, and they enabled Thomas Aquinas to become a supreme interpreter of Aristotle without knowing Greek.

Such a translation is intended to be useful to the serious student, the one who wishes and is able to arrive at his own understanding of the work. He must be . . . given the means of transcending the limitations of the translator's interpretation, enabled to discover the subtleties of the elusive original. The only way to provide the reader with this independence is by a slavish, even if sometimes cumbersome, literalness—insofar as possible

obeundo imparem, ne dicam plane ineptum (cf. l.c. p. iii sq.)” *De Textu Critico Leonino Summae Theologiae*, (Torino: Marietti, 1948), p. xii.

²⁹⁴ “boni ingenii signa ostendit, cui perfunctionarium opus Supplementi omnino contradicit. Tam negligenter et praecipitanter, tam imperite analyseon auctor egit, ut ob eam vel solam rationem credere non possimus Supplementum compilatum esse per Petrum de Alvernia.” *Opera Omnia, T. 12: Summa Theologiae, Tertia Pars et Supplementum*. (Romae: Leoninum, 1906), Praefatio in Supplementum, p. xvii. 49.

always using the same English equivalent for the same Greek word...The translator should conceive of himself as a medium between a master whose depths he has not plumbed and an audience of potential students of that master who may be better endowed than is the translator.²⁹⁵

While the following translation of *In IV Sententiarum*, Distinctions 26-42, also aimed to emulate the method of William of Moerbeke, this work of Saint Thomas does pose particular problems to the translator. In the first place, students of Saint Thomas are familiar with certain technical terms that he uses routinely, which depend upon extensive philosophical understandings. Some examples of these expressions are “act” and “potency,” “form” and “matter,” “substance” and “accident,” to name only a few of the most obvious. While it would be instantly apparent to a scholar of Aquinas that something “accidental” has to do with *how* something is, or *being in a certain respect*, the word carries a very different meaning for a reader who is not steeped in Thomistic or Aristotelian language. This poses a difficulty to translation, since the intelligent reader who is not familiar with Saint Thomas is to some extent the intended audience of this translation. Presumably, a scholar who *is* familiar with Aquinas would be reading his work in the original Latin. But as stated in the introduction to this thesis, the primary aim of this translation is to make Saint Thomas’s own teaching on marriage available to students of marriage theology. The “literalness” that Bloom indicates as the translator’s goal must be balanced against the necessity of conveying what Saint Thomas was saying to an audience potentially unversed in his vocabulary.

The translation of this treatise has given me a new appreciation for Saint Thomas’s use of language. Indeed, he is known as the master of *distinguo*, and he has gone down in history for solving many a philosophical and theological debate by carefully distinguishing the differing ways in which an equivocal word is being used. We see this gift at work in our study of his distinction of the several meanings of *concupiscence*, and the various senses of *love*.

But the translation of the treatise of marriage reveals that Saint Thomas is also a master of synonyms. He is wonderfully free from the modern tendency of loading an entire philosophical argument into the definition of one word, and using that word as code for the whole thesis. For him, the spoken word is a vehicle or container for an intellectual word or concept. He uses words as vehicles or even servants to ideas, rather than making the reader enslaved to the word. This absence of excessive reverence for particular words follows from his very Aristotelian appreciation for nature; it is not uncommon to find in the *Sed contra* of an article the simple argument, “This is the way that people normally speak.”²⁹⁶

What this natural use of language means to the translator is that a one-to-one literal translation of words, such as Bloom recommends (“always using the same English equivalent for the same Greek [or Latin] word”), not only poses a challenge to practicality, but it may result in a translation that is not necessarily as faithful to Saint Thomas’s thought. He routinely uses synonyms for the same idea in the very same paragraph, where

²⁹⁵ Allan Bloom. *The Republic of Plato: Translated, with Notes, an Interpretive Essay, and a New Introduction*. [New York]: Basic Books, 1991, p. xi.

²⁹⁶ *In IV Sent.*, D. 27, Q. 1, A. 1, qc. 2, *sed contra*.

it is evident that he is not intending to distinguish two different aspects by the use of two different words. For example, he usually refers to *lex naturae* (more rarely *lex naturalis*) to mean natural law, yet there are places where he calls it *ius naturae* or *ius naturale*. Finally in the corpus of Distinction 33, Question 1, Art. 1, he makes it clear that he is using them as simple interchangeable synonyms:

therefore a natural concept was placed in him, by which he is directed to acting appropriately, and this is called **natural law** or **natural right**.

ideo naturalis conceptio ei indita, qua dirigatur ad operandum convenienter, **lex naturalis** vel **jus naturale** dicitur.²⁹⁷

He uses *consuetudo* and *mos* similarly as synonyms in the first objection to the same article:

It seems that to have several wives is not against the Law of Nature. For **custom** does not prejudice natural right. But to have several wives was not a sin when it was a **custom**, as is found in the text from Augustine.

Videtur quod habere plures uxores non sit contra legem naturae. **Consuetudo** enim juri naturali non praejudicat. Sed habere plures uxores peccatum non erat quando **mos** erat, ut ab Augustino in littera habetur.²⁹⁸

In an objection in a later article he uses the two words again synonymously:

Augustine says about two wives, that when it was the **custom**, it was not a sin. But in the time of the Law, there was such a **custom** that a divorced woman would take another husband, as is clear from Deut 24:2: *and when, having departed, the woman has taken another husband, etc...*

Augustinus, dicit de duabus uxoribus, quod quando **mos** erat, peccatum non erat. Sed tempore legis erat talis **consuetudo** quod repudiata alium virum ducebat, ut patet Deut. 24, 2: *cumque egressa virum alterum duxerit et cetera*.²⁹⁹

But his response shows that, while it is natural to apply them interchangeably, in this particular case they convey different nuances:

In these words of Augustine, **mos** is not taken as "**custom**," but rather as "just act," according as from *mos* one is said to be law-abiding or *morigeratus*, because he is of good morals, or as from *mos*

in illo verbo Augustini **mos** non ponitur pro **consuetudine**, sed pro actu honesto, secundum quod a more aliquis dicitur morigeratus, quia est bonorum morum, vel sicut a more philosophia moralis

²⁹⁷ In IV Sent., D. 33, Q. 1, A. 1, corpus.

²⁹⁸ In IV Sent., D. 33, Q. 1, A. 1, ad 1. This objection gives another example of *lex naturae* and *jus naturale* being used interchangeably from one sentence to the next.

²⁹⁹ In IV Sent., D. 33, Q. 2, Art. 2, qc3, obj 2

moral philosophy is named.

nominatur.³⁰⁰

Another example of the fungibility of certain words has even more relevance to our theme. We might be inclined to consider the term “marriage vows” to be a more recent designation for the expression of marital consent. Saint Thomas analyzes the expression of consent in minute detail, but he does not refer to the form of the sacrament or the sealing of the contract as marriage “vows.” The reason is quite obvious to students of Aquinas; vows are the mode of entering the religious life. His definition of vows even forms part of his treatise on marriage—in order to determine and explain the impediment to marriage that is posed by religious vows. Aquinas defines a vow as

a certain contract of a promise
between God and man. Whence,
since a contract made between men
in good faith obliges someone to
necessary observance, more
strongly does a vow in which a
man promises something to God, in
those matters to which the vow
extends.

quidam promissionis contractus
inter Deum et hominem. Unde cum
contractus bonae fidei inter
homines factus obliget ad
necessariam observationem, multo
fortius votum quo homo Deo
aliquid promittit, in his dumtaxat ad
quae votum se extendit.³⁰¹

The resemblance, between a vow, which is a contract between God and man, and the marital contract, is not lost on Saint Thomas. In the discussion of the requirements for valid consent, one objection notes that “by religious vows a person contracts a spiritual marriage with God.”³⁰²

The marriage contract, on the other hand, is a contract between men—which is to say, the spouses—rather than an agreement between man and God. Sometimes to consent is added an oath (*juramentum*), by which “something is confirmed by divine truth.”³⁰³ Nevertheless, Aquinas is careful to distinguish that the oath is not an essential part of the contract:

an oath is employed for the
confirmation of a statement;
wherefore it only confirms what is
signified in words, nor does the
thing signified change... An oath
does not work to make a new
obligation, but confirms the one
already made.

juramentum adhibetur pro
confirmatione dictorum; unde illud
tantum confirmat quod in dictis
significatur, nec significatum
mutat... juramentum operatur
aliquid non novam obligationem
faciens, sed factam confirmans.³⁰⁴

³⁰⁰ *In IV Sent.*, D. 33, Q. 2, Art. 2, qc3, ad 2.

³⁰¹ *In IV Sent.*, D. 38, Q. 1, Art. 3, qc. 1, corpus.

³⁰² *In IV Sent.*, D. 27, Q. 2, Art. 2, qc. 3, obj. 3: “per votum religionis homo contrahit matrimonium spirituale cum Deo.”

³⁰³ *In IV Sent.*, D. 28, Q. 1, Art. 1, obj. 2: “per juramentum veritate divina firmatur aliquid.”

³⁰⁴ *In IV Sent.*, D. 28, Q. 1, Art. 1, corpus and ad 4.

Thus it seems clear that for Saint Thomas the expression of marital consent between two human beings is something essentially different from a vow, which is a contract of spiritual marriage between man and God. Nevertheless, in the consideration of whether consent is the efficient cause of marriage, the question is raised concerning the consent of “people who... are mute, or of diverse languages.”³⁰⁵ Saint Thomas answers that

Although such people cannot express their own **vows** to each other in words, they can however express it by nodding. And such nods are counted as words.

quod quamvis non possint **vota** sua mutuo verbis tales exprimere, possunt tamen exprimere nutibus; et tales nutus pro verbis computantur.³⁰⁶

Here we have the casual use of *votum* to refer not to the spiritual but to the sacramental or natural marriage. Aquinas’s meaning is unmistakable, but he gives no reason for referring to the marital consent as something that he defines later as a contract between man and God. It must be, indeed, a casual use of the word, based on the fact that “This is the way that people normally speak.” Although it is clear that *votum* was not the usual name for the exchange of marital consent, apparently the reference would have been clear to St. Thomas’s readers.

Perhaps the most conspicuous use of synonyms without clear distinction is in Saint Thomas’s vocabulary for referring to sexual intercourse. He uses at least seven different explicit names for sexual intercourse (*carnalis copula*, *carnalis conjunctio*, *coitus*, *concubitus*, *carnalis commixtio*, *accessus ad mulierem*, *cognoscere mulierem*). In addition he uses several expressions that we might be tempted to consider euphemisms or oblique references, such as *debitum coniugale*, *usus matrimonialis*, *actus maritalis*. In fact, as we have seen in the chapter on the marital debt, and we will see further on in the discussion of *uti* and *frui*, these are not used in circumlocution, but on the contrary to specify when Aquinas wishes to focus on a very particular aspect of the marital act. The marital debt bears a central importance in its exemplification of justice, as was discussed in Chapter 2. The “use of marriage” refers to an important distinction between marriage’s “first act” or “first perfection” and its operation or use.

A careful tracking of Saint Thomas’s use of the seven explicit expressions listed above does not indicate any deliberate distinctions being made by them. Rather, the reader is given the impression that Aquinas very naturally employed whichever first came to his mind while in the course of composing. There may be a slight predominance of one expression over the others in various Distinctiones,³⁰⁷ but it is never so consistent as to

³⁰⁵ *In IV Sent.*, D. 27, Q. 1, Art. 2, qc. 2, obj. 2: “matrimonium potest esse inter aliquos qui suum consensum sibi mutuo verbis exprimere non possunt: quia vel sunt muti, vel diversarum linguarum.”

³⁰⁶ Dist. 27, q. 1, art. 2, qc. 2, ad 2.

³⁰⁷ For example, *carnalis copula*: Dist. 27, Q. 1, A. 3 (entrance into religious life before and after); D. 28, Q. 1, A. 2 (whether intercourse with a pledge about the future causes marriage); D. 28, Q. 1, A. 4 (whether marital consent is to intercourse); Q. 34, Q. 1, A. 2 (whether impotence or evil spells impede the contract); D. 39, q. 1, a. 5 (divorce and separation); D. 41, Q. 1, A. 1, qc. 1 (definition of affinity); *carnalis conjunctio*: D. 26, Q. 1, A. 1 (whether marriage natural); D. 28, Q. 1, A. 4 (whether marital consent is to intercourse); D. 31, Q. 1, A. 3 (spiritual union contrasted with fleshly); *carnalis commixtio*: D. 26, Q. 2, A. 4 (whether integral to marriage),

suggest any deliberate meanings. In a general way, it might be said that Saint Thomas uses *copula* in discussions of the contract, the consent, or legal matters, *coniunctio* when focusing on the natural aspect of the act, or contrasting it with the spiritual union, *concubitus* when referring to the marital act in comparison with fornication, and *coitus* when emphasizing the sheer biology of the act (or quoting popes or fathers). Nevertheless, in making these general classifications, it is important to note that in nearly every article that shows a slight reoccurrence of one expression, one or two others appear alongside, with no distinction.

Moreover, the words *copula* and *conjunctio* are used throughout the text not only to designate the fleshly union, but also the larger concept of conjugal union itself. This brings us to the largest and most interesting linguistic issue involved in translating the treatise on marriage.

1. The Linguistic Problem of Two Things that Become One: *Conjunctio* vs. *Unio*

The majority of problems that face a translator of Saint Thomas's treatise on marriage derive without a doubt from the ontological peculiarities of two things that become one in a certain respect, while remaining two. Aquinas defines marriage as belonging to the genus of *conjunctio*, which an initial translation might render most naturally as "union" or "uniting." However, two further developments in the same article make such a translation impractical as well as inaccurate:

unio duorum ad aliquod unum non fit nisi secundum **conjunctionem**.
Hoc autem fit per matrimonium, ut patet Genes. 2, 24: erunt duo in carne una. Ergo matrimonium est in genere conjunctionis... **Conjunctio adunationem** quamdam importat; unde ubicumque est **adunatio** aliquorum, ibi est aliqua **conjunctio**.³⁰⁸

The use of *unio* and *adunatio* in the very definition of *conjunctio* begs the question: what exactly is the difference between *conjunctio* and *unio*, which compells us to translate *conjunctio* as the clumsily literal "conjoining"? We will briefly examine the other texts in the treatise on marriage where Aquinas uses these two words before returning to the pivotal texts above.

Saint Thomas uses the word *unio* several times in the treatise to describe friendship, stating, for example, "friendship is a certain tie or union."³⁰⁹ He explains the cause of the union in friendship further:

Although an act of a lover can pass to someone who does not love,	Ad primum ergo dicendum, quod quamvis actus amantis possit
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concubitus: D. 33, Q. 1, A. 3, (whether polygamy, concubinage against natural law), D. 33, Q. 3, A. 1 (virginity), D. 41, Q. 1, A.1, qc. 3 (whether affinity caused by illicit intercourse). **coitus**: D. 41, Q. 1, A. 3 (illegitimate sons arise from illicit intercourse).

³⁰⁸ *In IV Sent.*, D. 27, Q. 1, Art. 1, qc. 1, sed contra and corpus.

³⁰⁹ *In IV Sent.*, D. 40, Questio unica, Art. 1, corpus: "amicitia ligatio sive **unio** quaedam est."

nevertheless, the **union** between them cannot be unless there is mutual loving. And thus the Philosopher says in Book 8 of the Ethics, that friendship, which consists in a certain **union**, requires love in return.

transire in non amantem, tamen **unio** inter eos non potest esse nisi sit mutua amatio; et ideo dicit philosophus in 8 Ethicor., quod ad amicitiam, quae in quadam **unione** consistit, requiritur redamatio.³¹⁰

The suggestion is that *unio* is a spiritual uniting, a one-ness that results from mutual love or another spiritual bond. This impression is confirmed by Aquinas's use of the word *unio* to refer to a spiritual relationship in the discussion of the impediment of "spiritual family relationship" (being a godparent or godchild):

a union of spirit does not pass over into the flesh. But marriage is a fleshly conjoining. Therefore since spiritual familial relationship is a union of spirit, it cannot cross over to impede marriage.

unio spiritus non transit in carnem. Sed matrimonium est carnalis **conjectio**. Ergo cum cognatio spiritualis sit **unio** spiritus, non potest transire ad matrimonium impediendum.³¹¹

Here *unio* refers to a spiritual relationship, which is contrasted with the *conjectio* of a fleshly union. However, it would not be true to assume that by using these two words, Saint Thomas always means to divide the spiritual from the bodily. Further on in the same question dealing with spiritual kinship, the two words are again used side by side:

It seems that spiritual family relationship does not pass from a man to his wife. For spiritual and bodily unions are disparate things, and of different genera. Therefore, a spiritual family relationship is not conveyed by means of the fleshly union, which is between the man and his wife.

Videtur quod spiritualis cognatio non transeat a viro in uxorem. Quia spiritualis **unio** et corporalis sunt disparatae, et diversorum generum. Ergo mediante carnali **conjunctione**, quae est inter virum et uxorem, non transitur ad spiritualem cognationem.³¹²

On the one hand, Aquinas is again using *conjectio* for a fleshly union. However, he uses *unio* to refer to unions of both kinds: spiritual and bodily.

When the two terms are applied to the union of Christ and the Church, their relationship becomes even more difficult to discern, as in the following objection and reply:

every sacrament of the new law effects what it represents. But marriage does not effect the union of Christ and the Church which it

omne sacramentum novae legis efficit quod figurat. Sed matrimonium non efficit **conjunctionem** Christi et Ecclesiae

³¹⁰ In IV Sent., Dist. 29, Q. 1, Art. 3, qc. 2, ad 1.

³¹¹ In IV Sent., Dist. 42, Q. 1, Art. 1, obj. 3.

³¹² In IV Sent., Dist. 26, Q. 2, Art. 1, ad 4.

signifies.

quam significat.

The union of Christ to the Church is not a *res contenta* in this sacrament, but a *res significata non contenta*.

unio Christi ad Ecclesiam non est res contenta in isto sacramento, sed res significata non contenta.³¹³

Here the union of Christ and the Church is referred to first as a *conjunctio*, and second as a *unio*. We have no reason to believe that Saint Thomas is correcting the objector's use of *conjunctio* by his choice of *unio* in the response. Nor does it seem to have any bearing on the physical or spiritual nature of the union, since the union of Christ and the Church is mystical and supernatural, but it was accomplished through the Incarnation and the Passion. Furthermore, none of these themes seem to have any immediate bearing on the objection and its reply. The words are, to all appearances, simple synonyms. The impression is the same in another discussion of the union of Christ and the Church:

marriage signifies the conjoining of Christ and the Church. But no baseness exists there. Therefore, neither can marriage be contracted for a base reason.

matrimonium significat **conjunctionem** Christi et Ecclesiae. Sed ibi non cadit aliqua turpitudine. Ergo nec matrimonium potest contrahi propter aliquam turpem causam.

The union itself is a sign of the conjoining of Christ and his Church, the action of the ones uniting is not; therefore the argument does not follow.

Ad quintum dicendum, quod ipsa **unio** est signum **conjunctionis** Christi et Ecclesiae, et non operatio **unitorum**: ideo ratio non sequitur.³¹⁴

Here the marriage of Christ and the Church is referred to as a *conjunctio* while the human marriage that represents it is called a *unio*. Again, we are reinforced in the belief that the two words are here being used by Saint Thomas as interchangeable. In fact, the only place in the treatise on marriage where Aquinas uses the two words with careful distinction is in the article we cited first, which defines marriage as belonging to the genus of *conjunctio*.

the union of two into one does not happen except by a con-joining. But this happens through marriage, as is evident from Genesis 2:24: *they were two in one flesh*. Therefore, marriage is a kind of

unio duorum ad aliquod unum non fit nisi secundum **conjunctionem**. Hoc autem fit per matrimonium, ut patet Genes. 2, 24: *erunt duo in carne una*. Ergo matrimonium est in genere

³¹³ In IV Sent., Dist. 26, Q. 2, Art. 1, objection 4 and ad 4.

³¹⁴ In IV Sent., Dist. 30, Q. 1, Art. 3, objection 5 and ad 5.

con-joining.

conjunctionis.³¹⁵

In this article, and only here where Saint Thomas is about the task of giving a logical definition, we see the precise relationship of a *unio* to a *conjunctio*. *Unio* is the larger category, and it is the result of the *conjunctio*. The explanation is further developed in the corpus of the same article:

con-joining conveys a certain uniting together; wherefore wherever there is a uniting of certain things together, there is some kind of con-joining.

.. **Conjunctio adunationem** quamdam importat; unde ubicumque est **adunatio** aliquorum, ibi est aliqua **conjunctio**.³¹⁶

Conjunctio is an action by which a union of two things occurs. Saint Thomas explicitly addresses this aspect of *conjunctio* in his discussion of marriage made for base reasons.

"Conjoining" can be taken for the relation itself which is marriage and as such it is always from God, and it is good no matter what the reason for which it was made: or it can be taken for the act of those who are joined, and in this way it is sometimes evil, and is not from God, simply speaking.

conjunctio potest accipi pro ipsa relatione quae est matrimonium; et talis semper est a Deo, et bona est a quacumque fiat causa: vel pro actu eorum qui conjunguntur; et sic est quandoque mala, et non est a Deo, simpliciter loquendo.³¹⁷

Here *conjunctio* can refer to the action of joining together or the union that this joining accomplishes. This equivocation makes sense of some of the foregoing word choices that we have seen. Most of these refer to the relation of two people united, but not every *unio* is a *conjunctio*. For example, when considering consanguinity, Saint Thomas comments that one relationship can impede another:

those things that are more closely related and similar have a better and stronger union. But marriage is a certain kind of union. Therefore, since consanguinity is a certain kind of closeness, it does not impede marriage, but rather helps it.

Praeterea, eorum quae sunt magis propinqua et similia, melior et firmior est **conjunctio**. Sed matrimonium quaedam conjunctio est. Ergo cum consanguinitas sit propinquitas quaedam, matrimonium non impedit, sed magis juvat.

It is not unfitting for one of two **unions** to be impeded by the

Ad quintum dicendum, quod non est inconueniens duarum

³¹⁵ In IV Sent., D. 27, Q. 1, Art. 1, qc. 1, sed contra.

³¹⁶ In IV Sent., D. 27, Q. 1, Art. 1, qc. 1, corpus.

³¹⁷ In IV Sent., D. 30, q. 1, a. 3, obj. 2 and ad 2.

other; for just as where there is identity there is not 'likeness,' so also the bond of consanguinity can impede the union of marriage.

unionum unam ab altera impediri; sicut ubi est identitas, non est similitudo; et similiter consanguinitatis vinculum potest impedire matrimonii **conjunctionem**.³¹⁸

While marriage is alternately called a *unio* and a *conjunctio*, not all unions are conjoinings. As this text illustrates, it would be strange to call blood kinship a “conjoining.” It is a union, because it is a way that two persons are somehow one; however, two separate entities are not brought together in consanguinity (except in thought). Family relationship is a union that is inborn in both parties; it is a sharing or one-ness that is not the result of action.

This fact illuminates another important aspect of *conjunctio*. As Aquinas explains in the body of the article on marriage as a conjoining, separate persons cannot become one except by being ordered together toward one end:

con-joining conveys a certain uniting together; wherefore wherever there is a uniting of certain things together, there is some kind of con-joining. But things that are ordered to some one thing, are said to be united together in their ordering to it; as when many men are united for one military expedition or for business affairs to be carried out, by that fact they are called fellow soldiers or business partners; and thus, since by marriage two people are ordered to one single project for the generation and education of children, and therefore to one single domestic life, it is clear that in marriage there is a conjoining, because of which "husband" and "wife" are said; and such a conjoining, by the fact that it is ordained to some one thing, is marriage. However, the conjoining of bodies or of souls follows upon marriage.

conjunctio adunationem quamdam importat; unde ubicumque est **adunatio** aliquorum, ibi est aliqua **conjunctio**. Ea autem quae ordinantur ad aliquod unum, dicuntur in ordine ad aliud **adunari**; sicut multi homines adunantur ad unam militiam vel negotiationem exequendam, ex qua dicuntur commilitones ad invicem, vel socii negotiationis; et ideo, cum per matrimonium ordinentur aliqui ad unam generationem et educationem prolis, et iterum ad unam vitam domesticam; constat quod in matrimonio est aliqua **conjunctio**, secundum quam dicitur maritus et uxor; et talis **conjunctio** ex hoc quod ordinatur ad aliquod unum, est matrimonium; **conjunctio** autem corporum vel animorum ad matrimonium consequitur.³¹⁹

³¹⁸ In IV Sent., D. 40, Q. unica, Art. 3, arg5-ad 5

³¹⁹ In IV Sent., D. 27, Q. 1, Art. 1, qc. 1, corpus

Now we see why Saint Thomas chose the word *conjunctio* rather than *unio* where it is a matter of definition. The kind of union that marriage is, more properly should be called a con-joining, since the two persons do not cease to be two substances. Their union consists in the fact that they become a united principle of action for a shared end. While it is not incorrect to speak of the union of souls and bodies in marriage, and Scripture infallibly states that *the two become one flesh*, nevertheless, in this giving of definitions Aquinas calls our attention to the way these statements must be understood. *Conjunctio* recognizes the metaphysical reality that the spouses remain two persons with separate souls and bodies. Such a nuance to the word *conjunctio* is exactly what we should expect, given that it is derived from *jugum* –yoke. The conjugal relationship is intended to remind us of a team of horses or oxen yoked together: the two are one when considered as a united principle of action. The choice of *unio*, on the other hand, is better suited to cases of spiritual union and organic oneness, like consanguinity.

Nevertheless, we should remember that a *conjunctio* is a certain kind of *unio*: the kind of *unio* that happens by a uniting or *adunatio*, or the kind of *unio* that happens through a shared goal. Outside of the process of definition, Saint Thomas uses the two words almost interchangeably, according to the normal way that people speak. Therefore, outside of Distinction 27, Question 1, Article 1, we have translated these words as “union” or “conjoining” according to whichever seemed most natural.

Conjunctio and *unio* highlight the ongoing tension that animates the language of marriage. A marriage is one, but it is composed of two distinct parties. Accordingly, Saint Thomas speaks of the *inseparabilitas* of the union. In English, however, separability is a quality that can only be possessed by two things. Thus, the spouses can be separated, but the marriage cannot. Therefore, where *inseparabilitas* is predicated of a marriage, I have translated it as *indissolubility*; where Aquinas speaks of a marriage being “separated” (*separari*), I have used the word “dissolved,” or the classic Scriptural translation “put asunder,” which conveys the sense of some one thing being broken into two. In English, spouses can be separated, but a marriage, as a single entity, cannot.

A corollary to this issue relates to what canon law defines as one of the essential properties of marriage: unity.³²⁰ However, the “unity” that Saint Thomas and Canon Law refer to is not the-fact-of-being-united or the *conjunctio* between the spouses. Rather, as an essential property of marriage, this unity means “oneness”: the fact of having only one spouse. Since this misunderstanding occurs even among highly educated readers of Canon Law, we have attempted to deflect this misunderstanding by translating *unitas* as “monogamy” in the areas of the treatise on marriage where it comes under discussion. It is true that “monogamy” literally means “one wife.” Yet since it conveys the principle of unity of spouse to modern readers, and since, in the articles where it is discussed the notion of monoandry is summarily dispatched, we think it best conveys the meaning of *unitas*:

However the law of
monogamy is not humanly

Lex autem de unitate uxoris
non est humanitus, sed divinitus

³²⁰ Code of Canon Law, 1056: “The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament.

ordained, but divinely instituted,
neither by word or writing handed
down, but impressed on the heart,
like those things which belong in
any way at all to the law of nature.

instituta, nec unquam verbo aut
litteris tradita, sed cordi impressa,
sicut et alia quae ad legem naturae
qualitercumque pertinent.³²¹

2. Uti and Frui

One of the technical expressions that Saint Thomas uses for marital intimacy is *usus matrimonii*, the “use” of marriage:

thus they belong to the **use** of
marriage, by which both children
are produced and the conjugal pact
is preserved.

sic pertinent ad **usum**
matrimonii, per quem et proles
producitur, et pactio conjugal
servatur.³²²

By speaking of “using one’s wife,” the last thing Aquinas intends to convey is an action objectifying or “taking advantage of” the spouse. Rather this *usus* refers to an important philosophical distinction concerning marriage’s first and second perfection or “act.” The two levels of any substance’s being are, first, existence, and second, the ability to act based on that existence. Accordingly, the marital bond is its first perfection, its essence; marital intimacy is the operation that follows from its first being:

integrity is twofold. One
which is found according to the
first perfection, which consists in
the very being of a thing; another
which is attendant upon the second
perfection, which consists in
operation. Since therefore carnal
commingling is a certain activity or
use of marriage, through which a
faculty is given for this **use**, carnal
commingling will be of the second
integrity of marriage, and not of the
first.

duplex est integritas. Una quae
attenditur secundum perfectionem
primam, quae consistit in ipso esse
rei; alia quae attenditur secundum
perfectionem secundam, quae
consistit in operatione. Quia ergo
carnalis commixtio est quaedam
operatio, sive **usus** matrimonii, per
quod facultas ad hoc datur; ideo erit
carnalis commixtio de secunda
integritate matrimonii, et non de
prima.³²³

... But the third good
[sacrament] does not pertain to the
use of marriage, but to its very
essence, as was said; whence it

Sed tertium bonum non
pertinet ad **usum** matrimonii, sed
ad **essentiam** ipsius, ut dictum est,
unde facit ipsum matrimonium

³²¹ In IV Sent., D. 33, Q. 1, art. 2, corpus.

³²² In IV Sent., D. 31, Q. 1, art. 3, corpus.

³²³ In IV Sent., D. 26, Q. 2, art. 4, corpus.

makes marriage itself dignified, but not its act honestum, non autem actum ejus.³²⁴

The distinction as applied to marriage is important, for it allows Aquinas to explain the validity of a Josephite marriage,³²⁵ the purity of intention of St. John's marriage vows,³²⁶ and the fact that consent to marriage is consent to marital relations only implicitly.³²⁷ The "use" of marriage defines the rights of the couple with respect to each other: in marriage they are not consenting to have intercourse with each other, but rather each consents to give the other power over himself as regards intimacy:

<p>A woman has power over the body of her husband not simply speaking concerning all things, but only concerning the use of matrimony.</p>	<p>mulier habet potestatem in corpore viri non simpliciter quantum ad omnia, sed solum quantum ad matrimonii usum.³²⁸</p>
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This distinction concerning the 'power of the use' of matrimony also sets marriage apart as a perpetual contract in which a person gives "not just the fruit but the tree," as Saint Thomas explains in discussing the merit of a vow:

he that vows something and does it, subjects himself to God more than he that only does it; for he subjects himself to God not only as to the act, but also as to the power, since in future he cannot do something else. Even so he gives more who gives the tree with its fruit, than he that gives the fruit only, as Anselm observes (De Simil. viii).³²⁹

Consent to intimacy itself can happen outside of marriage and can be temporary. A commitment to give the power to have intercourse is necessarily a long-term arrangement:

<p>for the power of carnal union, to which one consents, is the cause of carnal union, as the power of using what is one's own is the cause of its use.</p>	<p>quia potestas carnalis copulae, in quam consentitur, est causa carnalis copulae, sicut potestas utendi re sua est causa usus.³³⁰</p>
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Yet for obvious reasons, *usus* and *uti* cannot be rendered as "to use one's wife." As mentioned in Chapter 2, the expression "to use one's wife" was employed in recent years by John Paul II to convey most effectively the sin of engaging in sexual intercourse exclusively

³²⁴ *In IV Sent.*, D. 31, Q. 2, art. 2, corpus.

³²⁵ *In IV Sent.*, D. 30, Q. 2, art. 2. Whether the marriage of the Blessed Virgin was valid.

³²⁶ According to tradition, John the Evangelist was the groom at the wedding at Cana, and left to follow Jesus after contracting marriage but before its consummation. St. Thomas must answer an objection that argues that consenting to marriage involves consenting to marital intercourse, such that a person could no longer be a virgin "in mind as well as body." See *In IV Sent.*, D. 28, Q. 1, art. 4, sed contra.

³²⁷ *In IV Sent.*, D. 28, Q. 1, art. 4.

³²⁸ *In IV Sent.*, D. 33, Q.1, Art. 3, qc. 1.

³²⁹ *St. Thomas Aquinas Summa Theologica 3 IIa IIae QQ. 1-148*. (Allen, TX: Christian Classics, 1981), Q. 88, Art. 6. See also *In IV Sent.*, D. 38, Q. 1, Art. 2, qc. 3 corpus.

³³⁰ *In IV Sent.*, D. 28, Q.1, art. 4, corpus

for one's own pleasure. There the word "use" conveys the typical attitude toward a thing or an object, as contrasted with the correct disposition one should have toward a person. For this reason, where Aquinas employs *uti* I have sometimes translated it as "make use of one's conjugal rights," or "to avail oneself of one's wife."

among the Greeks and other Eastern churches, holy orders impedes marriage from being contracted, but not the use of a marriage already contracted; for they can **avail themselves** of a marriage contracted beforehand, although they cannot contract marriage again. But in the Western church, it impedes marriage and the **use** of marriage

ordo impedit matrimonium contrahendum, non tamen matrimonii prius contracti usum; possunt enim matrimonio prius contracto **uti**, quamvis non possint matrimonium de novo contrahere. Sed apud Occidentalem Ecclesiam impedit matrimonium, et matrimonii **usum**.³³¹

However, "make use of one's rights" would likely contribute to the perception of Saint Thomas's marriage theology that we are trying to dispel: that of a legal contract bordering on human trafficking. Nor does "availing oneself of one's wife" offer any real solution; however much it suggests "seeking help" in its nuances, by definition it too reduces to *use*.

For this reason, when the context allows it, I have sometimes chosen to translate *uti* according to its secondary definition as "to enjoy"—to enjoy one's wife, to enjoy one's rights, to enjoy one's marriage:

then neither could know if the other is truly his spouse; and thus he will be a fornicator whenever he **enjoys** the rights of marriage.

tunc neuter poterit scire de altero an sit ei verus conjux; et ita erit fornicator quandocumque matrimonio **utetur**.³³²

the prophecy is referred to the mystery of Christ and the Church, which [Adam] forsee, not to the **enjoyment** of the woman which could be perceived by natural reason with sense alone.

prophetia referatur ad mysterium Christi et Ecclesiae, quod praevidit; non ad **usum** mulieris quae solo sensu percipi poterat naturali ratione.³³³

However, any student of theology would recognize that a translation of *uti* as "enjoy" risks venturing dangerously close to another theological precipice.

In Augustine's *De Doctrina Christiana*, he draws a distinction between *using* (*uti*) creatures and *enjoying* (*frui*) them:

³³¹ In IV Sent., D. 37, Q. 1, Art. 1, corpus.

³³² In IV Sent., D. 27, Q. 1, Art. 2, qc. 4, objection 4.

³³³ In IV Sent., D. 26, Expositio.

To enjoy something is to cling to it with love for its own sake. To use something, however, is to employ it in obtaining that which you love, provided it is worthy of love.³³⁴

The things which are to be enjoyed are the Father, the Son, and the Holy Spirit.³³⁵

Augustine's teaching, which must certainly be in any reader's mind when he comes across the words *uti* and *frui*, is that all creation was given to us for our use; only God is to be enjoyed. Moreover, creatures are meant to be used to attain the enjoyment of God:

Some things are to be enjoyed, others to be used, and there are others which are to be enjoyed and used. Those things which are to be enjoyed make us blessed. Those things which are to be used help, and as it were, sustain us as we move toward blessedness in order that we may gain and cling to those things which make us blessed. If we who enjoy and use things, being placed in the midst of things of both kinds, wish to enjoy those things which should be used, our course will be impeded and sometimes deflected, so that we are retarded in obtaining those things which are to be enjoyed, or even prevented altogether, shackled by an inferior love.³³⁶

An initial reading of St. Augustine does suggest that he *would* recommend using the spouse as a means to attain heaven. This is certainly how many of the authors mentioned in Chapter 2 have understood Aquinas's teaching that marriage furnishes a *remedium concupiscentiae*: the spouse represents a permissible means of gratifying the sexual appetite so as not to be guilty of mortal sin. We have discussed in Chapter 2 the ways that this reading underestimates Saint Thomas. In fact, he anticipates our *uti* and *frui* confusion in the very article where he addresses the morality of approaching one's spouse for the sake of pleasure alone. There, the objector invokes Augustine's argument:

whoever does not refer the use of creation to God, enjoys the creature, which is a mortal sin. But whoever **avails himself** of his wife because of delectation alone, does not refer this **use** to God.

quicumque usum creaturae non refert in Deum, creatura fruitur; quod est peccatum mortale. Sed quicumque uxore propter solam delectationem **utitur**, hunc **usum** non refert in Deum. Ergo mortaliter peccat.³³⁷

This objection and its reply poses a delicate task to the translator, since it seems to us that Saint Thomas would agree with John Paul II that to *use* one's spouse (according to the modern meaning of *use*) for pleasure would be a sin—it would be, as Aquinas says elsewhere in the article, to see “nothing else in her than what [one] might look for in a

³³⁴ Saint Augustine, *On Christian Doctrine*, D.W. Robertson, trans., (New York: Macmillan, 1987), Bk. I:iv, page 9.

³³⁵ Saint Augustine, *On Christian Doctrine*, D.W. Robertson, trans., (New York: Macmillan, 1987), Bk. I:v, page 10.

³³⁶ Saint Augustine, *On Christian Doctrine*, D.W. Robertson, trans., (New York: Macmillan, 1987), Bk. I:iii, page 9.

³³⁷ *In IV Sent.*, D. 31, Q. 2, art. 3, obj. 3.

prostitute.”³³⁸ However, to *use* one’s wife according to the proper *use* of marriage (a use that “is ordered by what is needed for the good of offspring”³³⁹) is to *enjoy* a good that God has created and a benefit that God has granted to him. Moreover, the bond of affection and charity between the spouses dictates that this “use” is not the kind of “use” that turns a person into a tool or a means. And indeed, in his response to the objection sparked by Augustine’s teaching, Saint Thomas defends the spouses’ ability to take advantage of this good, yet without suggesting that they are taking advantage of each other.

Although he does not refer this delectation to God in act, nevertheless, he does not place in it the final end of his will; otherwise he would seek it indifferently wherever he could find it. Therefore he does not necessarily **rest in the enjoyment** of a creature, but he **enjoys** a creature for itself. But this is for God’s sake habitually, although not actually.

quamvis delectationem non referat actu in Deum, tamen non ponit in ea ultimum voluntatis finem; alias eam ubicumque indifferenter quaereret; et ideo non oportet quod creatura **fruatur**, sed **utitur** creatura propter se; se autem habitualiter propter Deum, quamvis non actu.³⁴⁰

The sense of *utitur propter se* seems best conveyed by “enjoy for itself,” since the very notion of “using” to our minds seems to go against “propter se.” In turn, the sinful character of *creatura fruatur* fails to come across in “enjoy a creature.” The very word *frui* is derived from *fruit*, which Aquinas tells us, is something last and to be enjoyed;³⁴¹ he clearly has nothing against the enjoyment of creation. Therefore we have translated *fruatur* as “resting in the enjoyment” of something. This sets it apart as the kind of enjoyment that should be found in God alone.

With this translation, Aquinas is able to make his meaning clear: a married person is able to enjoy marital intimacy without sinning only when he makes *use* of marriage appropriately, without a will that is disordered in relation to God or to the other person. This meaning to his language is confirmed in a separate discussion where he quotes Saint Paul and comments on his turn of phrase:

The Apostle did not prohibit the marital act in those words, as neither the possession of things, when he said, *those who make use of this world, as though not using it*. But in both he prohibits **resting in their enjoyment**: which is clear from the way of speaking itself:

apostolus in verbis illis non prohibuit matrimonii actum, sicut nec rerum possessionem, cum dixit: *qui utuntur hoc mundo, sint quasi non utentes*. Sed in utroque **fruitionem** prohibuit; quod patet ex ipso modo loquendi: non enim dixit: sint non utentes, vel non

³³⁸ *In IV Sent.*, D. 31, Q. 2, A. 3, ad 1.

³³⁹ *In IV Sent.*, D. 32, Q. 1, art. 2, qc. 2, corpus. “ordinatus est omnis matrimonii usus quo bonum prolis impenditur.”

³⁴⁰ *In IV Sent.*, D. 31, Q. 2, A. 3, ad 3.

³⁴¹ See *Summa Theologiae*, I-II, Q.11, art. 1.

for he did not say, "let them not use" or "let them not have," but "as if not using, or not having."

habentes: sed quasi non utentes, vel non habentes.³⁴²

B. Situating Saint Thomas's Treatise on Marriage Historically

One of the largest obstacles to a greater appreciation for Saint Thomas's contribution to marriage theology is certainly the very different historical context he taught in. Of all the subjects Aquinas wrote about, marriage is, of course, one of the most subject to the dictates of time, place, and culture. Aquinas acknowledges this fact himself in several places:

human nature is not unmoving like the divine nature; and thus those things that are of divine law are diversified according to diverse states and conditions of man.

natura humana non est immobilis sicut divina; et ideo diversificantur ea quae sunt de jure naturali, secundum diversos status et conditiones hominum.³⁴³

Those things that are of natural law in general need an institution as to their determination, which is applicable in different ways to men in different conditions; just as it is of natural law that wrongdoing is punished, but how a certain punishment is appointed to a certain crime is done by the determination of positive law.

illa quae in communi sunt de jure naturali, indigent institutione quantum ad eorum determinationem, quae diversimode competit secundum diversos status; sicut de jure naturali est quod maleficia puniantur; sed quod talis poena tali culpae apponatur, per determinationem juris positivi fit.³⁴⁴

It goes without saying that much of the law and customs surrounding marriage were very different in Saint Thomas's day. Undoubtedly, Aquinas faced less of a need to defend the procreative end of marriage by comparison with the "unitive end."³⁴⁵ Considerations of inheritance and succession were obvious and compelling to his contemporaries. In an age when a couple's failure to have children and raise them to adulthood could plunge a region into warfare and result in the deaths of thousands, marriage's relation to its own primary end and to the common good appeared in concrete and urgent ways.

Yet one cannot help but see in Saint Thomas's approach to marriage that his attention is firmly on the metaphysical consequences of this fragile human institution. He had to address the contemporaneous human laws governing marriage (and, in some cases, compare

³⁴² *In IV Sent.*, D. 26, Q. 1, Art. 3, ad 2.

³⁴³ *In IV Sent.*, D. 26, Q. 1, Art. 2, ad 3.

³⁴⁴ *In IV Sent.*, D. 26, Q. 2, Art. 2, ad 1.

³⁴⁵ We have already discussed in chapter 1 the fact that Aquinas did not consider the unitive aspect of marriage as an end, but as a formal cause.

them to older ones) because the laws of the here and now are how God wills for us to encounter marriage. That an institution which began at the creation of the human race, and will endure until the Wedding Feast of the Lamb, should be subject to fickle local law is in a certain way a participation in the particularity and humility of the Incarnation.

For this reason, we will discuss briefly the elements of the marriage contract and ceremony that Aquinas was faced with. Some themes seem so completely conditioned by historical milieu as to be entirely irrelevant to the modern student of the sacraments. Yet even here we will see that Saint Thomas's attention never leaves the soteriological import of these details. For all the legal, medical, and cultural elements that must factor into his account of marriage, Aquinas's vision remains ever theological. The most important and interesting aspect of marriage for him was its unchanging, eternal signification. As Peter Kwasniewski describes,

[Thomas's] statement that "the conjoining of Christ to the Church, that marriage signifies, is perfected by charity," [D.26.2.3] amounts to saying that this state of life . . . both objectively assimilates the spouses to that supreme mystery of redemptive love *and* subjectively fills them with it. This, it would seem is implied in the statement that grace is the reality contained by the sacrament (its *res contenta*). Unfortunately for us, he did not explicate this truth as much as he might have done; still greater mysteries commanded his attention, the sovereign mystery of the Eucharist most of all. And with good reason: the Eucharist, says Thomas again and again, really contains the One who suffered for us, and thus brings the communicant to the very source and goal of charity. What Christian marriage *symbolizes* is truly *present in* the Eucharist; it is this sacrament that brings about and ever deepens the "spiritual marriage"...

Indeed, it is this "marriage" between God and man that captivates St. Thomas even more than the human marriage that signifies it.³⁴⁶

Saint Thomas had to harmonize a theology of unchanging truths with an attention to the practical details of the sacrament that were (and are) still developing.

One of the most well-known examples of this kind of development can be seen in Aquinas's treatment of clandestine marriage. In his discussion of "consent exchanged in secret" in Distinction 28, Question 1, article 3, Saint Thomas repeatedly underscores that, while clandestine marriages are sinful, and forbidden by the Church, they are in fact valid, since all the essential components of the sacrament are present. The Tridentine document, *Tametsi*, changed this teaching, by making the parish priest, church, and two witnesses essential to the *form* of the sacrament.³⁴⁷ Yet as the very title of the document expresses, this change in the form of the sacrament occurred notwithstanding the truth of Aquinas's teaching. *Tametsi* emphasizes that although the essence of the sacrament is the exchange of

³⁴⁶ Peter Kwasniewski, "St. Thomas on the Grandeur and Limitations of Marriage," *Nova et Vetera*, English edition, Vol. 10, No. 2 (2012), p. 423-424 and 427.

³⁴⁷ John P. Beal, "Introduction to Canons 1055-1165," *New Commentary on the Code of Canon Law*, (New York: Paulist Press, 2000) p. 1326.

consent (a fact that is reinforced by canon 1116 of the current code³⁴⁸), nevertheless, the damage that the practice of clandestine marriages had caused to the Church and society³⁴⁹ had impelled the Church to increase the requirements for the form. However, the change highlights an underlying theme of Saint Thomas's theology of marriage. It is because of marriage's manifold effects on the secular community that marriage is subject to human laws.³⁵⁰ The impact that clandestine marriages could have on nations and on the Church illustrates further the very concrete relation that marriage has to the common good.

1. The Marriage Rite and Contract

The jurisprudence that Saint Thomas inherited was a combination of elements of Roman legal practice and Medieval Gallic and Germanic customs. The legacy of Roman law was that "consent was both necessary and sufficient to bring about a marriage."³⁵¹ Moreover, consent had to be given continuously by the spouses for the marriage to remain valid: "if they withdrew their intention to be married then the marriage ended."³⁵² The preaching and rulings of bishops, popes, and Church fathers regarding the indissolubility of marriage had gradually changed the understanding of consent in the marriage contract;³⁵³ Aquinas gives philosophical reinforcement to church teaching by distinguishing that consent is the efficient cause of marriage, not the formal cause.³⁵⁴

On the other hand, the marriage customs of Germanic and Gallic tribes had focused on consummation and pregnancy as foundations of a marriage's validity; by the sixth century, marriage rituals in northern Europe involved a priest's blessing of a couple in their nuptial bed, before all their kinsfolk.³⁵⁵ Jurists and theologians had struggled for centuries to define the exact importance of consummation within marriage.³⁵⁶ Aquinas deploys not only philosophical distinctions between marriage's "first act" (or "first perfection") and "second act" or "use," he offers a theological analogy for the relationship of consummation to consent:

³⁴⁸ Canon 1116 provides for exceptions to canonical form in the event that priests or deacons are lacking, there is danger of death, or the situation threatens to continue for over a month. This provision is made so that canonical form does not "unduly abridge the exercise of the natural right to marry when authorized witnesses are lacking or rarely available." Beal, *New Commentary on the Code of Canon Law*, p. 1334.

³⁴⁹ One of the more illustrative examples is the case of Edward IV Plantagenet of England, whose clandestine marriage threatened to plunge England into renewed bloodshed during the War of the Roses.

³⁵⁰ Cf. *In IV Sent.*, D. 26, Q. 2, art. 2, corpus.

³⁵¹ Brendan Killeen, *What Brings A Marriage into Existence? A Historical Re-examination of the Canon Law of the Latin Church*, p. 5.

³⁵² Killeen, p. 8.

³⁵³ John P. Beal, "Introduction to Canons 1055-1165," *New Commentary on the Code of Canon Law*, (New York: Paulist Press, 2000) p. 1235.

³⁵⁴ See *In IV Sent.*, D. 27, Q. 1, Art. 2, qc. 2.

³⁵⁵ James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, (Chicago: University of Chicago Press, 1987), pp. 87-88. Fr. Stan Parmisano tells us that a ritual of blessing and incensing the nuptial chamber was still included in Roman marriage liturgy through the fifteenth century, citing the rituals of York, Hereford, Sarum (Salisbury), and Paris ("Spousal Love in the Medieval Rite of Marriage," *Nova et Vetera*, English Edition, Vol. 3, Num. 4 (2005), pp. 790-791).

³⁵⁶ For a description of the customs and the theological response to them, see E. Schillebeeckx, *Marriage: Human Reality and Saving Mystery*, (New York: Sheed and Ward, 1966), pp. 280-296.

Before carnal intimacy marriage signifies the conjoining of Christ to the soul by grace; which indeed is dissolved by a contrary spiritual disposition, namely, sin. But by carnal intimacy is signified his conjoining with the Church by the assumption of human nature into the unity of his person, which is indivisible in every way.

matrimonium ante carnalem copulam significat illam conjunctionem quae est Christi ad animam per gratiam; quae quidem solvitur per dispositionem spiritualem contrariam, scilicet peccatum; sed per carnalem copulam significat conjunctionem ad Ecclesiam quantum ad assumptionem humanae naturae in unitatem personae, quae omnino est indivisibilis.³⁵⁷

Saint Thomas had to balance the obvious importance of consummation at the natural and legal levels against the ideal of a spiritual union based on mutual consent. Also at stake, was the validity of Joseph and Mary's marriage, which was never consummated; moreover, if the object of marital consent were conjugal intercourse, the marriage of the Blessed Virgin would have suffered from vitiated consent. Accordingly, Aquinas had to explain the larger indissolubility of marriage while defending the marital chastity of the Blessed Virgin (undoubtedly, a cause near and dear to his heart).

The marital laws and customs that had grown out of the blending of Roman and Germanic practices also contribute to complications in language. Roman marriage ceremonies were enacted by a *paterfamilias*, and sometimes involved a betrothal, a dowry, and were completed by a *domumductio*;³⁵⁸ Germanic ceremonies for *Kaufehe* revolved around a handing over or *Anvertrauung* of the bride by the head of her family, after a *Muntvertrag* between the two families involved.³⁵⁹ While the different cultures placed the emphasis on various elements of the process, the steps show marked similarities. By St. Thomas's time, the language and the law of marriage had come to show traces of all these elements; nevertheless, St. Thomas had to redefine the terminology in some ways in order to clarify the theological emphasis.

2. Desponsatio vs. Sponsalia

Under Roman law, a *desponsatio* was a betrothal agreement between a suitor and the *paterfamilias* of his prospective bride. Historians tell us that the Germanic equivalent was more or less the *Muntvertrag*, as the first step in the marriage process.³⁶⁰

For these people, marriage did not come about when the parties exchanged consent, but as the end of a process involving several steps, each of which was necessary to constitute a marriage: a man's petition to a woman's father for her hand (*petitio*), betrothal

³⁵⁷ *In IV Sent.*, D. 27. Q. 1, Art. 3, qc. 2, ad 2.

³⁵⁸ Brundage, p. 34; Killeen, p. 4.

³⁵⁹ Brundage, p. 128; Killeen, pp. 34-36.

³⁶⁰ Brundage, p. 128.

by public agreement of the parties' families (*desponsatio*), provision of a dowry to the woman's family (*dotatio*), the handing over of the woman to the man (*traditio*), and the physical consummation of the union by sexual intercourse (*consummatio*). Until all of these steps had been completed, the marriage was incomplete.³⁶¹

However, when Aquinas uses the word *desponsatio*, it is clear that it does not correspond to either "betrothal" or "engagement." *Sponsalia* is the word that St. Thomas defines as a pledge of future marriage:

the sacramental causes bring about by signifying, wherefore they effect what they signify: and since when someone expresses his consent in terms of the future, it does not signify that he contracts marriage, but that he promises he will do it; and thus such an expression of consent does not effect the marriage, but the disposition for it, which is called "**betrothal**."

causae sacramentales significando efficiunt, unde efficiunt quod significant: et quia cum aliquis consensum suum per verba de futuro exprimit, non significat se facere matrimonium, sed promittit se facturum; ideo talis expressio consensus non facit matrimonium, sed dispositionem ejus, quae **sponsalia** nominantur.³⁶²

Here the promise of marriage in the future is expressly ruled out as a promise effecting marriage itself. Although in ancient practice a marriage could be contracted through various steps, the sacramental character of this contract means that the only effective consent is the present-tense consent.

On the other hand, *desponsatio* is not strictly equivalent to *contrahere/contractus*, *nubere/nuptias*, *consentire/consensus*. Where possible, we have chosen to translate it as "promising in marriage" or "exchange of promises." St. Thomas calls *desponsatio* the cause of marriage, by whose solemnity a marriage is completed:

it is to be said that in marriage there are three things to consider. First, its essence, which is a conjoining; and according to this it is called "conjugal." Secondly, its cause, which is promising in marriage; and according to this it is called "nuptials" from nubere, to veil, for in the very solemnity of promising in marriage, by which marriage is brought about, the heads of the ones being married are veiled.

in matrimonio est tria considerare. Primo essentiam ipsius, quae est conjunctio; et secundum hoc nominatur conjugium. Secundo causam ejus, quae est **desponsatio**; et secundum hoc vocantur nuptiae a nubere, quia in ipsa solemnitate **desponsationis** qua matrimonium perficitur, capita nubentium velantur.³⁶³

³⁶¹ Beal, p. 1236.

³⁶² *In IV Sent.*, D. 27, q. 1, art. 2, qc. 3, corpus.

³⁶³ *In IV Sent.*, D 27, Q 1, A 1, qc 2, corpus.

This is clearly not a betrothal, for betrothals do not cause marriage. In his discussions of Old Testament types, however, it would create confusion to speak of God's 'promising to marry' the Israelite people.³⁶⁴ Here we have used the traditional word, "espouse," which in English carries a certain ambiguity, but nevertheless conveys a stronger bond than "betrothal":

And furthermore, this is expressly against what we have in Jeremiah 3, Ezekiel 16, Hosea 2, 2 where the mention of the espousal of the synagogue is expressly made; wherefore, she was not as a concubine, but as a wife.

Et praeterea hoc est expresse contra id quod habetur Hierem. 3, Ezech. 16, Oseae 2, 2, ubi expresse fit mentio de desponsatione synagogae; unde non fuit sicut concubina, sed sicut uxor.

If a *desponsatio* were a betrothal, it would not have been sufficient to transform Hosea's harlot into a wife, according to canon law. The root of *desponsatio* is *sponsum*, pledge; while this commitment of pledges gave a certain legal firmness to the agreement in ancient cultures, those contracts were completed in the physical transfer of the bride to the groom's home (*traditio, domumductio* or *Trauung*). Aquinas must delineate that a pledging of oneself in the present tense constitutes a marriage, independent of any subsequent cohabitation. In addition, the fact that a sacrament depends on the contract means that greater specificity is required to identify the moment of grace.

3. A toro divortium vs. repudium

St. Thomas refers to the Mosaic divorce laws with the expressions *repudiare/repudium* and *libello repudii* (Distinction 33, Question 2). On the other hand, in the only Question considered in Distinction 35, he discusses the possibility of *divortium* on account of fornication in one of the spouses. This is a possibility opened up by the words of Christ in Matthew 5:32. However, Saint Thomas makes it clear that by *divortium* and the verb *dimittere*, he does not intend "divorce" as we understand it. Initially, he even calls it a "separation":

here he considers a toro separation because of the sin of fornication, which similarly takes away the marital act although the marriage bond endures.

hic determinat de **separatione** a toro propter peccatum fornicationis, quae similiter actum matrimonii tollit vinculo matrimoniali durante.³⁶⁵

It becomes quickly clear that the *divortium* at issue here is what we would call a separation, in which the marriage still exists, and neither party has the right to remarry.³⁶⁶ Aquinas makes another distinction that differs slightly from our understanding of legal

³⁶⁴ Even if this is what he seems to do in Hosea 2:19-20.

³⁶⁵ *In IV Sent.*, Distinction 35, Prologue.

³⁶⁶ *In IV Sent.*, D. 35, Q. u., art. 5.

terms. In current secular marriage law, legal separations are said to happen *a mensa et thoro*; this kind of separation legally ends cohabitation between the spouses.³⁶⁷ It is distinguished from a divorce as commonly understood today, which is *a vinculo matrimonii*.³⁶⁸ St. Thomas's *a toro* separation, however, pertains more specifically to the conjugal rights:

a man can send away his wife in two ways. In one way, only from the bed; and in this way he can dismiss her by his own judgment as soon as he discovers the fornication of his wife; nor is he bound to render the debt to her when she requires it, unless he is compelled by the Church; and in that case rendering the debt prejudices none of his rights. In another way, both *a mensa et thoro*; and in this way she cannot be sent away except by the Church's verdict. And if she had been dismissed in any other way, he ought to be forced to cohabit with her, unless her husband could prove the fornication of the incontinent one. Now this dismissal is called separation; and therefore it must be admitted that separation cannot be granted unless by the judgment of the Church.

vir potest **dimittere** uxorem dupliciter. Uno modo quantum **ad torum** tantum; et sic potest eam dimittere quam cito sibi constat de fornicatione uxoris, proprio arbitrio; nec tenetur reddere debitum exigenti, nisi per Ecclesiam compellatur; et taliter reddens nullum sibi praejudicium facit. Alio modo quantum **ad torum et cohabitationem**; et hoc modo non potest dimitti nisi iudicio Ecclesiae; et si alias dimissa fuerit, debet cogi ad cohabitandum, nisi possit ei vir incontinenti fornicationem probare. Haec autem dimissio **divortium** dicitur; et ideo concedendum est quod **divortium** non potest celebrari nisi iudicio Ecclesiae.³⁶⁹

A separation *a toro* for Saint Thomas is not necessarily an end to cohabitation, but merely the suspension of the marital debt. Accordingly, we have translated *dimittere*, as “send away” or “put away” rather than “divorce” as was formerly used, since calling this arrangement a ‘divorce’ seems to contribute to a misconstrual of Church teaching even today.

³⁶⁷ Henry Campbell Black. *Black's Law Dictionary; Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*. (St. Paul, Minn: West Pub. Co, 1968), p. 6: “a mensa et thoro: From table and bed, but more commonly translated, from bed and board. A kind of divorce, which is rather a separation of the parties by law, than a dissolution of the marriage.”

³⁶⁸ Henry Campbell Black. *Black's Law Dictionary; Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*. (St. Paul, Minn: West Pub. Co, 1968), p. 7: “a vinculo matrimonii. From the bond of matrimony. A term descriptive of a kind of divorce which effects a complete dissolution of the marriage contract.”

³⁶⁹ *In IV Sent.*, Dist. 35, Q. u., Art. 3, corpus.

4. The Deliberate Love in a Marriage that is no Love Match

Undoubtedly, however, the greatest hurdle to a modern reader's understanding of Saint Thomas's theology of marriage is the fact that the thoroughly deliberate process of choosing a spouse has given way, in the West, to marriage and engagement based on the affections of the couple. The prejudice is widespread, as Fr. Stan Parmisano states:

Notwithstanding substantial studies to the contrary, it remains commonplace among specialists in literature, in Church history, and historical theology, as also with the more popular mind, that the patristic and medieval Church had little regard for marriage as a bond of love between husband and wife.³⁷⁰

We must resist the temptation to reject Aquinas's juridical approach on the grounds that marriages are contracted very differently today. It is easy to assume, because marriage today (at least in Western, developed societies) takes place for purely affective reasons, that our modern, Western conception of marriage ensures more spousal love and accords more dignity to the human person. Such an attitude naively ignores the fact that happy Catholic marriages are still arranged in many parts of the world, and areas where marriages typically occur for emotional reasons suffer a divorce rate many times higher than areas that follow the traditional process. In commenting on the choice of the word *consortium* to define marriage in canon law, Fr. Ladislav Orsy reminds us

In choosing the word *consortium*, canon law tries to strike a middle course between the ideal of a perfect union of minds and hearts, and the unsatisfactory state of a merely external association, so that the legitimate marital customs and traditions of various peoples could be accommodated... We have to be careful not to make an exaggerated version of Western personalistic philosophy so absolute that the marriages of Christians living in another culture should be considered invalid.³⁷¹

Moreover, arranged marriage was the norm all over the world for centuries. Whether such marriages were valid is not the issue here, but rather whether they represented a truly inferior experience of spousal love. Chinese Catholic diplomat John C.H. Wu gives an indication from his own experience of the quality of the relationship in an arranged marriage.

Although I was engaged not by my own will, I had absolutely no doubt that the one to whom my parents had matched me was predestined to be my wife. In one sense, such a betrothal had a greater dignity than the civil engagement by the free choice of the parties; because it was, as it were, registered in Heaven. If one has chosen one's own fiancée, one is liable to wonder at times if one has made the right choice. If on the other hand, one believes, as we did, that every marriage is made in Heaven, there could be no

³⁷⁰ Stan Parmisano, "Spousal Love in the Medieval Rite of Marriage," *Nova et Vetera*, English Edition, Vol. 3, No. 4 (2005), p. 785.

³⁷¹ Ladislav Orsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, (Wilmington, DE: Michael Glazier, Inc., 1986), pp. 51-52.

room for regret . . . did you choose your parents, your brothers and your sisters? And yet you love them all the same.³⁷²

Modern students of marriage theology must resist the tendency to assume that the love-matches that have become the Western norm in the last 200 years have made true and deep spousal love possible for the first time. Such a belief would make us much more subject to the confines of our cultural milieu than Aquinas was, for the marriages that he addressed followed a pattern that had existed for thousands of years in countless different societies.

In his theology of marriage, Saint Thomas assumes a spousal relationship that is deliberate, rational, and accomplished through a considerable juridical process. Nevertheless, it is a relationship that is “made according to the freedom of love,”³⁷³ and which constitutes the “greatest friendship,”³⁷⁴ “a sweet partnership,”³⁷⁵ where the love is the “most intense”³⁷⁶ among human relations. Moreover, as we have attempted to show, a careful reading of Aquinas that draws upon every area of his teaching indicates that this deliberate juridical approach to marriage has much to teach the modern reader. This vision of love incorporates every power of the human being, from his reason to his lowest appetites; it considers his first beginnings, his ancestral heritage and his final end; it attends to the most intimate unspoken desires of the spouses and to their impact on their political community and on the communion of saints. It is these aspects that we have called ‘juridical’ that permit marriage to be something more enduring and supernatural than a love that springs from emotions alone.

³⁷² John C.H. Wu, *Beyond East and West*, quoted in Ladislav Orsy, *Marriage in Canon Law*, pp. 52-53.

³⁷³ *In Sent. IV*, D. 29, art. 3, questiuncula 1, sed contra.

³⁷⁴ *Summa Contra Gentiles*, III-II, cap. 123, 6.

³⁷⁵ *Ibid.*

³⁷⁶ *Summa Theologiae*, II-II, Q. 26, Art. 11.

COMMENTARY ON THE SENTENCES IV

DISTINCTION 26

QUESTION 1

Prologue

After the Master has discussed the sacrament of orders, which is ordered to the spiritual multiplication of the Church, here he begins to consider matrimony, which is ordered to the material multiplication of the faithful; and it is divided into two parts: in the first he considers matrimony; in the second, persons contracting matrimony (Distinction 34), where he says: *now it remains to consider which persons are eligible for contracting marriage*. The first is in two parts: in the first he determines those things which pertain to matrimony, inasmuch as it is a sacrament; in the second he determines the causes of matrimony, Distinction 27, where he says: *after this we must turn to what is wedlock*. The first is in two parts: in the first he considers the institution of marriage; in the second, its signification: for these two things are common to all the sacraments, where he says, *since other sacraments, etc...*

Concerning the first, he does three things: first he shows the two institutions of matrimony; secondly, he shows the difference between them, where he states: *the first institution had a precept*; thirdly, he excludes certain errors which can be occasioned by what has been said, where he says: *however, there were several heretics who detested wedding*. Concerning the second, he does two things; first he shows the difference between the second institution and the first, by the fact that the first was in precept, the second was granted as an indulgence; secondly he shows how this indulgence should be taken, where he says: *but indulgence is taken in diverse ways*.

Since then, wedlock is a sacrament, it is a sacred sign and a sacred thing. Here he considers the signification of matrimony; and concerning this he does two things: first he determines the signification of matrimony; secondly he excludes certain false opinions,

which arose from those things said before, where he says: *wherefore it is that certain learned men said that the woman who does not experience carnal intimacy does not belong to a marriage*.

Concerning this he does three things: first he sets forth those things that seem to be based on the opinion stated; secondly he shows this opinion to be false, where he says: *therefore if someone takes this according to the surface of the words, he is led into error*; thirdly he responds to the test, where he says: *but those things posited above are to be understood by the same reason stated, etc...*

This is a twofold question. The first, concerning marriage according as it is in the office of nature. The second, concerning that according to which it is a sacrament.

Concerning the first there are four things to be asked: 1) whether marriage is natural 2) whether now it is under command; 3) whether its act is licit; 4) whether it can be meritorious.

Article 1

Whether marriage is natural

1. It seems that marriage is not natural. For natural law is what nature has taught all animals. But in other animals there is sexual union without marriage. Therefore matrimony is not of natural law.

2. Furthermore, that which is of natural law is found in men, whatever their state. But marriage has not existed in men of every state: for, as Cicero says in the beginning of his Rhetoric,³⁷⁷ *men were living in the woods in the beginning, and then no one knew his own children, nor any particular wedding ceremonies in which marriage consists*. Therefore it is not natural.

3. Furthermore, natural things are the same among all men. But marriage is not the same among all men, since it is celebrated in different ways under diverse laws. Therefore it is not natural.

4. Furthermore, those things without which the intention of nature can be preserved do not seem to be natural. But nature intends the conservation of the species by generation, which can happen without marriage, as is clear

³⁷⁷ Actually Cicero's *De Inventione*, Bk II, section 65.

in the case of fornicators. Therefore, marriage is not natural.

But to the contrary is what is said in the beginning of the Digests: the union of a husband and wife, which we call marriage, is a natural right.

Moreover, in Book 8 of the Ethics, chapters 12-14, the Philosopher says that man is more naturally a conjugal animal than a political one. But man is naturally political and social, as he himself says. Therefore, he is naturally conjugal, and thus wedlock, or marriage, is natural.

I answer that something is said to be natural in two ways. In one way, as it is caused by necessity from the principles of nature, as to be moved upward is natural to fire, etc.; and in this way marriage is not natural, nor are any of those things that are completed by means of free will. In another way "natural" is said of what nature inclines to, but it is completed by means of free will, as acts of virtues are called natural; and in this way also marriage is natural, for natural reason is inclined to it in two ways. First, as concerns its principal end, which is the good of offspring: for nature does not intend only their generation, but their upbringing, and their advancement to the perfect state of man as man, which is the state of virtue. Wherefore, according to the Philosopher, we have three things from our parents: namely, being, nourishment, and learning. But a son may not be educated and instructed by a parent, unless he has certain, definite parents: which would not be, unless there were some obligation of a man to a particular woman, which constitutes marriage. Secondly, as to the secondary end of matrimony, which is the mutual service that the spouses devote to each other in domestic matters. For as natural reason dictates that men live together, because one man is not sufficient to himself in all things which pertain to life, by reason of which man is said to be naturally political; so also of those things which are needed for human life, certain works are suited to men and certain to women; wherefore nature moves that there be a certain association of a man with a woman, in which marriage consists. And the Philosopher sets forth these two reasons in Book 8 of the Ethics.

1. The nature of man inclines to something in two ways. In one way, because it befits the nature of his genus: and this is common to all animals. In another way, because it befits the

nature of the difference by which the human species exceeds its genus, inasmuch as man is rational; like the acts of prudence and temperance. And thus the nature of the genus, although it is one among all animals, yet it is not in all in the same way; so also it is not inclined in the same way in all, but according to what befits each one. Therefore the nature of man inclines to marriage on the part of the difference, as was assigned by the second reason; wherefore the philosopher assigns this reason to men above all animals. But as to the first reason, it inclines on the part of the genus; wherefore it says that the procreation of children is common to all animals. Nevertheless, it does not incline to this in the same way in all animals, for with certain animals, the children are sufficiently able to seek their own food immediately after birth, or one parent suffices for their sustenance: and among these animals there is no determination of male to female. Among those animals whose children need the sustenance of both, but for a little time, some determination is found corresponding to that time; as is seen among certain birds. But in man, since the child needs the care of parents for a long time, there is the greatest determination of male to female, to which also the nature of the genus inclines.

2. The words of Cicero can be true of a certain nation; if however, it is taken as the beginning of that particular tribe, when it became distinct from other nations. For this effect, to which natural reason inclines, is not attained by all nations. But [his statement] is not true universally, for from the beginning of the human race Sacred Scripture reports that there were marriages.

3. According to the Philosopher, in Book 6 of the Ethics, human nature is not unmoving like the divine nature; and thus those things that are of divine law are diversified according to diverse states and conditions of man; while in divine matters things do not naturally vary at all.

4. Nature does not only intend the being of the children, but also their being complete, for which marriage is required, as is clear from what has been said.

Article 2

Whether marriage remains under precept until now.

1. It seems that marriage remains under precept until now. For a command obliges as long as it is not revoked. But the first institution of marriage was under precept as is said in the text, nor is it ever read that this precept was revoked, but rather confirmed, Matthew 19, 6: *what God has joined together, let no man separate*. Therefore up to now marriage is under precept.

2. Furthermore, the precepts of natural law oblige in every age. But marriage is of natural law, as was said. Therefore, etc.,

3. Furthermore, the good of a species is better than the good of the individual: for the good of a nation is more divine than the good of one man, as is said in Book I of the Ethics. But the precept given to the first man for the conservation of the individual by the nutritive act, obliges even now. Therefore, much more does the precept of marriage, which pertains to the conservation of the species.

4. Furthermore, where the obligating reason remains, the same obligation must remain. But men were obliged to marry in ancient times because of this: lest the multiplication of the human race should cease. Since, therefore, the same thing would result if anyone could freely abstain from marriage, it seems that marriage is still under precept.

But to the contrary is what is said in 1 Corinthians 7:37: *whoever does not give his virgin in marriage, does better*--that is, than someone who does give her away in marriage. Therefore, the contract of marriage is not now under precept.

Moreover, a prize should be given to no one for the transgression of a precept. But a special prize is owed to virgins, namely the golden crown. Therefore, marriage is not under precept.

I answer that nature inclines to something in two ways. In one way, as toward that which is necessary for the perfection of the individual; and such an obligation obliges anyone; for natural perfections are common to everyone. In another way it inclines to what is necessary for the perfection of the multitude: and since many things are of this kind, of which one would impede another, every man is not obliged by such an inclination in the mode of a precept; otherwise every man would be obliged to

farming and building, and duties of this kind, which are necessary to human community: but for the inclination of nature it is enough if these tasks are completed by different men in different ways. Since, then, it is necessary for the perfection of the human multitude that some are in service to the contemplative life, which is most greatly impeded by marriage, the inclination of nature to marriage does not oblige by the mode of a precept, even according to the philosophers; wherefore, Theophrastus proves that for a wise man it is not expedient to marry.

1. That precept has not been revoked; but neither does it oblige each and every one because of the reason given, except back in the days when the scarcity of human beings required everyone to be available for generation.

2, 3. To the second and third the solution is evident from what has been said.

4. Human nature commonly inclines to diverse offices and acts, as was said. But since it is in diverse ways in different men, according to how it is individuated in this man or that man; one man inclines more to one of those offices, another to another. And from this diversity together with divine providence, which moderates all things, it happens that one man chooses one task, like farming, another chooses something else. And so it also happens that certain men choose matrimonial life and certain choose contemplative life. Whence no danger is imminent.

Article 3

Whether the marital act is always a sin.

1. It seems that the marital act is always a sin. For 1 Corinthians 7:29 says, *those who marry, let them be as if unmarried*. But the unmarried do not have the marital act. Therefore, even married people would sin in that act.

Furthermore, Isaiah 69:2: *your iniquities have made a division between you and your God*. But the marital act divides man from God; wherefore in Exodus 19 it is commanded to the people who had to see God, that they not approach their wives; and Jerome says that in the marital act the Holy Spirit did not touch the hearts of the prophets. Therefore, it is iniquity.

3. Furthermore, that which is base in itself cannot be made good in any way. But the marital act has concupiscence attached to it, which is always base. Therefore it is always a sin.

4. Furthermore, nothing is excused if it is not a sin. But the marital act needs to be excused by the goods of marriage, as the Master says. Therefore, it is a sin.

5. Furthermore, the judgment of things identical in species is the same. But marital lying together is of the same species as the act of adultery, since it results in the same thing, namely, the human species. Therefore, since the act of adultery is a sin, the act of matrimony is as well.

6. Furthermore, excess in passions corrupts virtue. But there is always an excess of pleasure in the marital act, to the extent that it absorbs reason, which is the principal good in man; wherefore the Philosopher in Book 7 of the Ethics says that it is impossible for man to understand anything during that delectation. Therefore, the marital act is always a sin.

But to the contrary, 1 Corinthians 7:36: *a virgin does not sin if she marries*; and 1 Timothy, 5:14: *I would like for the young girls to marry, in order to bear children*. But procreation of children cannot happen unless by carnal union. Therefore the marital act is not a sin; otherwise, the Apostle would not have wished it.

Moreover, no sin is commanded. But the marital act is commanded, in 1 Corinthians 7:3: *a man should render the debt to his wife*. Therefore it is not a sin.

I answer that given that bodily nature was instituted by God, it is impossible to say that those things pertaining to the conservation of bodily nature, and to which that nature is inclined, are universally bad; and therefore, since the inclination to the procreation of children, by which the nature of the species is conserved, is natural, it is impossible to say that the act by which children are procreated is universally illicit, so that in it could not be found the mean of virtue; unless it is argued according to the insanity of certain people, that corporeal things were caused by an evil god; from which is derived perhaps that opinion which is touched on in the text. And that is the worst heresy.

1. The Apostle did not prohibit the marital act in those words, as neither the possession of things, when he said, *those who make use of*

this world, as though not using it. But in both he prohibits resting in their enjoyment: which is clear from the way of speaking itself: for he did not say, "let them not use" or "let them not have," but "*as if* not using, or not having."

2. We are joined to God according to the habit of grace, and according to the act of contemplation and love. Therefore, anything that separates the first union, is always a sin; but not what separates the second: for a licit occupation dealing with inferior things distracts the soul, so that it is not capable of being joined to God in act; and this particularly happens in carnal union, in which the mind is absorbed because of intense delectation; and because of this, for those men to whom it belongs to contemplate divine things, or to treat sacred things, abstinence from their wives is enjoined for that time; and according to this also it is said that the Holy Spirit did not touch the minds of the prophets with the act of revelation of secrets, when they were availing themselves of their marital rights.

3. That baseness of concupiscence which always accompanies the act of matrimony is not the baseness of fault, but of punishment, coming from our first sin; so that namely the lower powers and members of the body do not obey reason; and because of this the argument does not follow.

4. Something is properly said to be excused which has a resemblance to evil, and yet is not evil, or not as much as it seems: and of these things, some are excused entirely, and some to a certain degree; and since the marital act has likeness to an inordinate act because of the corruption of concupiscence, therefore, for the good of marriage it is excused entirely, so that it is not a sin.

5. Although they are the same in species of nature, nevertheless they differ in species of moral act, which may differ by one circumstance, for example to approach one's own wife or not one's own wife; just as also to kill a man by violence or by justice makes different species of moral act, although it is one species of nature, yet one is licit and the other illicit.

6. The excess of passion which corrupts virtue, does not only impede the act of reason, but takes away the order of reason; which the intensity of delectation in the marital act does not do, for even if man is not ordered at that moment, nevertheless he is pre-ordered by reason.

Article 4

Whether the marital act is meritorious.

1. It seems that the marital act is not meritorious. For Chrysostom says about Matthew: even if marriage does not carry a punishment for those availing themselves of it, nevertheless, it does not furnish a reward (*mercedes*). But merit is said in respect of a reward. Therefore, the marital act is not meritorious.

2. It is not meritorious to give up what is praiseworthy. But virginity is praiseworthy, and because of it marriage is given up. Therefore, the marital act is not meritorious.

3. Furthermore, whoever takes advantage of indulgences made to him, enjoys a benefit received. But no one merits by being offered a benefit. Therefore, the matrimonial act is not meritorious.

4. Furthermore, merit consists in difficulty, like virtue. But the marital act does not have any difficulty, but rather delectation. Therefore it is not meritorious.

5. Furthermore, what cannot be done without venial sin, is never meritorious; for man cannot simultaneously merit and demerit. But in the marital act there is always venial sin: for even the first movement in pleasure like this is a venial sin. Therefore the act mentioned cannot be meritorious.

But to the contrary every act in which a precept is fulfilled is meritorious, if it is done out of charity. But the marital act is of this kind: for it is said in 1 Corinthians 7:3: *a man must render the debt to his wife*. Therefore, etc.

Moreover, every act of virtue is meritorious. But the act mentioned is an act of justice, which is called the rendering of a debt. Therefore it is meritorious.

I answer that since no act proceeding from deliberate will is indifferent, as was said in Book I, Distinction 40, Question 1, Article 5, the marital act is always either a sin or it is meritorious in someone who has grace. For if a virtue leads one to the marital act—whether justice, in order to render the debt, or religion, in order to procreate children for the worship of God—it is meritorious. But if sexual desire (*libido*) should move one, yet remaining within the goods of marriage, so that a man in no way wants to approach some other woman, then it is a venial sin. But if it is borne beyond the goods

of marriage, so that one would do it with any woman whatsoever, it is a mortal sin. However, nature cannot move unless ordered by reason, and thus it will be motivated by virtue; or else it is not ordered, and then it will be motivated by sexual desire (*libido*).

1. The root of meriting as to the substantial prize is charity itself: but as to some accidental prize, the *ratio* of merit consists in the difficulty of the act; and thus the marital act is not meritorious, except in the first way.

2. Man can merit in lesser things and in greater things: wherefore when someone forgoes a lesser good so that he might do the greater, his abandoning a less meritorious act is to be praised.

3. An indulgence sometimes has to do with lesser evils; and thus the marital act is indulged according as sexual desire moves one to it while remaining within the bounds of marriage, for thus it is a venial sin. But according as virtue moves one to it, so that it is meritorious, it does not require an indulgence unless as to the indulgence of lesser goods, which is the same as a concession. Nor is it unfitting that that man who takes advantage of this concession, merits: for the good use of the benefits of God is meritorious.

4. Difficulty of a work is required for the merit of the accidental prize, but for meriting the essential prize, the difficulty required consists in ordering to the mean, and this is also in the marital act.

5. The first movement according to which it is called venial sin, is the motion of the appetite toward something inordinately delectable, which is not in the marital act; and thus the argument does not follow.

QUESTION 2

Prologue

Next we must consider marriage as it is a sacrament: and concerning this there are four things to be asked: 1) whether it is a sacrament; 2) about its institution; 3) about its effect; 4) about its integrity.

Article 1

Whether matrimony is a sacrament

1. It seems that marriage is not a sacrament. For every sacrament of the new law has some form, which is of the essence of the sacrament. But the blessing which is done by the priests in the marriage ceremony is not of the essence of matrimony. Therefore it is not a sacrament.

2. Furthermore, a sacrament, according to Hugh, is a material element. But marriage does not have for its matter any material element. Therefore, it is not a sacrament.

3. Furthermore, the sacraments have efficacy from the passion of Christ. But by matrimony a man is not conformed to the Passion of Christ, which was painful, since it has pleasure attached to it. Therefore, it is not a sacrament.

4. Furthermore, every sacrament of the new law effects what it represents. But marriage does not effect the union of Christ and the Church which it signifies. Therefore, marriage is not a sacrament.

5. Furthermore, in the other sacraments, there is something that is *res* and *sacramentum*. But this cannot be found in marriage since it does not impress a character; otherwise it could not be repeated. Therefore it is not a sacrament.

But to the contrary is what is said in Ephesians 5:32, *this is a great sacrament, etc.* ..

Moreover, a sacrament is a sign of a sacred thing. But marriage is this kind of thing. Therefore, etc...

I answer that a sacrament carries a certain remedy of holiness for man against sin, shown by sensible signs, as was said in Distinction 1, Question 1, Article 2, *questiuncula* 1. Wherefore, since this is found in marriage, it is counted among the sacraments.

1. The words in which the matrimonial consent is expressed are the form of this sacrament, not the blessing of the priest, which is a certain sacramental.

2. The sacrament of matrimony is completed by the action of the one who avails himself (*uti*) of this sacrament, just like penance; and thus, as penance does not have any other matter than those sensible acts themselves which are in place of a material element, so it is with marriage.

3. Although marriage does not conform to the Passion of Christ in suffering, yet it does conform to it in the love, by which he suffered for the Church in order that she might be joined to him as bride.

4. The union of Christ to the Church is not a *res contenta* in this sacrament, but a *res significata non contenta*; and no sacrament can bring about such a thing, but it has another thing contained and signified, which it brings about, as will be said. However, the Master argued that it was a *res non contenta*; for he was of this opinion, that there could not be any other *res* except a *res contenta*.

5. Also in this sacrament there are three things: for *sacramentum tantum* are the external acts appearing; but *res et sacramentum* is the obligation which a man has toward a woman by such acts; but the final *res contenta* is the effect of this sacrament: but it is not the *res contenta* that the Master describes.

Article 2

Whether marriage should have been instituted before sin

1. It seems that marriage should not have been instituted before sin. For what is of natural law does not need an institution. But marriage is that kind of thing, as is clear from what has been said. Therefore, it did not have to be instituted.

2. Furthermore, sacraments are a certain medicine against the sickness of sin. But medicine is not prepared unless for someone sick. Therefore before sin, it did not have to be instituted.

3. Furthermore, one institution suffices for one thing. But marriage was also instituted after sin as is stated in the text. Therefore before sin it was not instituted.

4. Furthermore, the institution of a sacrament should be from God. But before sin the words which pertain to marriage were not spoken by God, but by Adam: those words that God said, *increase and multiply*, were also said to the beasts, in whom there is no marriage. Therefore, marriage was not instituted before sin.

5. Furthermore, marriage is a sacrament of the new law. But sacraments of the new law took their beginning from Christ. Therefore, it did not have to be instituted before sin.

But to the contrary is what is said in Matthew 19:4: *do you not read that the one who made man from the beginning, made them male and female, etc...*

Moreover, marriage was instituted for the procreation of offspring. But before sin the procreation of children was necessary for man, as was said in Book II, Distinction 20. Therefore, marriage had to be instituted before sin.

I answer that nature inclines to marriage, intending a certain good, which indeed varies according to the diverse states of man, and thus it is fitting that in regard to that good, it is instituted in different ways for the different states of men.

And thus marriage was instituted before sin, according as it is ordained to the procreation of offspring, which was necessary also when sin did not exist. But according as it is a remedy provided against the wound of sin, it was instituted after sin in the time of the law of nature. But according to the determination of persons, it had its institution under the law of Moses. Yet, according as it represents the mystery of the union of Christ and the Church, it had its institution under the new law; and according to this it is a sacrament of the new law. But as to the other benefits which are consequent upon marriage, like friendship and mutual service devoted to each other by the spouses, it has its institution in civil law. But since it is of the *ratio* of a sacrament that it be a sign and a remedy, thus the middle institutions have to do with it under the *ratio* of a sacrament; but as to the first institution, it has to do with what it is in the office of nature; as to the last, what it is in the office of civic life.

1. Those things that are of natural law in general need an institution as to their determination, which is applicable in different ways to men in different conditions; just as it is of natural law that wrongdoing is punished, but

how a certain punishment is appointed to a certain crime is done by the determination of positive law.

2. Marriage is not only a remedy against sin, but is principally in the office of nature; and thus it was instituted before sin, but not as a remedy.

3. According to the different things that need to be determined in matrimony, it is not unfitting that it have diverse institutions; and thus one institution is not the same as the other.

4. Marriage before sin was instituted by God in this, that he formed the woman for the man from his side as a helper, and he said to them: *increase and multiply, etc.*; although he said this to the other animals, it was not to be fulfilled in the same way as with men. But Adam brought forth those words, inspired by God, as he understood the institution of marriage to have been done by God.

5. Marriage as a sacrament of the New Law was not instituted before Christ, as is clear from what has been said.

Article 3

Whether marriage confers grace

1. It seems that marriage does not confer grace. For according to Hugh, the sacraments confer invisible grace by sanctification. But marriage does not have any sanctification which is of its essence. Therefore, grace is not conferred in it.

2. Furthermore, every sacrament that confers grace confers it by its matter and its form. But the acts that are the matter in this sacrament are not causes of grace; and the words expressing consent are not a cause of grace, since there is no sanctification from them. Therefore, grace is given in no way in marriage.

3. Furthermore, the grace ordained against the wound of sin is necessary for all who have that wound. But in all men is found the wound of concupiscence. If therefore, in marriage grace is given against the wound of concupiscence, all men should contract marriage; and thus it would be extremely stupid to abstain from marriage.

4. Furthermore, infirmity does not receive medicine from the same thing from which it takes intensity. But by marriage, concupiscence gains intensity, for just as the Philosopher says

in Book 3 of the Ethics, the concupiscible appetite is insatiable, and grows by its own operation. Therefore, it seems that in marriage a remedy of grace is not bestowed against concupiscence.

But to the contrary, the definition and the thing defined should be convertible. But in the definition of sacrament is included causality of grace, as was clear in Distinction 1. Therefore since marriage is a sacrament, it will be a cause of grace.

Moreover, Augustine says that marriage is a remedy for the diseased. But it is not a remedy except to the extent that it has some effect. Therefore it has something of efficacy for repressing concupiscence. But concupiscence is not repressed except by grace. Therefore grace is conferred in it.

I answer that concerning this there are three opinions.

For certain people said that marriage is a cause of grace in no way, but it is only a sign. But this cannot stand. For according to this it would not differ at all from the sacraments of the Old Law; wherefore there would be no reason why it should be enumerated among the sacraments of the New Law. For the remedy that it offers for the satisfying of concupiscence lest it should drive someone over the edge from being too strictly restrained, it possessed also in the Old Law by the very nature of the act.

And thus others have said that grace is conferred here in order to withdraw one from evil: for the act is excused from sin, which would have been a sin without marriage. But this would be scarcely anything: for this was also the case in the Old Law. So they say that it withdraws one from evil by diminishing concupiscence, lest it be borne outside the goods of marriage; by that grace there is no help for acting well, however. But this cannot stand, for it is the same grace which impedes sin and which inclines to good, just as the same heat which removes cold also warms.

Wherefore, others say that marriage, inasmuch as it is contracted in the faith of Christ, is able to confer a grace helping those things to be done which are required in marriage; and this is more probable: for wherever a certain divine faculty is given, help is also given by which man can fittingly make use of that faculty; as is clear that some members of the body correspond to each of the powers of the soul, by which they may discharge an act. Wherefore, since in marriage

a man is given by divine institution the faculty of enjoying (*uti*) his wife for the procreation of children, grace is also given without which he could not do this fittingly; just as with the power of holy orders spoken of above, so also what grace is now given in this sacrament is like the *res contenta*.

1. Just as the water of baptism is able to touch the body and cleanse the heart by its contact with the flesh of Christ, so marriage has this from the fact that Christ represented it in his Passion; and not principally by some sanctification of the priest.

2. Just as neither the water of baptism nor the form of words bring about grace immediately, but a character; so the external acts and the words expressing consent directly effect a certain bond of obligation, which is the sacrament of marriage; and a bond of this kind operates dispositively for grace by the power of divine institution.

3. That argument would hold unless some more efficacious remedy could be applied against the illness of concupiscence. But a greater remedy is applied by spiritual works and mortification of the flesh by those who do not make use of marriage.

4. Against concupiscence a remedy may be applied in two ways. In one way is on the part of concupiscence itself, as it is repressed in its root; and thus marriage offers a remedy by the grace which is given in it. In another way, on the part of its act; and this in two ways. In one way as the act to which concupiscence inclines loses baseness externally; and this happens through the goods of marriage, which ennoble carnal concupiscence. In another way, as the act having baseness is impeded; which happens by the very nature of the act; for as long as concupiscence is satisfied in the conjugal act, it is not so incited to other corrupting influences; because of which the Apostle says, 1 Corinthians 7:9, *it is better to marry than to burn*. For although the works corresponding to concupiscence *secundum se* are bound to increase concupiscence; yet according as they are ordered by reason, they repress it: for by repeated acts are left behind similar habits and dispositions.

Article 4

Whether carnal commingling is of matrimonial integrity.

1. It seems that carnal commingling is integral to marriage. For in the very institution of marriage was said, Genesis 2:24, *there were two in one flesh*. But this does not happen unless by carnal commingling. Therefore, it is integral to marriage.

2. Furthermore, what pertains to the signification of the sacrament is necessary to the sacrament, as was said before. But carnal commingling belongs to the signification of the sacrament, as is said in the text. Therefore, it is integral to the sacrament.

3. Furthermore, a sacrament like this is ordered to the conservation of the species. But conservation of the species cannot happen without carnal commingling. Therefore, it is integral to the sacrament.

4. Furthermore, marriage is a sacrament, by which the remedy is supplied against concupiscence, concerning which the Apostle says, 1 Corinthians 7:9, that *it is better to marry than to burn*. But this remedy is not furnished to those who do not commingle carnally. Therefore, the same as above.

But to the contrary, in paradise there was matrimony. But there was not carnal intimacy. Therefore, carnal commingling is not integral to marriage.

Moreover, a sacrament, by its very name, carries sanctification. But without carnal commingling, marriage is holier, as is said in the text. Therefore, carnal commingling is not necessary to the sacrament.

I answer that integrity is twofold. One which is found according to the first perfection, which consists in the very being of a thing; another which is attendant upon the second perfection, which consists in operation. Since therefore carnal commingling is a certain activity or use of marriage, through which a faculty is given for this use, carnal commingling will be of the second integrity of marriage, and not of the first.

1. Adam was speaking of the integrity of marriage as regards both perfections, for a thing is recognized by its act.

2. The signification of a *res contenta* is necessary to the sacrament, and carnal commingling does not belong to this

signification, but to the *rem non contentam*, as is clear from what has been said.

3. A thing does not arrive at its end except by its proper act; wherefore by the fact that the end of marriage is not had without carnal commingling, is shown that it is of its second integrity, and not its first.

4. Before carnal commingling happens, marriage is a remedy by the grace that is given in it, although not by the act, which belongs to its second integrity.

Exposition

Although other sacraments received their beginning after sin and because of sin, the sacrament of marriage is read to have been instituted by the Lord also before sin. It seems that he should have considered matrimony before the order of the sacraments: for what is animal is before what is spiritual, as is said in 1 Corinthians 15. And it must be said that although it is first in the way of generation, nevertheless, in the way of perfection and sanctification it is last; and thus that sacrament which has a minimum of spirituality should be ordered last among the sacraments.

One taken from his ribs, and from thence formed into a woman. Concerning this, what is said in Book II, Distinction 18.

To have spoken prophetically, that the prophecy is referred to the mystery of Christ and the Church, which he foresees, not to the enjoyment of the woman which could be perceived by natural reason with sense alone. Nor does it follow that if he foresaw the mystery of the incarnation, he foreknew his own fall, even supposing that Christ would not have become incarnate if man had not sinned: for there are many things of which one does not exist without the other, although one can be understood without the other.

He has a remedy, not a prize, that is, the accidental one, as virginity has; namely, the golden crown.

DISTINCTION 27

QUESTION 1

Prologue

After the Master has determined concerning the institution of marriage and its signification, here he begins to determine concerning its causes; and this is divided into two parts: the first, concerning the constituent causes of marriage; the second, concerning the causes dignifying it, Distinction 31, where he says, *After these things concerning the goods of wedlock: what they are, and how they excuse coitus*. The first part is divided into two: in the first he determines the efficient cause of marriage; in the second, its final cause, around the end of Distinction 30, where it says, *having set forth what the efficient cause of marriage is, it is reasonable to show on account of which cause marriage must be, or customarily would be, contracted*. The first is divided into two parts: in the first part, he determines the efficient cause of marriage; in the second he establishes the impediment of that cause, Distinction 29, where he says, *but it is necessary that conjugal consent be free of coercion*. The first part is divided into two parts: in the first he shows that consent makes marriage; in the second he shows how that consent must be, Distinction 28, where it says, *here it should be asked, whether consent about the future, even with an oath added, would bring about the conjugal union*. The first is divided in two: in the first, having set forth what is intention, he defines marriage, so that the cause is taken proportionate to the effect; in the second, he shows what the cause of marriage is, where he says: *But the efficient cause of marriage is consent*. And here it is divided into three: in the first he proposes what he intends; in the second part he proves the proposition, where it says: *But that consent effects marriage is proved by the evidence below*; in the third part he excludes errors, where it says: *Yet certain people claim that true marriage is not contracted before the handing-over and carnal intimacy*. And this is divided into two parts: in the first part, the parts of their error are traced; in the second part, he excludes it, where he says, *But we answer these men in this way*. Concerning the first, he does three things: first he sets forth the false opinion of

those men; second, he sets forth the proof of it, where he says: *Because, indeed, there is a big difference between a betrothed and a spouse, from which fact they argue . . . etc.*; thirdly, he sets forth their answer to the test applied for truth, where he says: *But the authorities mentioned . . . wish to be understood in this way*.

Therefore we respond to these things. Here he answers the demonstration of those things; and concerning this he does three things: first he establishes a certain distinction, by which the aforementioned authorities are resolved; secondly he proves that distinction through the diverse authorities of the saints, where he says: *for sometimes they call "brides" those who have had such an exchange of promises, where a conjugal pact was made concerning the present*; thirdly, he demonstrates it by reasons, where he says: *and it is known that that bride who was pledged only in the future, does not remain a widow in the event of the groom's death*.

Here there is a three-fold question. First, concerning matrimony. Second, concerning betrothals. Third, concerning bigamy. Three things are to be asked concerning the first: 1) What is matrimony? 2) Whether consent is the cause of matrimony? 3) Whether matrimony can be dissolved by entrance into religious life?

Article 1

Whether marriage is a kind of con-joining (conjunctionis)

Quaestiuncula 1

1. It seems that marriage is not a kind of con-joining. For the bond by which they are somehow bound, differs from con-joining itself as a cause from its effect. But marriage is a certain bond by which the two joined are bound in marriage. Therefore, it is not a kind of con-joining.

2. Furthermore, every sacrament is a sensible sign. But no relation is a sensible accident. Therefore, marriage, since it is a sacrament, will not be in the genus of relation; and so neither in the genus of con-joining.

3. Furthermore, a con-joining is an equal-sided relation, like equality. But the relation of equality is not one in number in both of two extremes, as Avicenna says. Therefore, nor is

there one con-joining; and thus if marriage is in the genus of con-joining, there will not be only one marriage between two spouses.

But to the contrary, a relation is that according to which two things are referred to each other. But in marriage they are referred to each other in some way: for it is said, a man is husband to his wife, and a wife is wife to her husband. Therefore marriage is a kind of relation, nor is it anything other than a con-joining.

Furthermore, the union of two into one does not happen except by a con-joining. But this happens through marriage, as is evident from Genesis 2:24: *they were two in one flesh*. Therefore, marriage is a kind of con-joining.

Quaestiuncula 2

1. In addition. It seems that matrimony is inappropriately named. For a naming should be made from the more noble. But a father has greater dignity than a mother. Therefore, the con-joining of the two should rather be named from the father than from the mother.

2. Furthermore, a thing should be named from that which is of its essence; since the ratio which the name signifies, is the definition, as is said in Book 4 of the *Metaphysics*. But nuptials are not of the essence of marriage. Therefore, matrimony should not be called nuptials.

3. Furthermore, a species cannot be named by a proper name from that which is of the genus. But con-joining (*conjunctio*) is the genus of marriage. Therefore, it should not properly be called conjugal union (*conjugium*).

But to the contrary is the common way that people speak.

Quaestiuncula 3

1. In addition. It seems that it is unfittingly defined in the text. For in the definition of husband, it is necessary that marriage be included: for a husband is one who is joined to a wife in marriage. But he includes marital conjoining in the definition of matrimony. And therefore it seems that these definitions are circular.

2. Furthermore, just as a man is made the husband (*maritus*) of his wife through marriage, so also a woman is made the wife of her husband. Therefore, it should not be called

a "marital con-joining" any more than an "uxorial con-joining."

3. Furthermore custom belongs to the genus of mores. But frequently those joined in marriage are of completely different mores. Therefore the following should not be included in the definition of marriage: *retaining an indivisible custom of life*.

4. Furthermore, other definitions given for marriage are found. For according to Hugo, marriage is the consent to conjoining of two suitable persons. But according to some people, marriage is a consortium of shared life, and a community of divine and human law. And it must be determined how these definitions differ.

Quaestiuncula 1

I answer to the first question, that con-joining conveys a certain uniting together; wherefore wherever there is a uniting of certain things together, there is some kind of con-joining. But things that are ordered to some one thing, are said to be united together in their ordering to it; as when many men are united for one military expedition or for business affairs to be carried out, by that fact they are called fellow soldiers or business partners; and thus, since by marriage two people are ordered to one single project for the generation and education of children, and therefore to one single domestic life, it is clear that in marriage there is a conjoining, because of which "husband" and "wife" are said; and such a conjoining, by the fact that it is ordained to some one thing, is marriage. However, the conjoining of bodies or of souls follows upon marriage.

1. Marriage is the bond by which they are bound formally, not effectively; and thus it is not necessary that it be anything other than the conjoining.

2. Although the relationship itself is not a sensible accident, nevertheless, its causes can be sensible: nor is it required in the sacrament that the *res et sacramentum* be sensible (for in this way the aforementioned conjoining is related in this sacrament), but the words expressing consent, which are the *sacramentum tantum* and the cause of the aforementioned conjoining, are sensible.

3. A relation is founded on something as its cause, as similitude is founded on quality;

and in something as its subject, which would be the very things that are similar; and its unity and diversity can be seen in these two aspects. For therefore in similitude quality is not the same in number in both things but it is the same in species. And again, the subjects of the similitude are two in number, and it is the same way with equality; thus both equality and similitude are two different things in every way in number, in both matters of equality and of similarity. But the relation that is marriage, is one in each of its extremes, on the part of the cause, since it is ordered to one and the same project of generation. But on the part of the subjects, it has diversity of number. And therefore this relation is one and manifold: and the fact that it is manifold on the part of the subjects, is signified in these names, "husband" and "wife." But the fact that it is one, is signified in the name "matrimony."

Quaestiuncula 2

To the second question it is to be said that in marriage there are three things to consider. First, its essence, which is a conjoining; and according to this it is called "conjugal." Secondly, its cause, which is promising in marriage; and according to this it is called "nuptials" from *nubere*, to veil, for in the very solemnity of promising in marriage, by which marriage is brought about, the heads of the ones being married are veiled. Thirdly, the effect, which is children; and thus it is called "matrimony," as Augustine says against Faustus, *on account of this, that a woman should not marry for anything else, except so that she might be a mother.* Also, it can be called matrimony, like *matris munium* (the duties of a mother), that is, office: for the office of educating the children falls mostly to women. Or it is called matrimony, like *matrem muniens* (fortifying the mother): for now she has that by which she is defended and fortified, namely, a husband. Or it is called matrimony, like *matrem monens* (warning the mother), lest she leave her husband, to cleave to another. Or it is called matrimony, like *materia unius* (matter of one), since by it a conjoining happens for a united bringing-forth of children materially, so that it may be called matrimony from *monos* and *materia*. Or it is called matrimony, as Isidore says, from *matre* and

nato (mother and child), for by marriage, in a certain way, the mother of a child is made.

1. Although the father is nobler than the mother, nevertheless, concerning children the mother is more dutiful than the father. Or thus, since the woman was chiefly made for this, that she might be a helper to the man with children for the man; but the man was not made for the sake of this; whence "mother" belongs more to the *ratio* of matrimony than "father."

2. Sometimes essentials are known by accidentals, and thus also they can be named through accidentals, since the name is given for the sake of knowing the thing.

3. Sometimes a species is named from that which is of the genus, because of an imperfection of the species, namely when it has completely the *ratio* of the genus yet it doesn't add anything that belongs to its dignity, as when the accidental characteristic retains the name of the common characteristic. But sometimes this happens because of a perfection, when the *ratio* of the genus is completely found in one species, and not in others; as animal is denominated from *anima*, which refers to the animated (living) body, which is the genus of animal; but animation is not found perfectly in animated (living) things that are not animals; and it is the same way in this argument: for the conjoining of man and woman by matrimony is the greatest since it is a conjoining of souls and of bodies; and therefore it is named *conjugium*.

Quaestiuncula 3

To the third question it must be said that, as was said above, in marriage three things are to be considered: namely, its cause, its essence, and its effect. And according to this three definitions are found to be given for matrimony. For the definition of Hugh touches the cause, namely consent, and is not *per se*. But the definition set forth in the text touches upon the essence of marriage, namely, conjoining, and it adds a determinate subject by saying: *between eligible persons*. It also establishes a specifying difference by saying *marital*: for since matrimony is a conjoining that is ordered to some one thing, such a conjoining is specified by what it is ordered to; and this is what *maritum* (husband) refers to. It also includes the virtue of this conjoining, that

it is indissoluble, in saying, *retaining an indivisible custom of life*.

But the other definition touches the effect to which marriage is ordered; namely, *common life in domestic matters*. And since any community is ordered by some law, for this reason is included the regulating of this communion, which is divine and human law: for other communities, such as business associations and military bodies, have been instituted by human law alone.

1. Sometimes prior things, from which a definition should be given, are not named; and therefore, in the definition of some things certain things are included which are posterior simply speaking, but which are prior with respect to us: as in the definition of quality the Philosopher includes *quale* (what kind), when he says: *quality is that according to which we are said to be of a certain kind*. And so also here in the definition of matrimony is included "marital conjoining," so that the sense is that marriage is a conjoining of those things that require the office of a husband, which could not be named by one name.

2. This difference touches upon the end of the conjoining, as was said; and since, as the Apostle says (1 Corinth. 7), *the man is not for the sake of the woman, but the woman for the sake of the man*; therefore this difference should be taken rather from the man than from the woman.

3. Just as civil life does not convey the singular act of this person or of that person, but those things which pertain to civil community; so conjugal life is nothing other than the companionship belonging to that kind of community; and therefore, the custom of this life is always an indivisible one, however diverse may be the singular acts of each of the two.

4. To the fourth the solution should be evident from what has been said.

Article 2

Whether consent is the efficient cause of matrimony.

Quaestiuncula 1

1. Thus we proceed to the second article. It seems that consent is not the efficient cause of matrimony. For sacraments are not from human will, but from divine institution. But

consent belongs to the will. Therefore, it is not the cause of marriage, just as it is not a cause of any other sacraments.

2. Furthermore, the same thing is not a cause of itself. But marriage seems to be nothing other than consent: for the consent itself signifies the conjoining of Christ to the Church. Therefore, consent is not the cause of marriage.

3. Furthermore, the cause of one thing should be one. But matrimony is one thing between two people, as was said: however, the consents of two people are diverse, for they are from diverse persons, and also they are consents to diverse things: for on one side the consent is to the man, and on the other side the consent is to the woman. Therefore, mutual consent is not the cause of matrimony.

But to the contrary is what Chrysostom says: *It is not coitus, but free will that causes marriage*.

Moreover, one person does not receive power over what is freely another's, unless by his consent. But by marriage both spouses receive power over each other's bodies, as is evident from 1 Corinth. 7, since beforehand each would have had free power over his own body. Therefore, consent effects marriage.

Quaestiuncula 2

1. In addition. It seems that it is not necessary that consent be expressed by words. For a person is handed over into the power of another by marriage, just as also happens by a vow. But a vow obligates with respect to God, even if it is not expressed in words. Therefore, consent also brings about the obligation of marriage even without the expression of words.

2. Furthermore, there can be a marriage between people who are not able to express their consent to each other by words, if, for example, they are mute, or of diverse languages. Therefore, the expression of consent by words is not required for marriage.

3. Furthermore, if what is necessary to the sacrament is omitted for any reason whatsoever, there is no sacrament. But in some cases there is matrimony without the expression of words: as when a girl remains silent out of modesty, her parents commit her to the man. Therefore the expression of words is not necessary to marriage.

But to the contrary, marriage is one of the sacraments. But in every sacrament some sensible sign is required. Therefore, also in marriage; and thus here it is necessary at least that there be words expressing consent sensibly.

Moreover, in marriage a contract is made between a man and a woman. But in every contract there needs to be an expression of words, by which men oblige themselves to each other. Therefore in marriage there must be consent expressed in words.

Quaestiuncula 3

1. In addition. It seems that consent expressed in words concerning the future brings about marriage. For just as the present refers to the present, so is the future related to the future. But consent expressed through words concerning the present effects marriage in the present. Therefore, consent expressed through words concerning the future effects marriage in the future.

2. Furthermore, in marriage a certain obligation is brought about by the words expressing consent, just as in other civil contracts. But in other contracts the obligation does not differ whether it is made through words about the present or about the future. But consent expressed in terms of the present causes marriage in the present. Therefore, consent expressed in terms of the future causes marriage in the future.

3. Furthermore, by religious vows a person contracts a spiritual marriage with God. But a religious vow is made by words concerning the future, and it is binding. Therefore, in the same way marriage can be brought about by words about the future.

But to the contrary is the fact that a man who consents to one woman in words concerning the future, and afterward consents to another in words concerning the present, should, according to the laws, have the second one as his wife. But this would not be the case if consent by words about the future effected matrimony: for by the fact that there is a valid marriage with one, it could not be contracted with another while she lives. Therefore, consent through words concerning the future does not bring about marriage.

Moreover, whoever promises that he will contract something, does not yet do it. But

whoever consents through words about the future, promises that he will contract marriage. Therefore, he does not contract it with her as yet.

Quaestiuncula 4

1. In addition. It seems that the expression of consent through words, also if interior consent should be lacking, effects marriage. For no one should be acquitted of fraud and deception according to the laws. But that man who expresses in words consent that he doesn't have in his heart, commits a deception. Therefore he should not get away with it (*patrocinari*), such that he is rendered free from the obligation of matrimony.

2. Furthermore, mental assent cannot be known to anyone unless as far as it is expressed by words. If, therefore, the expression of words does not suffice, but interior consent is required in both spouses, then neither could know if the other is truly his spouse; and thus he will be a fornicator whenever he enjoys the rights of marriage.

3. Furthermore, if someone is proved to have consented to someone else through words about the present, he is forced to have her as his wife, under pain of excommunication, even if he says that mental consent was lacking; also if he has afterward consented to another with words expressive of his mental consent. But this would not be the case, if mental consent were required for marriage. Therefore it is not required.

But to the contrary is what Innocent III says in the Decretals: without consent, the other things are insufficient to perfect the conjugal covenant (*foedus*).

Moreover, intention is required in all the sacraments. But that man who does not consent in his heart, does not have the intention of contracting marriage. Therefore no marriage happens.

Quaestiuncula 1

I answer to the first question that in all sacraments there is some spiritual operation by the mediation of a material operation which signifies it; just as by the bodily cleansing in baptism an interior spiritual cleansing happens; wherefore, since in marriage there is a certain spiritual conjoining, inasmuch as marriage is a

sacrament, and another material one according as it is in the office of nature and civil life; it is fitting that by the mediation of matter a spiritual thing is done by divine power; wherefore, since the conjoinings of material contracts happen by mutual consent, it is fitting that the matrimonial conjoining is also done in this manner.

1. The first cause of the sacraments is divine power, which works our salvation in these things; but the secondary, instrumental causes are material operations having efficacy from divine institution; and in this way consent is the cause in matrimony.

2. Marriage is not the consent itself, but a certain union of two ordered to each other, as was said, which consent effects. Nor does consent, properly speaking, signify the conjoining of Christ to the Church, but his will, by which it happened that he was conjoined to the Church.

3. Just as marriage is one thing in what the conjoining happens for, although it is manifold on the part of the ones conjoined; so also consent is one thing in what is consented to, namely, the aforementioned conjoining, although it is manifold on the part of the ones consenting; nor is it consent to the man directly, but to the conjoining of the woman with the man; and likewise, for the man's part, he consents to his conjoining with the woman.

Quaestiuncula 2

To the second question it should be said that, as is clear from what was already said, the matrimonial conjoining happens in the manner of obligation in material contracts. And since material contracts cannot be made unless the contracting parties express their wills to each other with words, therefore, it is also necessary that the consent effecting matrimony be expressed in words, so that the expression of words is related to matrimony as the exterior washing is related to baptism.

1. In a vow there is no sacramental obligation, but only a spiritual one; and therefore it is not necessary that it be in the mode of material contracts for it to be binding, as it is with marriage.

2. Although such people cannot express their own vows to each other in words, they can however express it by nodding. And such nods are counted as words.

3. As Hugh of St. Victor says, those who are conjoined must consent to each other in such a way that they receive each other of their own wills (*spontanee*); which is judged to happen in the espousal if they do not speak against it; whence the words of the parents are counted in this case as if they were those of the girl: for it is a sufficient sign that they are hers from the fact that she does not contradict them.

Quaestiuncula 3

To the third question it is to be said that the sacramental causes bring about by signifying, wherefore they effect what they signify: and since when someone expresses his consent in terms of the future, it does not signify that he contracts marriage, but that he promises he will do it; and thus such an expression of consent does not effect the marriage, but the disposition for it, which is called "betrothal."

1. Consent is expressed in terms of the present, and the words are in the present tense, and in the present it is consented to for the same time; but when consent is made in terms of the future, the words are in the present tense, but it is consented to in the future; and therefore it is not for the same time, and because of this it is not the same thing.

2. Even in other contracts which use future words, one party does not transfer power over his own affairs to the other if he says, "I will give to you"; but only when he uses present tense words.

3. In the vow of religious profession, an act of spiritual marriage is expressed in terms of the future, namely, obedience, or observance of the rule, and not the spiritual marriage itself. But if spiritual marriage were vowed in the future, it would not be a spiritual vow, for someone is not yet a monk by this fact; but he pledges that he will be a future monk.

Quaestiuncula 4

To the fourth question it should be said that external washing is related to baptism as the expression of words is related to this sacrament, as was said. Wherefore just as if someone receives an external washing while not intending to receive a sacrament, but doing it as a game or trickery, he would not be baptised; so also the expression of words

without interior consent does not effect matrimony.

1. Here there are two things: first, the lack of consent, which one must justify to himself in the court of conscience in order for him not to be bound by the bond of matrimony, although not in the external forum of the Church, in which things are judged according as they are adduced; and second, the deceitful words; and this will not stand up either in the forum of penance, nor in the forum of the Church, for in either place it is punished.

2. If mental consent is lacking in one party, marriage exists in neither party: since marriage consists in a mutual conjoining, as was said. However, it can be probably believed that there is no deception unless signs of deception appear: since good is presumed of any one, unless the contrary is proved; wherefore that party in whom there is no deception is excused from sin by ignorance.

3. In such a case the Church compels him to stay with his first wife, since it judges based on what appears externally. Nor is it deceived in justice, although it may be deceived in fact. But that man should undergo excommunication rather than be intimate with his first wife, or he should flee to other remote regions.

Article 3

Whether one spouse, also after carnal intimacy has taken place, can enter religious life against the will of the other spouse?

Quaestiuncula 1

1. It seems that one spouse, even after carnal intimacy, can enter religious life against the will of the other spouse. For divine law should favor spiritual things more than human law does. But human law has permitted this. Therefore much more should divine law have permitted it.

2. A lesser good does not impede a greater good. But the state of matrimony is a lesser good than the state of religious life, as is clear from 1 Corinthians 7. Therefore, a man should not be impeded by marriage from entering religious life.

3. Furthermore, in any religious life a certain spiritual marriage occurs. But it is permissible to pass from a more lax to a more strict religious order. Therefore, someone is

also allowed to pass from the more lax marriage, which is the carnal one, to the stricter marriage, which is the marriage of religious life, even against the will of one's wife.

But to the contrary is what is said in 1 Corinthians 7, *so neither should spouses abstain from marriage except by mutual consent to be free for prayer for a time.*

Moreover, no one can licitly infringe upon the rights of another (*facere quod est in praejudicium alterius*) against that person's will. But for one spouse to take religious vows infringes upon the rights of the other: for one has power over the body of the other. Therefore, one cannot take religious vows without the other's consent.

Quaestiuncula 2

1. In addition. It seems that also not before carnal intimacy. For the indissolubility of marriage belongs to the sacrament of marriage, inasmuch as it signifies the perpetual conjoining of Christ to the Church. But there is a true sacrament of marriage after the words of consent are expressed in terms of the present but before carnal intimacy. Therefore a division cannot be made by one party entering religious life.

2. Furthermore, in the consent itself, expressed in terms of the present, one spouse transfers power over his own body to the other spouse. Therefore the debt can be exacted right away, and the other is bound to render it. And therefore one cannot pass over into religious life while the other is unwilling.

3. Furthermore, Matthew 19:6 says, *what God has joined together, let no man separate.* But the conjoining which exists before carnal intimacy was divinely done. Therefore it cannot be separated by human will.

But to the contrary is that, according to Jerome, the Lord called John from his wedding.

Quaestiuncula 3

1. In addition. It seems that if a woman's husband has entered religious life before carnal intimacy took place, she cannot marry another. For that which can remain with marriage, does not dissolve the matrimonial bond. But the matrimonial bond remains between those who both vow to enter religious life. Therefore, by the fact that one enters religious life, the other

is not absolved from the marital bond. But as long as the marital bond remains for one person, he may not marry anyone else. Therefore, etc . . .

2. Furthermore, a man, after entering religious life, can return to the world before his profession. But therefore a woman could marry another after her husband entered religious life, and he could marry another once he returned to the world; which is absurd.

3. Furthermore, by the new decretals, a religious profession made before a year is considered none at all. Therefore, if after such a profession someone should return to his wife, she is bound to receive him: therefore, neither by her husband's entrance into religious life, nor by his vow is the woman given power to marry another: otherwise one woman would have two husbands.

But to the contrary, no one can oblige another to those things that belong to the life of perfection. But continence is one of the things that belong to the life of perfection. Therefore, a woman should not be constrained to continence by her husband's entrance into religious life, and so she can marry.

Quaestiuncula 1

I answer the first question by saying that no one can make an offering to God from what belongs to another; wherefore, since in a consummated marriage the body of the man has already become his wife's, he cannot offer himself to God by a vow of continence without her consent.

1. Human law was considering marriage only as it is a duty (*officium*); but divine law according as it is a sacrament, by which it has absolute indissolubility; and therefore, they are not the same.

2. It is not unusual for a greater good to be impeded by a lesser good which is contrary to it, just as also good is impeded by evil.

3. In every religious community marriage is contracted with one person, namely, Christ, for whose sake someone is pledged to one religious community rather than another because of many things; but material marriage and religious life are not directed toward the same person; therefore it is not the same.

Quaestiuncula 2

To the second question it should be said that before carnal intimacy there is only a spiritual bond between the spouses, but after it there is a carnal bond between them as well. And therefore, just as after carnal intimacy, marriage is dissolved by carnal death, so also it is dissolved before carnal intimacy by entrance into religious life: for the religious life is a certain spiritual death, by which someone, by dying to the world, lives for God.

1. Before carnal intimacy marriage signifies the conjoining of Christ to the soul by grace; which indeed is dissolved by a contrary spiritual disposition, namely, sin. But by carnal intimacy is signified his conjoining with the Church by the assumption of human nature into the unity of his person, which is indivisible in every way.

2. Before carnal intimacy the body of one has not been transferred to the power of the other absolutely, but under the condition that if meanwhile the other spouse should not aspire to the fruits of a better life: but by carnal intimacy this transfer is said to be completed, for then each person enters into bodily possession of the power handed over to each other. Wherefore, even before carnal intercourse someone is not bound to render the debt immediately after the marriage is contracted in terms of the present; but the time of two months is given to him, for three reasons. First, so that in the meantime he might deliberate about entering religious life. Secondly, so that the necessary things may be prepared for solemnization of the wedding. Thirdly, lest the husband should hold cheap a wife whom he did not have to pine in wait for.

3. The matrimonial conjoining before carnal intimacy is something imperfect as regards first being, as was said above, but not consummated as regards second act which is operation; and likewise for bodily possession; and thus it does not have indivisibility in every way.

Quaestiuncula 3

To the third question it must be said that just as the bodily death of a man dissolves the matrimonial bond so that the wife may marry whomever she wishes according to the statement of the Apostle, so also after the

spiritual death of the man by entry into religious life, she could marry whomever she wanted.

1. When both vow continence by simultaneous vows, then neither may renounce (*abrenuntiat*) the conjugal bond; and thus it remains even after; but when only one makes the vow, then he renounces as much of the conjugal bond as is in himself; and thus the other is loosed from this bond.

2. Someone is not considered dead to the world by entrance into religious life until he has made his profession; and thus until that time his wife is bound to wait for him.

3. A profession made in this way before the time determined by law, is judged as if it were a simple vow; whence after a man's simple vow, the woman is not bound to render the debt to him, but she does not have the power to marry another; and so it is with this.

QUESTION 2

Prologue

Next is to be asked concerning betrothals (*sponsalibus*); and about this three things are to be asked: 1) What are betrothals? 2) Who can contract a betrothal? 3) Whether betrothals can be invalidated.

Article 1

Whether betrothals are fittingly called the promise of a future wedding.

1. It seems that betrothals are not fittingly called the promise of a future wedding, as we have from the words of Pope Nicholas. For as Isidore says, someone is not a bridegroom (*sponsus*) because he promises, but because he pledges himself (*spondet*), and gives sureties (*sponsores*) of his pledge. But from the betrothal, someone is called a bridegroom. Therefore, it is misnamed a promise.

2. Furthermore, whoever promises something should be compelled to keep it. But the man who contracts a betrothal is not compelled by the Church to contract a marriage. Therefore a betrothal is not a promise.

3. Furthermore, in a betrothal there is sometimes not only a promise, but an oath is added to it, and some earnest money. Therefore it seems that it should not have been defined only as a promise.

4. Furthermore, marriages should be free and absolute. But betrothals are sometimes done under the condition of also receiving money. Therefore it is not fittingly called a promise to wed.

5. Furthermore, a promise, which regards future things, is blamable (*vituperatur*) according to James 4. But there should not be anything blamable about the sacraments. Therefore, nor should there be the promise of future nuptials.

6. Furthermore, no one is called a bridegroom (*sponsus*) except by a betrothal (*sponsalibus*). But someone is called a bridegroom from present nuptials, as is said in the text. Therefore, betrothals are not always a promise of future nuptials.

I answer that, as was said above, consenting to conjugal intimacy in terms of the future does not make a marriage, but the promise of marriage, and this promise is called betrothal from pledging (*spondendo*), as Isidore says. For before the use of written records, people used to give securities of marriage, by which they pledged to consent to each other under the laws of matrimony, and they also gave guarantees. However, that promise happens in two ways: absolutely or conditionally. Absolutely, in four ways. The first is by a mere promise, as when it is said, "I will receive you as my own," and vice versa. In the second, a betrothal pledge (*arrhis sponsalitiis*) is given, like money (*pecunia*) or something of this kind. The third is with a ring as pledge (*subarrhatione*). In the fourth, with an accompanying oath. But if it is a promise given conditionally, then we must make a distinction: for either it is an honorable condition, as when is said, "I will receive you, if your parents agree," and then, when the condition is fulfilled, the promise stands, and if the condition is not fulfilled, then the promise does not stand. Or it is dishonorable, and this can be in two ways: either it is contrary to the goods of matrimony, as if I said, "I will receive you, if you will procure drugs of sterility," and then the betrothal is not contracted; or it is not contrary to the goods of marriage, as if I said, "I will receive you, if you consent to my secret thievery." And then the promise stands, but the condition should be taken away.

1. The betrothal ceremony itself and the giving of sureties is confirmation of the promise; and thus it is named from what is more perfect.

2. By such a promising, one person is obliged to contract marriage with another; and he sins mortally who does not keep his promise, unless a legitimate impediment intervenes; and because of this the Church even compels by imposing penance for the sin. However, if brought to trial, it is not compelled: for forced marriages are wont to have bad ends; unless perhaps an oath accompanied it: for then, certain people say, it must be compelled; although it would not seem so to others, because of the reason mentioned above, particularly if there is a danger of uxoricide.

3. Those things are only added for confirming the promise; wherefore, they are not something other than the promise.

4. That condition which is attached does not remove the freedom of marriage: for if it is dishonorable, it should be rejected; but if it is honorable: either concerning good things simply, as if is said, "I will receive you, if our parents agree," and this condition does not remove the freedom of the betrothal, but increases its honorableness; or else it concerns matters of utility, as if one says, "I will contract with you, if you will give me 100__"; and then this is not considered as selling matrimonial consent, but it is understood as a promise of dowry; whence the marriage does not lose its freedom. Sometimes, however, the condition of money is attached in the mode of a penalty; and then, because marriages should be free, such a condition does not stand, nor can that penalty be exacted from someone who does not want to complete the marriage.

5. James does not intend to prohibit someone from making any kind of promise concerning the future, but that he should not promise as someone having assurance of his own life; wherefore he teaches that the condition should be attached, *if God wills*; which, even if the words are not expressed, should be understood in the heart.

6. In marriage can be considered the matrimonial conjoining itself, and its act. And from the pledging of the first in the future he is called the bridegroom, from the betrothal contracted in terms of the future; and from the pledging of the second, someone is called a bridegroom also when marriage is contracted in terms of the present, for in so doing, he pledges the act of matrimony. However, from the first pledging it is properly called betrothal (*sponsalia*), which is a certain sacramental of marriage, like the exorcisms in baptism.

Article 2

Whether the age of seven years is fittingly assigned for the contracting of betrothals.

1. It seems that the age of seven years is not fittingly assigned for contracting betrothals. For a contract that can be made by others, does not require discretion in those to whom it pertains. But betrothals can be made by parents, without the knowledge of either of the betrothed. Therefore, they can happen just as well before seven years as after.

2. Furthermore, the use of reason is required for someone to contract a betrothal, just as also for consenting to a mortal sin. But as Gregory tells in the Fourth Dialogue, a certain boy was destroyed by the devil because of the sin of blasphemy. Therefore, also before the age of seven years a betrothal may be contracted.

3. Furthermore, betrothals are ordered to marriage. But in marriage the same age is not assigned for a girl as for a boy. Therefore neither in betrothals should the age of seven be assigned to both.

4. Furthermore, people can contract betrothals from the time that they can agree to future nuptials. But such signs of agreeableness frequently appear in boys before the age of seven years. Therefore, before then they can contract betrothals.

5. Furthermore, if certain people contract betrothals before seven years of age, and then after the age of seven years but before the time of puberty, they contract in terms of the present, a betrothal is considered to be between them. But this is not from the second contract, for at that time they do not intend to contract a betrothal, but a marriage. Therefore, it is from the first contract; and on this account betrothals may be contracted before seven years of age.

6. Furthermore, in those things which are done by many people together, what is lacking to one, is supplied by another, as is clear among those rowing a ship. But the contract of betrothal is a certain common action between the contractants. Therefore, if one of them is a young man, he can contract a betrothal with a girl who is not seven years old: for what is lacking in age to one, is made up for in the other.

7. Furthermore, if some people on the verge of puberty, although before it, contract in terms of the present, there is considered to be a marriage between them. Therefore, by the same reasoning, if before the age of seven years, but close to it, they should contract in terms of the future, a betrothal will be considered to be between them.

I answer that seven years is the age determined by law for contracting a betrothal reasonably enough: for since the betrothal is a certain promise of future things, as was said, it is necessary that it be between those who in some way are able to promise such things; which is only those who have a certain prudence concerning future matters, which

requires the use of reason, in respect to which three stages are noted according to the Philosopher in Book 1 of the Ethics. The first is when someone neither understands by himself, nor can receive from another. The second stage is when a man can grasp from another, but alone he is not sufficient to himself for understanding. The third is when a man can already receive from another, and consider things for himself. And since reason in man grows strong gradually, as the movements and fluidity of humors are quieted; therefore, man obtains the first state of reason before the age of seven years; and for this reason he is not qualified for any contract at that time, and so neither for a betrothal. But a man begins to arrive at the second stage at the end of seven years, wherefore also this is the established time for a boy to go to school. But a man begins to arrive at the third stage at the end of the second seven years, as concerns those things which pertain to his person, regarding which his natural reason develops more quickly; but as concerns those things which are outside him, at the end of the third seven years. And thus before the first seven years, a man is not qualified to make any contract; but in the end of the first seven years, he begins to be capable of promising something in the future, especially concerning those things to which reason is naturally inclined; but not of obliging himself with a perpetual bond, for at that point he does not have a firm will. And thus at such an age betrothals may be contracted. But in the end of the second seven years he can already oblige himself in those things which pertain to his own person, whether to the religious life or to conjugal life. But after the third seven years he can also oblige himself regarding other things, and according to the laws the power of disposing of his own things is constituted to him after twenty-five years of age.

1. If before the years of puberty a betrothal contract is made by others, both parties or either one may denounce it; wherefore, at that time nothing was enacted (*actum*), as seen in the fact that also no affinity is contracted by this; and therefore a betrothal which is contracted between certain persons by some other persons has strength as long as those between whom it is contracted do not denounce it when they reach the due age; by which they are understood to consent to those things which were done by others.

2. Certain people say that the boy of whom St. Gregory speaks was not damned, nor did he sin mortally, but that vision was shown to his father to make him sorry, for he had sinned in not correcting the boy in that sin. But this is expressly against the intention of Gregory's saying that the father of the boy, who neglected the soul of his little son, did not take care of the little sinner in the fires of Gehenna. And thus it should be said that for mortal sin a present consent is also enough; but in a betrothal the consent is to something future. However, much greater discretion of reason is required to plan in the future than to consent to one present action; and thus a man is able to sin mortally before he is able to oblige himself to something in the future.

3. At the time of a marriage contract, not only is there required a disposition on the part of the use of reason, but also on the part of the body, so that the time is suited to generation. And since at twelve years of age a girl becomes capable of the act of generation, a boy, however, at the end of the second seven years, as the Philosopher says in Book 9 of the History of Animals; yet they receive the use of discretion at the same time, which alone is required for a betrothal; and therefore in betrothals, one age is determined for both of them, but not in marriage.

4. That agreeableness which is in boys younger than seven years of age does not proceed from the perfect use of reason, since they are not yet fully susceptible to learning; but it is more dependent on the movement of nature than on any reason; and thus such an agreement does not suffice for contracting betrothals.

5. Although in this case they do not enact a marriage by the second contract, nevertheless, they show that they have confirmed the prior permission; and therefore the prior contract gains firmness.

6. Those rowing a ship act in the mode of a single cause; and thus, what one lacks can be supplied by another: but those contracting a betrothal act as distinct persons, for a betrothal cannot be except between two people: wherefore in both parties is required what would be sufficient for contracting; and thus a lack in one person impedes the betrothal, nor can it be supplied by the other person.

7. In a betrothal it is also the same: if the contractants are approaching the age of seven years, the betrothal contract has strength, for

according to the Philosopher in Book 2 of the Physics, where both are lacking equally, nothing seems to be lacking. However, this approximation is determined by certain people to be a period of six months; but it is better that it be determined based on the condition of the ones contracting, for in certain children the use of reason is more advanced than in others.

Article 3

Whether a betrothal could be dissolved

1. It seems that a betrothal cannot be dissolved by one member entering religious life. For when I have promised money to someone, I cannot licitly contract a debt to someone else. But that person who contracts a betrothal promises his body to the woman. Therefore, he cannot further offer himself to God in the religious life.

2. Again, it seems that neither should it be dissolved when one of the betrothed transfers himself to a distant region. For in doubtful matters, the safer part is to be chosen. But it would be safer if the other party waited for him. Therefore, she is bound to wait for him.

3. Again, it seems that neither would the contract be dissolved by an illness which one person incurred after the betrothal contract. For no one should be punished for suffering. But a man who incurs infirmity, is punished by the fact that his right to have his fiancée is taken away. Therefore, because of bodily infirmity the betrothal contract should not be invalidated.

4. Again, it seems that neither because of an affinity intervening, as, for example, if the bridegroom should sleep together fornicariously with a family member of the bride: for according to this, the bride would be punished for the sin of the groom, which is unfitting.

5. Again, it seems that the two cannot release each other from this contract. For this shows a great inconstancy, that first they would contract, and afterward they would release each other. But such things should not be tolerated by the Church. Therefore, etc...

6. Again, it seems that neither on account of the fornication of one of them. For one person does not yet receive power over the body of the other by a betrothal: and so it seems that they sin against each other in no

way, if they fornicate in the meantime: and thus a betrothal should not be invalidated by this.

7. Again, it seems that neither by a contract with someone else in terms of the present. For a second sale does not repeal a first sale. Therefore, neither does a second contract repeal a first one.

8. Again, it seems that neither can it be dissolved because of a defect of age. For what does not exist cannot be dissolved. But before the determined age a betrothal contract would be null. Therefore, it cannot be invalidated.

I answer that in all the above-mentioned cases the betrothal contract would be dissolved, but in various ways. For in two of these instances, namely when one person takes refuge in religious life, and when the one party contracts with another person in terms of the present, by the law itself (*ipso jure*) the betrothal is invalidated. But in all other cases it must be invalidated according to the judgment of the Church.

1. Since a promise like that is purely spiritual, it is dissolved by spiritual death, as was said.

2. That doubt is resolved by the fact that the other did not appear in the time established for the completion of the marriage; wherefore if on one person's part, nothing was lacking for the marriage to be completed, he may marry another without any sin; if however, it was his fault that the marriage was not completed, he must do penance for the sin of a breach of promise or of oath, if an oath was attached, and to contract with another, if he wants, by the judgment of the Church.

3. If before the matrimonial contract one of the betrothed incurs some grave infirmity, which extremely debilitates him, such as epilepsy, or paralysis; or deforms him, such as his nose being cut off, or being bereft of his eyes, or something of this kind; or which is against the good of offspring, as leprosy which tends to infect the children; then the betrothal can be invalidated, lest the two should displease each other, and the marriage so contracted may be doomed to a bad end. Nor is anyone punished for his suffering, but he does incur a loss by his suffering, which is not unusual.

4. If the groom has known a relative of his bride, or vice versa, then the betrothal must be nullified; and to prove this, rumor alone is sufficient because of the scandal to be avoided. For causes that have their effects in the future,

are impeded from producing their effects not only by what is, but also by what will be. Wherefore, just as an affinity, if it were at the time of the betrothal contract, would have impeded that contract; so also if it should intervene before the marriage, which is a certain effect of a betrothal, the first contract is impeded by its own effect. Nor does this detract something from the other party, but rather benefits her; for she is released from someone who has made himself odious to God by fornication.

5. Certain people do not accept this case: but against them stand the Decretals, which expressly say, in regard to those who contract an association of fidelity, and afterward remitt the same to each other, it can be tolerated in patience, if those who have contracted a betrothal mutually release each other. But to this they say that the Church allows this lest a worse thing should result, rather than that this be *de jure*. But this does not seem to fit the example that the Decretals give. And thus it should be said that it is not always a sign of inconstancy to retract what previously was affirmed: for our plans are uncertain, as it says in the Book of Wisdom.

6. Although those contracting a betrothal had not yet given to each other the power over their respective bodies, nevertheless, by this act one is made suspect to the other of not keeping faith in the future. And thus one can protect himself against the other by nullifying the betrothal.

7. That argument holds, if both contracts were of one *ratio*: but the second contract of marriage is stronger than the first of betrothal: and thus it dissolves it.

8. Although this was not a true betrothal, nevertheless there was here a certain mode of betrothal; and thus lest it seem to be acceptable, upon arriving at legal age they should seek dissolution of the betrothal to be made by the judgment of the Church for the sake of a good example.

QUESTION 3

Prologue

Next bigamy should be examined; and concerning this three things are to be sought: 1) Whether irregularity accompanies bigamy; 2) whether this is resolved by baptism; 3) whether it can be dispensed in such irregularity.

Article 1

Whether irregularity is attached to bigamy

Quaestiuncula 1

1. It seems that irregularity is not attached to that bigamy which arises from someone having two wives successively. For multitude and unity are consequent on being. Therefore being and non-being do not add up to any multitude. But as to that man who has two wives successively, when one is in being, the other is not in being. Therefore by this fact a man has not become the husband of more than one wife, which would prohibit him from the episcopate according to the Apostle.

2. Furthermore, a greater sign of incontinence appears in someone who fornicates with several women than someone who has several wives successively. But by the first a person is not made irregular. Therefore neither from the second.

3. Furthermore, if bigamy causes irregularity, either this is by reason of the sacrament or by reason of carnal intimacy. But it is not for the first reason; for then if someone had contracted with one woman in terms of the present, and if she had died before carnal intimacy took place, and he had taken another wife, it would seem irregular; which is against the decree of Innocent III. Nor again is it for the second reason, since according to this even those who fornicate by sleeping with many women would be irregular, which is false. Therefore in no way does bigamy cause irregularity.

Quaestiuncula 2

1. In addition. It seems that irregularity is not attached to the bigamy which happens

when a man has two wives at the same time, or successively one wife *de jure*, and another *de facto*. For where there is no sacrament, there cannot be a defect of sacrament. But when someone contracts with a woman *de facto* and not *de jure*, there is no sacrament there: for such a conjoining does not signify the conjoining of Christ with the Church. Therefore, since irregularity does not follow upon bigamy except from some defect in the sacrament, it seems that irregularity does not follow upon such bigamy.

2. Furthermore, someone approaching a woman with whom he contracts *de facto* and not *de jure*, commits fornication, if he does not have another woman as his legal wife; or else he commits adultery, if he does have another. But to divide his own flesh among many women by fornication or adultery does not cause irregularity. Therefore, neither does the aforesaid mode of bigamy.

3. Furthermore, it happens that one person, before he has known another carnally with whom he contracted *de jure*, contracts with another *de facto*, not *de jure*, and knows her carnally, either when the first one has died or the first one is still living. Such a man has contracted with more than one woman, either *de jure* or *de facto*; and nevertheless he is not irregular, for his own flesh is not divided among many women. Therefore, by the abovementioned mode of bigamy, irregularity is not contracted.

Quaestiuncula 3

1. In addition. It seems that irregularity is not contracted by the fact that someone takes as his wife a woman who is not a virgin. For someone is impeded more by his own defect than by the defect of another. But if the man contracting is not a virgin, he does not become irregular. Therefore, much less if his wife is not a virgin.

2. Furthermore, it can be that someone has deflowered a certain woman, and afterward takes her as a wife. Such a person does not seem to become irregular; for he does not divide his flesh among many women, nor in fact does his wife; and nevertheless, he takes a corrupted woman for his wife. Therefore such a mode of bigamy does not cause irregularity.

3. Furthermore, no one can contract irregularity unless voluntarily. But when

someone involuntarily takes a wife who is not a virgin, as when he believes her to be a virgin, and afterward, when he knows her, finds that she has been corrupted. Therefore such a mode does not always cause irregularity.

4. Furthermore, corruption following marriage is more detestable than before marriage. But if a wife, after the marriage is consummated, is known by another, her husband is not made irregular; otherwise he would be punished for the sin of his wife: also, it can be that after he knows this, he might render to her the debt when she asks before she is condemned of adultery. Therefore, it seems that this kind of bigamy does not cause irregularity.

But to the contrary is what Gregory says: *we command that you never make illicit ordinations, neither a bigamist, whether someone who has not chosen a virgin for his wife, or unknowingly has such a wife; nor someone having vitiated any part of his body, whether in penance, or liable to whatsoever grievous condition, should you allow to approach holy orders.*

Quaestiuncula 1

I answer the first question that someone is constituted a minister of the sacraments by the sacrament of orders; and the one who should administer the sacraments to others, should himself suffer no defect in the sacraments. But it is a defect in the sacrament when the full signification is not found in a sacrament. But the sacrament of matrimony signifies the conjoining of Christ with the Church, which is of one to one; and thus it is required for the perfect signification of the sacrament that the man be the husband of only one woman, and the wife be the wife of only one man. And therefore, bigamy, which destroys this, produces irregularity. And there are four kinds of bigamy. The first kind is when someone has more than one wife *de jure* in succession. The second, when someone has more than one wife at the same time, one *de jure*, and another *de facto*. The third, when he has more than one wife in succession, one *de jure*, and another *de facto*. The fourth, when someone takes a widow as his wife. And there is irregularity attached to all of these things. However, another consequent reason is assigned, for in those who receive the sacrament of orders, the

greatest spirituality should appear: for at some times they administer spiritual things—the sacraments; at others, they teach spiritual things and should be occupied with spiritual things. Wherefore, since concupiscence, by which the whole man is turned into the flesh, is greatly opposed to spirituality, no sign should appear in them of permanent concupiscence, which does in fact appear in bigamists, who refused to limit themselves to one wife. Nevertheless, the first argument is better.

1. A multitude of several wives at the same time is a multitude of existent things simply speaking; and thus such a multitude is completely opposed to the signification of the sacrament; and because of this it destroys the sacrament; but a multitude of wives in succession is a multitude only under a certain aspect; and thus it does not remove the signification of the sacrament completely, nor does it do away with the essence of the sacrament, but rather its perfection, which is required in those who dispense the sacraments.

2. Although there is a greater sign of concupiscence in fornicators, yet it is not such an enduring concupiscence; for in fornication one person does not oblige himself to another in perpetuity. And therefore, here there is no defect of sacrament.

3. Bigamy causes irregularity inasmuch as it takes away the perfect signification of matrimony, which consists indeed in the conjoining of souls, which occurs through consent, and in the conjoining of bodies; and thus by either reason it is necessary that the bigamy which causes irregularity be simultaneous; wherefore what the Master says in the text is abrogated by the Decretals of Innocent, which state that consent in terms of the present alone suffices for introducing irregularity.

Quaestiuncula 2

To the second question it should be said that in the second two kinds of bigamy, irregularity is contracted: for although there is no sacrament in the other person, there is however, a certain likeness to a sacrament; wherefore those two kinds are secondary, and the first is principal in causing irregularity.

1. Although here there is no sacrament, there is nonetheless some likeness to a

sacrament, which does not exist in fornication or adultery; and therefore it is not the same.

2. And from this the answer to the second objection is clear.

3. In such a case someone is not considered a bigamist, for the first marriage did not have its perfect signification. Nevertheless, if by the judgment of the Church the man is compelled to return to the first woman, and to know her, immediately he becomes irregular: for sin does not cause irregularity, but imperfection of signification does.

Quaestiuncula 3

To the third question it should be said that in the conjoining of Christ and the Church, unity is found on the part of both; and therefore, whether division of flesh is found on the part of the man or on the part of the woman, there is a defect in the sacrament, but nevertheless in different ways: for on the part of the man it is required that he has not taken another as his wife, not that he be a virgin; but on the part of the wife it is required also that she be a virgin; the reason of which is assigned by the decretists: *for the bishop signifies the Church militant, whose care he bears, in which there are many corruptions; but the bride signifies Christ, who was a virgin*. So that on the part of the bride virginity is required, but not on the part of the bride groom, for someone to become a bishop. But this argument is expressly against the Apostle, (Ephesians 5:25): *husbands, love your wives, as Christ [loved] the Church*; from which it is clear that the wife signifies the Church, and the bridegroom, Christ; and again, *since the man is head of the woman, as Christ of the Church*. And therefore others say that by the bridegroom Christ is signified, by the bride is signified the Church triumphant, in which there is no stain; but, Christ first had the synagogue as concubine, and thus nothing is taken away from the perfection of the signification of the sacrament, if the bridegroom had a concubine beforehand. But this is extremely absurd: for just as there is one faith of ancient and modern men, so there is one Church; wherefore those who served God in the time of the synagogue belong to the unity of the Church in which we serve God. And furthermore, this is expressly against what we have in Jeremiah 3, Ezekiel 16, Hosea 2, 2 where the mention of the

espousal of the synagogue is expressly made; wherefore, she was not as a concubine, but as a wife. And furthermore, according to this, fornication would be a sacrament of that conjoining, which is absurd; and thus before the gentiles were espoused by Christ into the faith of the Church, they were corrupted by the devil through idolatry. And otherwise it must be said that a defect in the sacrament itself causes irregularity; however, corruption of the flesh that takes place outside matrimony and precedes matrimony, makes no defect in the sacrament on the part of that person in whom the corruption is, but it makes a defect on the part of the other; for the act of someone contracting marriage is not directed to himself but is directed to the other; and thus it is specified by its term, which is also in relation to that act, like the matter of the sacrament. And so if a woman were susceptible of holy orders, as a man is made irregular by the fact that he takes a wife who has been corrupted, but not by the fact that he has been corrupted when he makes the contract, so a woman would be irregular if she contracted with a corrupted man; but not if she herself, having been corrupted, contracted, unless she had been corrupted in another marriage beforehand.

1. And from this the answer to the first objection is evident.

2. In such a case there are diverse opinions: yet probably it is that there is no irregularity, for he did not divide his own flesh among several women.

3. Irregularity is not a punishment inflicted, but a certain defect of the sacrament; and thus it is not necessary that it always be voluntary bigamy that causes irregularity; and thus that man who takes a corrupted wife, who believes her to be a virgin, is irregular when he knows her.

4. If a woman fornicates after having contracted marriage, the man is not made irregular by that fact, unless after her adulterous corruption he should know her again. For otherwise, the corruption of his wife in no way reflects upon the matrimonial act of the man. But also if he should be compelled to render the debt to her by right, or because of his own conscience, if she should ask for the debt before her condemnation as an adulterer, he would become irregular; although concerning this there may be opinions. But what was said is most probable, for here we do

not seek what would be a sin, but the signification only.

Article 2

Whether bigamy is dissolved by baptism.

1. It seems that bigamy is dissolved by baptism. For Jerome says in *On the Letter to Titus*, that if someone had more than one wife before baptism, or one before and one after, it is not bigamy. Therefore, bigamy is dissolved by baptism.

2. Furthermore, whatever does what is more, does what is less. But baptism takes away all sin, which is more serious than irregularity. Therefore, it takes away the irregularity of bigamy.

3. Baptism takes away all punishment arising from an act. But the irregularity of bigamy is of this kind. Therefore, etc...

4. Furthermore, a bigamist is irregular inasmuch as he is lacking in his representation of Christ. But by baptism one is conformed fully to Christ. Therefore, irregularity is dissolved by that.

5. Furthermore, sacraments of the New Law are more efficacious than sacraments of the old law. But sacraments of the Old Law dissolved irregularities, as was said by the Master in Book I. Therefore, also baptism, which is the most efficacious sacrament in the New Law, resolves the irregularity contracted by bigamy.

But to the contrary is what Augustine says, *they understand more acutely who forbade ordaining a man who either as a catechumen or pagan had a second wife, for it is a question of the sacrament, not of sin.*

Moreover, as it says in the same place, *a woman, if she was ruined as a catechumen or pagan, cannot take the veil among the virgins of God after baptism.* Therefore, by the same reasoning, neither can a bigamist be ordained after baptism.

I answer that baptism dissolves faults, it does not dissolve marriages (*conjugia*). Wherefore since irregularity results from marriage itself, it cannot be taken away by baptism, as Augustine says.

1. In this case, the opinion of Jerome is not upheld; unless perhaps we wish to explain that he speaks about a higher dispensation.

2. It is not necessary that whatever does a greater thing should do a lesser thing, unless it is ordered to it, and that is not the case here, for baptism is not ordered to taking away irregularity.

3. This is to be understood concerning the punishments which follow upon actual sin as inflicted, not about to be inflicted; for someone does not recuperate his virginity by baptism, nor the division of his flesh.

4. Baptism conforms one to Christ as concerns the power of the mind, not the state of the flesh, which is considered in virginity, or in division of the flesh.

5. Those irregularities were contracted by passing causes, not perpetual ones, and thus they could also be removed through those sacraments; and besides, those sacraments were ordered to that end; but baptism is not.

Article 3

Whether a dispensation may be given to a bigamist

1. It seems that a dispensation may not be given to a bigamist. For it is said in Extra De Bigamis, *With clergymen, who, in whatever way possible, have united themselves in marriage with second wives, just as with bigamists, it is not permitted to give a dispensation.*

2. Furthermore, no dispensation can be given from divine law. But all the things which are named in the canon belong to divine law. Since, then, the Apostle says in the canonical Scriptures, *it is necessary that a bishop have had only one wife*; it seems that this cannot be dispensed.

3. Furthermore, no one may give a dispensation in those things which are necessary to the sacrament. But not to be irregular is necessary to the sacrament of holy orders, since signification, which is essential to the sacrament, would be lacking. Therefore, no dispensation can be given for this.

4. Furthermore, what was reasonably done cannot be changed reasonably. But if a dispensation can be given to a bigamist, then irregularity was unreasonably attached to him; which is unfitting.

But to the contrary is that Pope Lucius gave a dispensation to the bishop of Palermo who was a bigamist.

Moreover, Pope Martin says: *If the reader would accept a widow for his wife, he may remain in the lectorate; or if it were necessary, he could be made a subdeacon; but nothing higher: likewise, if he had been a bigamist.* Therefore, at least up to the subdiaconate a dispensation may be given.

I answer that irregularity is not attached to bigamy by natural law, but by positive law; nor again is it something essential to holy orders that a man not be bigamous; as is evident from the fact that if someone bigamous advances to holy orders, he receives a character; and therefore the Pope can dispense completely from such irregularity, but a bishop only as to the minor orders. And certain people say that also as to the higher orders among those who wish to serve God in the religious life, in order to avoid the dispersal of religious.

1. By that decretal, the difficulty is shown to be the same in granting a dispensation to those men who have contracted *de facto* with many women, as if they had contracted *de jure*; not that the power of the Pope is lessened in such cases.

2. This is true as regards those things which are of natural law, and as regards those things which are necessary to the sacraments and to the faith; but in other things which are by the institution of the apostles, since the Church has now the same power of establishing and abolishing that it had then, a dispensation can be given by the one who holds supremacy in the Church.

3. Not every signification is of the essence of the sacrament, but only that which belongs to its office of sacrament; and this is not removed by irregularity.

4. In particular things a reason cannot be found that applies equally to all, because of their diversity; and thus what has been universally established by considering those things which happen in most cases, can also be reasonably removed by a dispensation in a certain determinate case.

Exposition

If however, they express in words what actually they don't wish in their hearts, if there is no coercion or deception here; that obligation of words . . . causes matrimony. And here the Master is speaking about the external forum of the Church, in which it is judged

according as things appear; and deception hidden in the heart is not assumed, unless it is somehow expressed through external signs, like someone calling himself by some other name. But as to the forum of conscience it is not true what the Master says here. *He chooses the solitude of the desert etc.*, Although hermits do not promise any obedience whatsoever, nevertheless, they do have a vow of continence added, and after the custom their vow is solemnized after the time determined.

Also if he was already tonsured. But he is not bound to defer the tonsure and the religious habit; for either his profession was not valid, if he took his vow against his wife's objection; or else if she did not contradict, and yet remained in the world, he took his vow of profession; and although it was a valid vow, it is still suspended for a time while his wife lives since it was to her disadvantage. Wherefore, after the death of his wife he is bound to return to religious life, nor can he marry another. But meanwhile he is not bound to defer the habit or the tonsure, whether because of the censure of his wife, or for the sake of avoiding scandal.

For which the man joined in marriage did not advance further to holy orders. The Master and Pelagius are speaking according to the strict construction of law, wherefore today according to the new law it is not held; for there is no obstacle on the part of the sacrament, as was said before.

DISTINCTION 28

QUESTION 1

Prologue

After the Master shows that consent is the efficient cause of marriage, here he shows how the consent that brings about marriage must be; and it is divided into two parts: in the first part it is inquired whether consent in terms of the future, confirmed by an oath, brings about a marriage; in the second he shows what is that consent that makes marriage, where he says: *since consent about the present brings about a marriage, here it should be asked what the consent pertains to*. Concerning the first he does two things: first he determines the truth; secondly he objects to the contrary, where he says: *but the opinions mentioned seem to go against what the laws hand down*.

And concerning this he does two things: first he objects against what was immediately determined; secondly against what was held in the previous distinction, and there he says: *those opinions also in so far as it was said, that consent alone causes wedlock, it seems to go against what Pope Evaristus said*, and both are divided into objection and solution, as is clear from the text.

Here there are four things to be asked: 1) whether an oath accompanying the consent expressed in terms of the future, causes marriage? 2) whether carnal intimacy accompanying it? 3) whether secret consent in terms of the present suffices to cause a marriage? 4) in what does the consent that makes marriage consist?

Article 1

Whether an oath added to consent in terms of the future causes marriage

1. It seems that an oath added to consent in terms of the future causes marriage. For no one can oblige himself to do something against divine law. But to fulfill an oath is divine law, as is clear from Matthew 5:33: *yet render to the Lord your oaths*. Therefore, no subsequent obligation can make it so that a man should not fulfill an oath he made before. If, then, after consenting to some woman in terms of the

future confirmed by an oath, someone should oblige himself in terms of the present, it seems that nevertheless he must keep the first oath. But this would not be unless by that oath the marriage were completed. Therefore, an oath joined to consent about the future, causes marriage.

2. Furthermore, divine truth is stronger than human truth. But by an oath, something is confirmed by divine truth. Therefore, since words expressing consent in the present, in which there is only human truth, complete a marriage, it seems that much more could words of the future bring this about, if they were confirmed by an oath.

3. Furthermore, according to the Apostle in the Letter to the Hebrews, *the end to all controversy . . . is an oath*. Therefore, at least in a law-court, more is established by an oath than by a mere word. If therefore someone should consent by a mere word to one woman in terms of the future that were confirmed by an oath, it seems that by the judgment of the Church he must be compelled to remain with her, and not with any other woman.

4. Furthermore, words about the future, simply uttered, make a betrothal. But here an oath is at work. Therefore, it causes something more than a betrothal. But beyond the betrothal, there is nothing more except marriage. Therefore, it causes marriage.

But to the contrary, what is about to be, is not. But the addition of an oath does not change the fact that terms of the future signify consent about the future. And therefore, under these conditions, there is no marriage.

Moreover, after the marriage has been completed, no other consent is necessary for the marriage. But after an oath, some consent does have to happen, which brings about the marriage; otherwise it would be in vain to swear about what is yet to be. Therefore, it does not make a marriage.

I answer that an oath is employed for the confirmation of a statement; wherefore it only confirms what is signified in words, nor does the thing signified change; and thus since words concerning the future by their very meaning are not capable of causing marriage, since what is promised in the future is not done yet, even if an oath should occur, the marriage is not enacted yet, as the Master says in the text.

1. To fulfill a licit oath is of divine law, but not to fulfill an illicit one. Wherefore, if

some obligation occurring after an oath should make it to be illicit, when before it had been licit, it does not detract from divine law if someone does not keep the oath made previously; and it is thus in the case proposed. For what is sworn illicitly is promised illicitly; but a promise of what belongs to someone else is illicit; wherefore, the consent attendant upon terms of the present, by which someone transfers mastery over his own body to another, makes the preceding oath illicit, which beforehand had been licit.

2. Divine truth is most efficacious for strengthening what is avouched to it.

3. Wherefore the answer to the third is clear.

4. An oath does not work to make a new obligation, but confirms the one already made; and thus someone sins more gravely who violates it.

Article 2

Whether carnal intimacy causes marriage after consent expressed in terms of the future

1. It seems that carnal intimacy after consent expressed in terms of the future makes marriage. For consenting in deed is greater than consenting in word. But that man who commingles carnally consents by his deed to the promise that he made beforehand. Therefore it seems that a marriage is made much more by this than if it is done only by words about the present.

2. Furthermore, not only consent expressed, but also understood causes marriage. But there can be no greater construal of consent than carnal intimacy. Therefore, by this a marriage is accomplished.

3. Furthermore, every carnal union outside of marriage is a sin. But a woman does not seem to sin if she admits her betrothed to carnal intimacy. Therefore, marriage is brought about by this.

4. Furthermore, a sin is not forgiven unless something is restored that was taken away. But someone cannot restore what was taken away from a woman who was deflowered under the pretext of marriage, unless he takes her in marriage. Therefore, it seems that even if after carnal intimacy with one woman, he has contracted in terms of the present with another, he is bound to return to the first; which would

not be the case unless a marriage were between them. Therefore, carnal intimacy after consent about the future causes marriage.

But to the contrary is what Pope Nicolas says: *if consent was lacking at the wedding, all the other celebrations, even with coition itself, are in vain.*

Moreover, what is consequent upon something does not bring it about. But carnal intimacy follows marriage, as effect follows cause. Therefore, it cannot cause marriage.

I answer that we can speak of marriage in two ways. In one way, as to the forum of conscience; and thus in the truth of reality, carnal intimacy is not capable of making a marriage complete whose previous betrothal took place in terms of the future, if internal consent is lacking: for even words expressing consent in the present, if mental consent were lacking, would not cause marriage, as was said above. But as to the judgment of the Church it is otherwise: and because in external judgment things are judged according to what is outwardly apparent, since nothing can more expressly signify consent than carnal intercourse, according to the judgment of the Church, carnal intercourse following upon betrothal is judged to cause a marriage, unless other signs appear indicative of fraud or deceit.

1. That man who mingles carnally consents to carnal intimacy by his act according to the truth of the matter. But one does not consent to marriage by this fact alone, unless according to the interpretation of the law.

2. That interpretation does not change the truth of the matter, but the judgment which is made of matters externally.

3. If a betrothed woman receives her groom, believing that he wants to consummate the marriage, she is excused from sin, unless other signs indicating fraud should appear; as if, for example, there are a number of conditions separating them, like nobility of birth, or fortune, or another clear sign that might appear. But the bridegroom, on the other hand, sins both by fornicating and (what is more) by the fraud that he commits.

4. In such a case if the groom has taken another woman beforehand, he is bound to take her as his wife, if they are of equal conditions, or if the bride is of a better condition. But if he has married another, he has now become powerless to fulfill what he is bound to: and thus it suffices if he should provide for her

marrying. And some people say that the groom is not even bound to this, if he is of a much better condition, or if there was some evident sign of fraud: for it can be probably presumed that the bride was not deceived but contrived herself to be deceived.

Article 3

Whether consent made in secret in terms of the present causes marriage

1. It seems that consent made in secret in terms of the present does not cause marriage. For a thing existing in the power of one person is not transferred to the power of another unless by the consent of the one in whose power it was. But a girl was in the power of her father. Therefore, she cannot by marriage pass over into the power of a husband, unless her father consents. And thus, if consent happens in secret, even expressed in terms of the present, there will not be a marriage.

2. Furthermore, in marriage our act is like the essence of the sacrament, just as it is in penance. But the sacrament of penance is not perfected unless by mediating ministers of the Church, who are the ones who dispense the sacraments. Therefore, neither can marriage be completed in secret without the priestly blessing.

3. Furthermore, baptism, which can happen in secret and in public, is not prohibited by the Church from happening in secret. But the Church prohibits clandestine marriages. Therefore it cannot happen in secret.

4. Furthermore, between persons who are related in the second degree, no marriage can be contracted, since the Church prohibits it. But likewise, the Church prohibits clandestine marriage. Therefore, these cannot be valid marriages.

But to the contrary, where the cause happens, the effect happens. But the efficient cause of marriage is consent expressed in terms of the present. Therefore, whether it be done in public, or in secret, a marriage results.

Moreover, wherever there is the due form and the due matter, there is a sacrament. But in a secret marriage, the due matter is preserved for they are persons legally capable of contracting; and the due form, which are words expressing consent in the present. Therefore, here there is a valid marriage.

I answer that just as in other sacraments certain things are of the essence of the sacrament, and if omitted, the sacrament would not be, but certain others belong to the solemnity of the sacrament, and if omitted the sacrament would be validly completed, although it would be a sin for the one who made the omission; so also, consent expressed in terms of the present between persons legally capable of contracting, causes marriage: for these two things are of the essence of the sacrament; but other things are of the solemnization of the sacrament, since they are employed so that marriage may be fittingly done; wherefore if they are omitted, it is a valid marriage, although they would sin by contracting it, unless they were excused by some legitimate reason.

1. A girl is not in the power of her father like a slave-girl, so that she does not have power over her own body, but like a daughter to be educated; and thus according to the fact that she is free, she can give herself into the power of another without the consent of her father, as also some man or woman may enter religious life without the consent of parents, since he or she is a free person.

2. Our act in penance, although it is of the essence of the sacrament, is still not sufficient for bringing about the proximate effect of the sacrament, namely, absolution from sins; and thus it is necessary that for the perfection of the sacrament an act of the priest occurs. But in marriage our acts are the sufficient cause for bringing about the proximate effect, which is the obligation: for anyone of his own right can oblige himself to another: and thus the blessing of the priest is not required for marriage as of the essence of the sacrament.

3. It is also prohibited that someone receive baptism except from a priest, unless in the case of necessity. But marriage is not a sacrament of necessity; and thus there is no similar reason. But clandestine marriages are prohibited because of the dangers that tend to result from them: for frequently in such matters there is some fraud on the part of one or the other; frequently also, they cross over into other unions, when they repent of what they have done so impetuously and many other evils happen from this; and beyond this, these marriages have an appearance of shame.

4. Clandestine marriages are not prohibited as being against the essential components of marriage, as marriages are

prohibited between persons legally ineligible, who are improper matter for this sacrament; and thus it is not the same thing.

Article 4

Whether the consent which makes marriage, is consent to carnal intimacy

1. It seems that the consent which makes marriage, is consent to carnal intimacy. For as Jerome says: *for those vowing virginity, it is condemnable not only to marry, but even to want to marry*. But it would not be condemnable, unless it were contrary to virginity; to which nuptials are not opposed, except by reason of carnal intimacy. Therefore, the consent of the will that there is in a wedding, is consent to carnal intimacy.

2. Furthermore, all those things that are in marriage between a man and a woman can be licitly between a brother and sister, except for carnal intimacy. But marital consent cannot be licitly between them. Therefore, marital consent is consent to carnal intimacy.

3. Furthermore, if a woman should say to a man, I consent to you provided that you will not know me, it is not marital consent: for there is something here that is contrary to the substance of the spoken consent. But that would not be unless the consent uttered were consent to carnal intimacy.

4. Furthermore, the beginning in anything corresponds to the consummation. But marriage is consummated by carnal intimacy. Therefore, since it is begun by consent, it seems that the consent is to carnal intimacy.

But to the contrary, no one who consents to carnal intimacy is a virgin in mind and body. But blessed John the Evangelist was a virgin in mind and body after his marital consent. Therefore, he did not consent to carnal intimacy.

Moreover, the effect corresponds to the cause. But consent is the cause of marriage. Since therefore, carnal intimacy is not of the essence of marriage, it seems that the consent which causes matrimony is not consent to carnal intimacy.

I answer that the consent that makes marriage is consent to marriage, for the proper effect of the will is the very thing willed; wherefore the consent that causes marriage is related to carnal intimacy in just the same way

that carnal intimacy is related to marriage. But marriage, as was said above, is not essentially carnal union itself, but a certain association of a man and a woman ordered to carnal intimacy and other things which pertain to a man and a woman as a result, according to which they give power to each other as regards carnal intimacy; and this association is called conjugal union. Wherefore it is clear that those men spoke well who said that to consent to marriage is to consent implicitly to carnal intimacy, not explicitly. For it should not be understood except as an effect is implicitly contained in its cause: for the power of carnal union, to which one consents, is the cause of carnal union, as the power of using what is one's own is the cause of its use.

1. Consent to marriage is condemnable after a vow of virginity, because by such consent power is given to what is not permitted; as if someone gave someone else the power to take something that had been given to him for safekeeping, he would sin--not only in actually handing it over to him. Concerning the consent of the Blessed Virgin, however, we will speak in a little while.

2. Between a brother and sister there cannot be the power of having each other in carnal intimacy, as neither can carnal intimacy occur licitly; and thus the argument does not follow.

3. That condition set forth is not only opposed to the act but also to the power of carnal intimacy, and thus it is contrary to marriage.

4. The beginning of marriage corresponds to the consummation, as a habit or power corresponds to the act which is its operation.

The arguments to the contrary show that consent is not explicitly given to carnal intimacy; and this is true.

Exposition

Without which it is done legitimately as regards its power, but not the dignity (honestas) of the sacrament. Against. In the second marriage there is no blessing of the priest, and yet it has the dignity of matrimony. And it must be said that the dignity of the perfect signification of marriage is not there; wherefore, because of a defect of the sacrament the blessing is omitted.

Consent does not cause marriage etc...

Here is understood as to the judgment of the Church, but as to the judgment of conscience only consent makes marriage firm.

For not from the head, nor from the feet, but from the side. It seems that it is taken from the most excellent place: for the heart is the most important of the members, and beside it are the ribs. And it must be said that the heart is the most noble as regards the origin of life, but the head as to the full complement of virtues, in which movement and sense happen, in which consist the sensitive life.

DISTINCTION 29

Prologue

After the Master has shown that consent is the cause of marriage, here he shows what impedes the consent, so that no marriage can be effected. And this is divided into two parts: in the first is considered the impediment of compulsion; in the second the impediment of error, Distinction 30, where he says: *nor does coercion alone impede or exclude consent, but also error*. The first is divided in three: in the first part he shows that coercion of consent does not bring about marriage; in the second he shows that if after the coercion, free consent should come forth, it will be a valid marriage, where he says: *nevertheless those who are joined against the will of one of the parties, or by coercion, if afterward from a certain space of time they have lived together without contradiction and complaint, they seem to have consented by having had the possibility of leaving or protesting*; in the third, how someone may be understood to have consented, where he says: *but consenting is proved*.

Here four things are to be asked: 1) Whether some consent may be compelled 2) whether any compulsion could happen to a steadfast man; 3) whether forced consent causes marriage; 4) whether someone can be compelled by his father to contract marriage.

Article 1

Whether some consent can be compelled

1. It seems that no consent may be compelled. For compulsion cannot happen to a free will, no matter what its condition, as was said in Book 2, Distinction 25, Question 1, Article 1. But consent is an act of free will. Therefore, it cannot be compelled.

2. Furthermore, violence, which is the same as compulsion, according to the Philosopher, is what has its principle outside, with the one suffering the force contributing nothing. But the principle of every consent is within. Therefore no consent can be compelled.

3. Furthermore every sin is completed in consent. But what completes a sin, cannot be compelled; for according to Augustine, no one sins in what he cannot avoid. But since force is defined by jurists as being the impetus of a

larger thing, which cannot be repelled; it seems that consent cannot be compelled or violent.

4. Furthermore, domination is opposed to freedom. But compulsion belongs to domination, as is clear in a certain definition from Cicero: for he says that *force is the impetus of the dominant thing retaining a thing within foreign boundaries*.³⁷⁸ Therefore force does not happen to a free will; and thus neither does it happen in consent which is its act.

But to the contrary what cannot be cannot impede something. But the compulsion of consent impedes marriage, as is said in the text. Therefore, consent can be compelled.

Furthermore, in marriage there is a certain contract. But in contracts the will can be compelled; wherefore, the legislator adjudicates for the full restitution, the contract not standing because it was done by force or because of grave fear. Therefore, consent can also be forced in marriage.

I answer that compulsion or violence is twofold. One kind is what causes absolute necessity, and this kind of violence is called "violence simply-speaking" by the Philosopher; as when someone impells something else to move bodily. The other kind causes a conditioned necessity; and the Philosopher calls this "mixed violence," as when someone casts his cargo into the sea, lest it should endanger him; and in this violence, although what is done is not voluntary *per se*, nevertheless, considering the circumstances, here and now it is voluntary. And since acts are about particulars, therefore it is voluntary simply-speaking, and involuntary in a certain respect. Wherefore this kind of violence or compulsion can exist in consent, which is an act of the will; but the first kind cannot. And since this compulsion happens by the fact that someone fears some imminent danger, thus this is the same force as grave fear, which forces the will in a certain way; but the first kind of force happens also in bodily acts. And since the legislator does not consider only interior acts, but rather external ones, by force is understood compulsion simply-speaking, which is why

³⁷⁸ The Leonine commission notes that Albert's *Commentary on the Sentences* also ascribes this statement to Cicero, but it has not been found in Cicero's works. (*Opera Omnia*, T. 12: *Summa Theologiae, Tertia Pars et Supplementum*. (Romae: Leoninum, 1906), Praefatio in Supplementum, p. xxiii.

force is distinguished from grave fear. But now we are considering interior consent, in which compulsion or force, which is distinguished from fear, does not happen. And thus, in the case proposed, compulsion is the same as fear. However, according to juridical experts, grave fear is *trepidation of the mind by reason of instant or future danger*.

And by this the answers to the objections are clear: for first arguments deal with the first kind of compulsion, and the second arguments deal with the second kind.

Article 2

Whether compulsion from grave fear can happen to a steadfast man

1. It seems that the compulsion by grave fear cannot happen to a steadfast man. For someone steadfast is precisely someone who does not quail among dangers. Since then grave fear is a trepidation of the mind by reason of imminent danger, it seems that he would not be compelled by grave fear.

2. Furthermore, *death is, of all terrible things, the end*, according to the Philosopher in Book III of the Ethics, as though it were the most complete among terrible things. But the steadfast are not compelled by death: for a brave man will also undergo the dangers of death. Therefore no grave fear can happen to a steadfast man.

3. Furthermore, among other evils, the danger to reputation is particularly feared by good men. But the danger of disgrace is not considered a fear affecting steadfast men; for as the law says, *the fear of disgrace is not included in that edict which was made about grave fear*. Therefore, neither does any other fear affect a steadfast man.

4. Furthermore, when someone is compelled by fear, the fear leaves sin in its wake: for it makes him promise something that he does not wish to do; and thus it makes him lie. But a steadfast man does not commit the least sin on account of any fear. Therefore, no grave fear affects a steadfast man.

But to the contrary, Abraham and Isaac were steadfast men. But grave fear affected them; for because of grave fear they said that their wives were their sisters. Therefore grave fear can affect a steadfast man.

Moreover, everywhere that there is mixed violence, there is some kind of fear compelling. But anyone, however steadfast he may be, can suffer such violence: for if he is at sea on the point of shipwreck, he throws his cargo overboard. Therefore, grave fear can affect a steadfast man.

I answer that for grave fear to affect someone is for someone to be forced by grave fear. However, someone is forced by fear when he does something that otherwise he would not wish, in order to avoid what he fears. In this matter, though, the steadfast man is distinguished from the inconstant man in two ways. First, as regards the quality of the danger that is feared; for the steadfast man follows right reason, by which he knows what may be good to do or to forgo.

But always a lesser evil or a greater good must be chosen; and thus the steadfast man is forced by fear of the greater evil to suffer the lesser evil; but he is not forced to the greater evil in order to avoid the lesser evil.

But the inconstant man is forced to the greater evil because of fear of the lesser evil; for example, to sin out of fear of bodily pain. But an obstinate man on the contrary cannot even be forced to suffer or do the lesser evil for the sake of avoiding the greater evil; wherefore, the steadfast man is the mean between the inconstant and the obstinate. Secondly, they differ as regards the estimation of the imminent danger: for the steadfast man is not forced, except by a strong and probable judgment, but the inconstant man can be forced by a light judgment, as in Proverbs 18: 1: *the impious man flees when no one is pursuing*.

1. The steadfast man, as the Philosopher says of a brave man, is intrepid, not because he fears nothing, but because he does not fear what it is not fitting to fear, or where or when it is not fitting.

2. Sins are the greatest of evils; and therefore the steadfast man can in no way be forced to them; indeed a man should rather die than allow such evils, as the Philosopher also says in Book III of the Ethics. But certain bodily damages are less than others, which are among those particulars that pertain to the person, like death, flogging, rape, and enslavement. And thus by these things, the steadfast man is forced to undergo other bodily damages, and these are contained in this verse: dishonor or status, flogging, or killing. Nor does it matter whether this pertains to one's

own person, or one's wife's, or one's children, or others like this.

3. Disgrace, although it is a great damage, nevertheless can happen easily to someone; and therefore the fear of disgrace is not considered as affecting a steadfast man according to the laws.

4. The steadfast man is not forced to lie, for at that moment he does wish to give; but nevertheless afterward he may wish to seek restitution, or at least to appeal to the court, if he promised that he would not seek restitution. But he can't promise that he won't appeal to the court, since this would be against the good of justice, to which he cannot be forced--that namely, he should act against justice.

Article 3

Whether consent under compulsion invalidates marriage

Quaestiuncula 1

1. It seems that consent under compulsion does not invalidate marriage. For consent is required for marriage, just as the intention is required for baptism. But someone compelled by fear into receiving baptism does receive the sacrament. Therefore, also someone compelled by some fear to consenting is obliged in marriage.

2. Furthermore, mixed violence, according to the Philosopher, has more of the voluntary than of the involuntary. But consent cannot be compelled other than by mixed violence. Therefore, it does not entirely exclude the voluntary; and thus there still is a marriage.

3. Furthermore, someone who was compelled to consent in marriage, should be counseled it seems to remain in that marriage: for promising and not keeping one's promise has a species of evil, from which the Apostle wishes us to abstain. But this would not be the case, if consent under compulsion did away with marriage altogether.

To the contrary is what the decretals say: *Since consent does not take place where grave fear or compulsion intervene, it is necessary that where common consent is required, the matter of compulsion is excluded.* But in marriage, common consent is required. Therefore, etc . . .

Moreover, marriage signifies the union of Christ to the Church, which is made according to the freedom of love. Therefore, it cannot happen by compelled consent.

Quaestiuncula 2

1. In addition. It seems that compelled consent at least on the part of the one coercing, would cause marriage. For marriage is a sign of spiritual union. But spiritual union, which happens through charity, can exist toward someone who does not have charity. Therefore, also a marriage to someone who does not wish it.

2. Furthermore, if some woman who had been coerced, afterward gave her consent, it would be a valid marriage. But the man who had coerced her in the first place, would not be bound by her consent. Therefore, he was bound in the marriage by the first consent.

But to the contrary, marriage is an equal-sided (*aequiparantiae*) relation. But such a relation is equally in both members. Therefore if there should be an impediment on the part of one, there will not be a marriage on the part of the other.

Quaestiuncula 3

1. In addition. It seems that neither does marriage happen by conditional consent. For what is placed under a condition, is not simply enunciated. But in marriage it is necessary that the words be simply expressive of consent. Therefore, a condition of any consent would not cause marriage.

2. Furthermore, a marriage must be certain. But where something is said under a condition, it is subject to doubt. Therefore, such consent does not cause marriage.

But to the contrary, in other contracts an obligation is made under a condition, and it stands as long as the condition is fulfilled. Therefore, since marriage is a certain contract, it seems that it could be done by conditioned consent.

Quaestiuncula 1

I answer to the first question, that the marriage bond is perpetual: wherefore, what is opposed to perpetuity, invalidates marriage. But fear grave enough to affect a steadfast man

removes the perpetuity of the contract, for restitution can be sought in its entirety: for the kind of compulsion from fear that would affect a steadfast man, and no other kind, destroys marriage. But a steadfast man is judged virtuous, which is the measure of all human works, as the Philosopher says in Book III of the Ethics, chapters 9 and 10. But certain people³⁷⁹ say that if consent is present, even though compelled, there is an inner marriage before God, but not as regards one's state in the Church, which presumes there to have been no interior consent because of fear. But this is nothing: for the Church should not presume a sin of anyone without it being proved. A person has sinned, however, if he has said that he consented, and did not consent. Wherefore the Church presumes him to have consented, but it judges consent that has been extorted to be insufficient for causing matrimony.

1. Intention is not an efficient cause of the sacrament in baptism, but only elicits the action of the agent. But consent is the efficient cause in marriage, and therefore, it is not similar.

2. Not every voluntariety is sufficient for marriage, but only complete voluntariety: for it must be perpetual, and therefore it is impeded by mixed violence.

3. It should not always be concluded in this situation that a person should remain in a marriage, but only when a danger is feared from its dissolution; but anyway he would not sin, for not to keep a promise that someone made unwillingly, is not a species of evil.

Quaestiuncula 2

To the second question it must be said that marriage is a certain relation, and a relation cannot arise in one extreme without happening in the other; so whatever impedes marriage in one, impedes it in the other. For someone cannot be a husband without a wife, nor a wife without a husband, just as neither can someone be a mother without a child. And thus it is commonly said that marriage cannot limp along on one foot.

1. Although an act of a lover can pass to someone who does not love, nevertheless, the union between them cannot be unless there is

mutual loving. And thus the Philosopher says in Book 8 of the Ethics, that friendship, which consists in a certain union, requires love in return.

2. By the free consent of the one who was formerly compelled, a marriage does not happen, unless to the degree that the preceding consent remains in the other party to its full strength. Wherefore if he should dissent, no marriage would occur.

Quaestiuncula 3

The condition set forth either has to do with the present or with the future. If it concerns the present, and it is not contrary to marriage, it is either honorable or dishonorable, and the marriage stands if the condition is fulfilled, and it does not stand if it is not fulfilled. But if it is contrary to the goods of marriage, it does not bring about a marriage, as was also said about betrothals. But if the condition has to do with the future: either it is a necessary condition like the sun rising tomorrow; and then there is a marriage, for such future things are already present in their causes; or it is a contingent condition, such as the giving of money, or the acceptance of the parents. And then the judgment is the same of such consent as of consent that is made in terms of the future: so that it does not cause marriage.

And by this the answers to the objections are clear.

Article 4

Whether someone can be compelled to marriage by the command of his father

1. It seems that someone could be compelled to contract marriage by his father's command, for Colossians 3:20 states, *sons, obey your parents in all things*. Therefore also in this they are bound to obey them.

2. Furthermore, in Genesis 28, Isaac commanded Jacob that he not take a wife from among the daughters of Canaan. But he would not have commanded unless he were able to command by law. Therefore a son is bound to obey his father in this.

3. Furthermore, no one must promise, especially by an oath, on behalf of someone else whom he cannot compel to keep the

³⁷⁹ Huguccio, according to William of Rennes, (*Opera Omnia, T. 12: Summa Theologiae, Tertia Pars et Supplementum*. (Romae: Leoninum, 1906), Praefatio in Supplementum, p. xxiii.)

promise. But parents promise future marriages on behalf of their children, and even strengthen it with an oath. Therefore they can force their children to fulfill it by their command.

4. Furthermore, the spiritual father, namely the Pope, can compel a spiritual marriage by his precept, namely for someone receiving the episcopate. Therefore a carnal father can do this for a carnal marriage.

But to the contrary, if the father commands marriage, the son can enter religious life without sinning. Therefore, he is not bound to obey him in this.

Moreover, if he were bound to obey, the betrothal contracted by the parents without the consent of the children would be binding. But this is against his rights. Therefore, etc. . .

I answer that since marriage is like a certain perpetual servitude, a father cannot compel his child to marry by his command, since the child is of a free condition. But he can induce him by reasonable grounds, and then the son is subject to this reason as he is to the command of his father. And if this reason compels him out of necessity or honor, the command of his father will also compel him in the same way, otherwise not.

1. The words of the Apostle are not to be understood concerning those matters in which the son is as free as the father; and marriage is one of these, by which a son becomes a father.

2. Jacob was bound to do what Isaac commanded for other reasons as well, whether because of the malice of those women, or because the seed of Canaan was about to be dispersed from the land which had been promised to the seed of the patriarchs; and therefore Isaac could command.

3. They do not swear except under a certain understood condition: that the children will agree; and they are obligated to bring them up in good faith.

4. Certain people say that the Pope cannot command someone to accept the episcopate: for consent should be free. But if this were held, the ecclesiastical order would perish. For unless someone can be compelled to undertake the rule of the Church, the Church could not be preserved; since the men most suited would never want to undertake this unless they were compelled. And thus it should be said that it is not the same thing here, for there is no bodily servitude in spiritual marriage as in corporeal marriage: for spiritual marriage is a certain office of administering the common welfare; 1

Corinthians 4:1: *so let man consider us, as ministers of Christ.*

Exposition

The legates of the prince drew back from the Jordan. It seems that a marriage cannot be done by intermediaries, for if before the arrival of the mediary, one of the parties should change his mind, there would be no marriage. And it must be said that someone can establish another as his proxy for the purpose of consenting: nevertheless, if beforehand he should change his mind about consenting, it is not a marriage, whether in the truth of the matter, nor according to the judgment of the Church, if by some signs he should appear to have changed his mind. But by the fact that consent happened through intermediaries, the marriage holds as if he himself had done it.

But he is proved to consent who does not openly contradict. This is understood as to the forum of the Church: for as to the forum of conscience, if internally he should dissent although externally he does not make any protest, there is no marriage.

DISTINCTION 30

After the Master has showed that matrimonial consent is impeded by compulsion, here he shows that it is impeded by error; and this distinction is divided into three parts: in the first he considers the impediment of error; in the second, concerning the consent that there was in the marriage of the Blessed Virgin, where he says, *Something should be added to the foregoing*; in the third part, concerning the final cause of matrimony, where he says, *having set forth what is the efficient cause of marriage, it follows that we should show the reason for which marriage is usually contracted, or should be contracted*. About this he does three things. First he shows which error impedes marriage; secondly, he objects to the contrary, where he says, *But it is objected about Jacob*, etc.; thirdly, he resolves it, where he says, *But what was done in a mystery there, is an exploit not handed down immorally. Something should be added to the foregoing*. Now he considers the consent that there was in the marriage of the Blessed Virgin; and concerning that he does two things: first he shows what kind of consent that was; secondly he shows that that marriage was complete, where he says *Between them, as Augustine says, was a complete marriage. Having set forth what is the efficient cause of marriage*, etc. Then he considers the final cause of marriage; and first concerning the causes of marriage in general; secondly the causes of the marriage of the Blessed Virgin, where he says: *However the marriage of Mary and Joseph had other special reasons*. Concerning the first he does two things: first he sets forth the final causes of marriage, both principal and secondary; secondly, excludes error, where he says: *Nor should we agree with those who say that a marriage that is contracted for these less honorable reasons, is not a marriage*. Whereby he does two things: first he shows that an evil aim does not mean that there will not be a valid marriage, where he says: *and although a marriage may be contracted with no good aim, when the beauty of the one contracting is what moves the soul, nevertheless the marriage is valid*. Here there is a twofold question. First, concerning marriage in general. Second, concerning the marriage of the Blessed Virgin.

QUESTION 1

Concerning the first question, three things are to be asked: 1) Whether error impedes matrimony by its very nature; 2) Which errors? 3) On the final cause of matrimony.

Article 1

Whether error should be considered an impediment to marriage per se

1. It seems that error should not be considered an impediment to marriage per se. For consent, which is the efficient cause of marriage, is impeded in the same way as the voluntary. But the voluntary, according to the Philosopher in Book 3 of the Ethics. Chapter 7, is considered to be impeded by ignorance, which is not the same thing as error: since ignorance means no cognition; while error does not: for error is to take false things for true, according to Augustine. Therefore, not error, but rather ignorance, should have been counted here as an impediment to marriage.

2. Furthermore, the only thing that can impede marriage by its very nature is what is contrary to the goods of marriage. But error is not. Therefore, error, of its own nature, does not impede marriage.

3. Furthermore, as consent is required for marriage, so also is intention required for baptism. But if someone baptizes John and believes that he baptizes Peter, nevertheless John is validly baptized. Therefore error does not exclude marriage.

4. Furthermore, between Leah and Jacob there was a valid marriage. But there was an error there. Therefore, error does not exclude marriage.

But to the contrary is what is said in the digests: *What is so contrary to consent as error?* But consent is required for matrimony. Therefore, error impedes matrimony.

Moreover, consent is called something voluntary. But error impedes the voluntary, since the voluntary, according to the Philosopher, and Gregory of Nyssa, and John Damascene, is what has its principle in someone knowing particulars, for an action is about particulars. And this does not happen in someone who errs. Therefore, error impedes matrimony.

I answer that whatever impedes a cause, of its very nature likewise impedes the effect. But consent is the cause of matrimony, as was said; and therefore, whatever does away with consent, does away with marriage. But consent is an act of the will, which presupposes the act of the intellect. Yet when the first is lacking, the second will necessarily not happen. Therefore, when error impedes cognition, a defect of consent results as well, and consequently, a defect in the marriage. And therefore, by natural law, error can do away with marriage.

1. Ignorance differs, simply speaking, from error: for ignorance by its very nature does not carry any act of the intellect: but error forms a perverse judgment of reason about something. However, as concerns what impedes willing, it makes no difference whether it is called ignorance or error, for no ignorance can impede willing unless it has error attached to it, inasmuch as the act of the will presupposes estimation or judgment of something it is directed toward. Wherefore, if there is ignorance, there is necessarily error: and for this reason error is also counted as if it were a proximate cause.

2. Although error is not in itself contrary to marriage, it is contrary to marriage as regards its cause.

3. The baptismal character is not caused directly by the intention of the one baptizing, but by the material element being outwardly applied. However the intention works only as directing the material element to the proper effect. But the conjugal bond is caused directly by consent; and therefore it is not similar.

4. As the Master says in the text, the marriage which was between Leah and Jacob was not completed by the fact that they slept together through an error, but by the consent which was supplied afterward. However both parties were excused from sin, as is clear from the text.

Article 2

Whether any error may impede matrimony

1. To the second article we proceed thus. It seems that any error might impede matrimony, and not only error of condition or of persons, as is stated in the text. For what applies to something *secundum se*, applies to its

entire extent. But error by its very nature contains what would impede marriage, as was said. Therefore, any error may impede marriage.

2. Furthermore, if error impedes marriage because of the kind of thing it is, then a greater error should impede more greatly. But the error of faith, which is in heretics who do not believe in this sacrament, is greater than the error of the person. Therefore, it should impede more than the error about the person.

3. Furthermore, error does not void marriage except insofar as it takes away the voluntary. But ignorance of any circumstance whatsoever destroys the voluntary, as is evident in Book 3 of the Ethics. Therefore, not only the errors of person or of condition can impede matrimony.

4. Furthermore, just as the condition of slavery is an accident added to a person, so also is the quality of the body or of the soul. But the error of condition impedes marriage. Therefore, by the same reasoning, should the error of quality or of fortune.

5. Furthermore, just as slavery or liberty belongs to the condition of the person, so also nobility or being base-born, either dignity of status or its absence. But the error of the condition of liberty or slavery impedes marriage; so an error in the other things mentioned should also.

6. Furthermore, just as the condition of slavery impedes marriage, so also disparity of worship, and impotence to have intercourse, as will be said later. Therefore, just as the error of condition sets an impediment to marriage, so also should an error about other things of this kind should be listed as an impediment to marriage.

But to the contrary, it seems that neither would an error of person impede marriage. Since just as a purchase is a certain contract, so also is marriage. But in buying and selling if one is given gold equivalent to some other gold, it does not impede the sale. Therefore, neither should marriage be impeded if in place of one woman another is received.

Furthermore, it can happen that two people may be detained for many years by one such error, and they may have sons and daughters together. But it would be very burdensome to say then that they should separate. Therefore, an error in the beginning should not thwart marriage.

Furthermore, it can happen that the brother of the man to whom a woman believes she has consented presents himself to her in his brother's place, and mingles carnally with her. Therefore it seems that she could not return to the one to whom she believed she had consented, but should remain with his brother; and thus the error of the person does not impede marriage.

I answer that just as the error that causes something to be involuntary may excuse it as sin, so also error may impede matrimony in the same way. However, error does not excuse from sin, unless it be an error of a circumstance whose presence or absence makes a difference of licit or illicit in the act. For if someone strikes his father with an iron rod, which he believes to be wooden, he is not excused completely, although perhaps somewhat; but if someone believes he strikes his son for the sake of discipline, and he strikes instead his father, he is excused from all, if all due reasonable care has been taken. Whence it is necessary that the error which impedes marriage be an error of what pertains to the essence of matrimony. However marriage itself is contained in two things: namely, persons who are joined and the mutual power over each other, in which marriage consists. The first, however, is taken away by an error in the person, the second by the error of condition, since a slave cannot transfer power over his own body to another without the consent of his master, and because of this these two errors impede marriage, and not others.

1. Error does not impede marriage from the nature of a genus, but from the nature of an added difference; namely, according as it is an error concerning the essence of marriage.

2. The error of a non-believer about marriage has to do with the consequences of marriage, as whether it is a sacrament, or if it is licit; and therefore this kind of error does not impede marriage, just as neither does an error about baptism impede the reception of the character, provided that one intends to do or to receive what the Church gives, however much he believes it to be nothing.

3. Not all kinds of ignorance of circumstance cause something to be involuntary such that it is excused from sin, as was said above; and because of this, the argument does not follow.

4. Diversity of fortune does not change anything that belongs to the essence of

marriage, nor does diversity of quality, in the way that the condition of servitude does; and therefore the argument does not follow.

5. An error about nobility as such does not do away with marriage for the same reason that neither does an error about a quality. But if the error about nobility or dignity amounts to an error about the person, then it impedes marriage; whence if the consent of the woman is intended directly to that person, an error about his nobility does not impede the marriage. If however, she directly intends to consent to the son of the king, no matter who that might be, and then if another should be presented to her as the son of the king, it is an error of the person and it would impede marriage.

6. Error of those impediments to marriage that make persons ineligible, also impedes marriage. But he does not mention errors in those things, since they impede marriage whether there be an error or not. As, for example, if someone contracts with a subdeacon, whether she knows it or not, there is no marriage. But the condition of slavery does not impede, if the slavery is known, and therefore there is no comparison.

7. Money is received in contracts as the measure of other things, and not as if it were sought for its own sake, as is clear from Book 5 of the Ethics. And therefore, if that money which is owed is not given, but rather some equivalent thing, nothing prevents the contract. But if there be an error about something sought for itself, it would impede the contract, as if, for example, a donkey were sold in place of a horse. And it is likewise in the case proposed.

8. However long he may have been with her, unless he wants to consent anew, there is no marriage.

9. If beforehand she had not consented to his brother, she can keep the one whom she received by error. Nor can she return to his brother, especially if she has been carnally known by the one whom she received. If however she had consented to the first man in words of the present, she cannot have the second while the first is living; but she can either leave secular life, or return to the first: and ignorance excuses the sin committed, just as it would also be excused after the marriage, if she were fraudulently known by someone related to her husband, since the fraud of another should not prejudice one's own rights.

Article 3

Whether matrimony takes place when someone gives consent for dishonorable reasons

1. It seems that marriage cannot exist by someone's giving consent for dishonorable reasons. For the account of one thing is one. But marriage is one sacrament. Therefore it cannot happen by the intention of another end, rather than that end to which God has instituted it, namely, the procreation of children.

2. The joining of marriage is from God, as is clear from Matt 19:6: *whom God has joined, let no man put asunder*. But the marital union that is made for base reasons is not from God. Therefore, it is not a marriage.

3. Furthermore, in other sacraments if the intention of the Church is not preserved, it is not a valid sacrament. But the intention of the Church in the sacrament of marriage is not for the sake of any base reason. Therefore, if marriage is contracted for some base reason, it will not be true marriage.

4. Furthermore, according to Boethius, what has a good end is itself good. Therefore, it is not marriage if it is made for an evil end.

5. Furthermore, marriage signifies the conjoining of Christ and the Church. But no baseness exists there. Therefore, neither can marriage be contracted for a base reason.

But to the contrary, whoever baptizes someone with the intention of making money, baptizes truly. Therefore also someone who contracts with someone else, with the intention of making money, has a true marriage.

Furthermore, the same idea is proved by the examples and authorities who are cited in the text.

I answer that the final cause of matrimony can be taken in two ways: namely *per se* and *per accidens*. Indeed, the cause of marriage *per se* is that to which marriage is of itself ordained, and this is always good; namely the procreation of children, and the avoidance of fornication. But its final cause *per accidens* is that which the contracting parties intend from this marriage. And since what is intended from a marriage follows upon a marriage; and prior things are not changed by what comes later, but rather the reverse; therefore, the marriage does not receive goodness or badness from that cause. But the contractants themselves do, since it is their end *per se*. And since *per accidens* causes are infinite, such causes of

marriage can be infinite, some of them being honorable and others dishonorable.

1. To the first it should be said that it is true of a *per se* and principal cause; but what has one *per se* and principal end can have many secondary *per se* ends and infinite accidental ends.

2. "Conjoining" can be taken for the relation itself which is marriage and as such it is always from God, and it is good no matter what the reason for which it was made: or it can be taken for the act of those who are joined, and in this way it is sometimes evil, and is not from God, simply speaking. Neither is it unfitting that some effect be from God, of which the cause is evil; like children who are conceived through adultery. For it is not from that cause insofar as it is evil, but insofar as it has something of good, that it is from God, although it is not simply from God.

3. The intention of the Church which intends to give the sacrament is necessary to any sacrament, so that nothing happens in the sacraments when it is not observed; but the intention of the Church which intends the benefit coming from the sacrament, has to do with the sacrament being well-done and not with what is necessary to it. Whence, if this is not observed, nonetheless there is a true sacrament; but the one neglecting this intention sins; just as if in baptism one did not intend the health of the soul which the Church intends. Likewise, that man who intends to contract marriage, however much his marriage is not ordained to the end that the Church intends, nevertheless, contracts a valid marriage.

4. That evil intent is not the end of marriage, but of the ones contracting marriage.

5. The union itself is a sign of the conjoining of Christ and his Church, the action of the ones uniting is not; therefore the argument does not follow.

QUESTION 2

Next is inquired about the marriage of the Blessed Virgin Mary, and about this three things are to be asked: 1. concerning the vow and the marriage of the Blessed Virgin; 2. whether this marriage was perfect; 3. whether it was ever consummated, as Elvidius said.

Article 1

Concerning the vow and the marriage of the Blessed Virgin

Quaestiuncula 1

1. It seems that the Blessed Virgin should not have vowed virginity. For in the law a curse was due to those who do not leave any of their seed upon the earth, as is clear from Deuteronomy 7. But the status of the law has endured until now. Therefore she should not have vowed virginity.

2. Furthermore, the vow of virginity belongs to the counsels of perfection. But such perfection should have been begun by Christ, who came to complete the law with the counsels.

But to the contrary, in the mother of Christ should have been every perfection. But the vow of virginity is of greatest perfection. Therefore it should not have been absent in her.

Quaestiuncula 2

Moreover, it seems that she should not have been joined in matrimony

1. Since for those vowing virginity, not only marrying but even wishing to marry is blamable, as Jerome says. But nothing blamable should be in the Blessed Virgin. Therefore, after she vowed virginity, she should not have married.

2. Furthermore, vowing virginity would expose one to danger, if one were to hand oneself over to the power of a man. But this is a sin. Therefore, the Blessed Virgin should not have handed herself over to the power of another in marriage; therefore, neither should she have married.

3. Furthermore, whoever consents in marriage, consents in some way to carnal

intimacy, at least implicitly. But consenting to carnal intimacy diminishes in some degree the purity of virginity, at least as regards the spirit of virginity. Since then, to the mother of God was due such purity, that greater purity under God could not be understood, as Anselm says, it seems that she should not have married.

But to the contrary is what is said in Matt 1:18: *When the Mary, the mother of Jesus, was espoused to Joseph*; in the text and in the gloss.

Furthermore, Christ by his birth had to make virginity so commendable, that he did not detract from marriage. He could not, however, have more greatly affirmed both than by being born to a married virgin.

Quaestiuncula 3

1. Moreover, it seems that the causes ascribed to her marriage in the text are not fitting. For the devil, since he had natural lucidity, could understand more things by natural understanding than man. But man can also know through his senses whether someone is a virgin. Therefore, much more powerfully was the devil able to know this.

2. Furthermore, the devil knows well that that girl is a virgin who was never united with a man. But the devil could have known that Joseph never had been united with her carnally. Therefore, by the fact that she was married, the Mother of God's virginity was not hidden from him.

3. Furthermore, the mystery of the divinity of Christ was shown to be not less miraculous than the virginity of his mother. But the devil saw that miracle, so it is not fitting that the mystery of Jesus' incarnation was concealed from him by the marriage of his mother.

4. Besides, if she were not married, she could not have been stoned under suspicion of fornication, as with adultery. Therefore, it seems that it was not for this that it was necessary for her to marry.

5. Furthermore, from the fact that she had married, the Jews who discovered the Scripture, *Behold a virgin shall conceive*, were more built up against the faith; and thus the virginity of the mother should not have been hidden.

6. Besides, Christ came so that he might suffer our labors, and by this fact, take them away. Therefore it was not fitting that his mother should have a husband for his service.

Quaestiuncula 1

I answer that in the Blessed Virgin had to display everything that was of perfection. However at the time, marriage was preferred to virginity because of the expectation of blessed children coming by the way of generation, although nevertheless, virginity is the best thing in itself. Therefore the Blessed Virgin vowed virginity as the most excellent thing and the thing most acceptable to herself, not though simply speaking, but under the most honorable condition, that is, unless God should will otherwise. Nor was that condition added as though she was unsure whether she wanted to remain a virgin, but whether she should; and this is what Augustine says in the text, that she proposed that she would persevere as a virgin, unless God commanded otherwise.

1. The Blessed Virgin was the threshold between the Old Law and the New, as dawn is between night and day; and thus in her vow she was sensitive to the New Law, inasmuch as she vowed virginity; as well as the old, inasmuch as she attached conditions to it.

2. The perfection of the counsels as regards their consummation had to have been begun by Christ. But as regards a certain inchoation, it was fittingly begun by his mother.

Quaestiuncula 2

To the second question it is to be said that it was fitting for the mother of Christ to be joined in marriage because of the reasons given in the text, and also for other reasons, of which the first is that it signified the Church, which is virgin and bride. Secondly, so that through Joseph the genealogy of Mary might be woven: for it was not the custom of the Hebrews to compute the genealogy on the part of the woman. Third, so that the excuse might be taken away from virgins, if they were disgraced by fornication. Fourth, so that Christ might affirm marriage by his birth. Fifth, so that the greater perfection of virginity might be displayed in the Blessed Virgin, since she remained a virgin even in matrimony.

1. After the vow of virginity made absolutely, a person cannot consent to marriage without sinning; for if it were solemnly vowed, it would not be a valid marriage. If, however, it were a simple vow, a valid marriage is what

would follow, although those contracting it would sin. Yet the vow of the Blessed Virgin was not made solemnly, but simply expressed in her heart; neither was it absolute, but under condition, as is clear from the text; and therefore, she could consent to marriage without sinning and by the special counsel of the Holy Spirit, to whose management her vow was conditionally subject.

2. Before the Blessed Virgin contracted with Joseph, she was assured by divine inspiration that Joseph had been similarly promised; and therefore she did not expose herself to danger by marrying him. Nor did any of the truth perish because of this, since that intention was not conditionally added to the consent, for such a condition, since it would be against one of the goods of matrimony, namely the procreation of children, would invalidate the marriage.

3. Carnal intimacy was included implicitly in the consent of the Blessed Virgin, just as act is implicitly contained in potency, as is evident from what was said above, in *Distinctio 28, Qu. 1, Art. 4*. The potentiality for carnal intimacy, however, is not contrary to virginity, nor did it diminish anything of her own purity unless by reason of the act itself, which was certainly never in the design of the Blessed Virgin, since she was already assured that the act would never occur.

Quaestiuncula 3

To the third question it is to be said that the reasons which are set forth in the text are fitting. The first is taken on the part of the One conceived, namely that the birth be concealed from the devil; the second on the part of the mother, namely that she not be stoned; and the third reason is on the part of Joseph, that he might serve the mother and the child, and furnish testimony of her virginity.

1. By his natural understanding the devil could perceive well the virginity of the Mother of God despite the fact that she had married, unless he was prevented by divine power from the accurate examination of what was about her.

2. And the answer to the second objection is similar.

3. By another miracle he could not manifestly recognize Jesus as the Son of God: since at the same time he saw in Him signs of

weakness and strength; whence if sometimes something of His divinity was confessed, it proceeded more from presumption than from certitude. But this, because of the foregoing prophecy, would have been the most certain sign of the living Son of God.

4. Stoning implies disrepute: or since on her mother's side she was of a priestly lineage; which is clear from the fact that Elizabeth, who was of the daughters of Aaron, is said to have been related to her (Luke 1). However, the daughter of a priest, apprehended in unchastity, even if unmarried, was to be burned, as is clear from Leviticus 21; but on her father's side, she was of the line of David. For the daughters of Aaron were able to be joined in marriage with those of the royal tribe or also with any of the other tribes, by the fact that they did not receive an inheritance separate from the other tribes. And thus from this fact no confusion could have arisen from the prophecy, which confusion was the reason for the prohibition against contracting marriage between members of different tribes.

5. The Lord preferred to permit the Jews to be uncertain of his own divinity rather than of the chastity of His mother, for He knew that the reputation of virginity is fragile.

6. Christ did not of necessity have to refuse comfort: since this would be more an act of perversity than of humility.

Article 2

Whether the marriage mentioned was fully a marriage

1. It seems that the marriage described was not complete. For a complete marriage proceeds from absolute consent. But the Blessed Virgin did not seem to have consented absolutely in matrimony, as neither did she vow absolutely, since in both she committed herself to divine governance, as is said in the text. Therefore, it was not a perfect marriage.

2. Furthermore, the signification is of the essence of marriage, inasmuch as it is a sacrament. But that marriage was not complete in its signification, as it says in the text. Therefore,

3. Where the final consummation is lacking, there is no true completion. But the marriage of the Blessed Virgin was never

consummated. Therefore it was not truly completed.

4. Furthermore, a marriage is said to be complete from the fact that it possesses the good of offspring. But that marriage did not have the good of offspring, since the child who was educated in that marriage was not the effect of that marriage, just as neither is an adoptive son called a good of marriage. Therefore.

5. After a marriage is complete, one is not allowed to send away one's spouse. But Joseph, although he was a just man, wanted to send Mary away secretly, as it says in Matt 1. Therefore, the marriage was not yet complete.

But to the contrary, the works of God are complete (Deut 32:4). But that marriage was divinely inspired. Therefore it was complete.

Furthermore, unless marriage is complete, the members are not called spouses (*conjuges*). But Mary was called Joseph's spouse (Matt. 1). Therefore a complete marriage existed between them.

I answer that the perfection of marriage is twofold. The first refers to its very being, which comes to be through consent expressed in words of the present. And by such perfection, this marriage was complete. The other perfection refers to operation, and thus this marriage was not complete, for the proper act of marriage is carnal intimacy.

1. The Blessed Virgin consented absolutely to marriage, as confirmed by divine inspiration. But while consenting thus to marriage, she had committed her own virginity to God, as it says in the text.

2. The essence of marriage is not from any signification whatsoever, but only that signification by which the effect of the sacrament is signified; and therefore the argument does not follow.

3. This argument proceeds from the second kind of perfection, which is called the consummation of a marriage.

4. A child is not called the good of marriage only because he is generated through marriage, but also inasmuch as he is accepted and educated in marriage; and thus the good of this marriage was a child, but not in the first way. Neither is a child born of adultery, however, or an adoptive son who is educated in marriage, a good of marriage; for marriage is not ordained to the education of those, as this marriage was specially ordained to the end that

this child should be received into it and educated.

5. Joseph did not wish to send Mary away so that he could take another wife, or because of any suspicion, but because he feared to cohabit with such holiness because of his reverence; whence it was said to him, "*Do not fear*," (Matt.1:20).

Article 3

Whether this marriage was ever consummated

1. It seems that this marriage was consummated at some time. For it is said in Matt 1:18, *before they came together, she was found to be with child by the Holy Spirit*. And in verse 25, *he did not know her until she had given birth to her first-born son*. Therefore it seems that afterward, he did know her.

2. Furthermore, "the first" is said with respect to a second. But Christ is called the first-born son of the virgin by the authorities brought forth. Therefore, after the first, she had another; and thus this marriage, at least after the birth of Christ, was consummated.

3. Furthermore, the words of the Gospel writer were never lacking in expressing his intention. But they never expressed that Joseph did not know his wife at all. Therefore, after the generation of Christ, the marriage was consummated.

4. Furthermore, Joseph is called the father of Christ in many places in the Gospels, and He is also said to have had brothers; but this would not be if the marriage had never been consummated. Therefore, etc. . .

5. Furthermore, two bodies cannot be in the same place at the same time. Therefore, Christ could not have exited the womb of his mother while leaving her virginity intact; and thus it would not have been unfitting for the marriage to have been consummated.

6. Furthermore, Abraham and other fathers who enjoyed marriage had the greatest of dignity. Therefore, nothing would have been lost to the mother of Christ, if she had consummated her marriage.

7. Furthermore, Helvidius objects: if it is base thing for Christ for his mother to be known after his birth, how much more so for him to have been borne through the genitals of the virgin.

But to the contrary, virginity is preferred to corruption. But the mother of Christ had to be in the most excellent state. Therefore she had to be a virgin, and thus her marriage could not have been consummated.

Furthermore, it is not probable that Joseph dared to approach the womb that he knew was a temple of God, as Jerome says.

I answer that the mother of Christ remained a virgin before the birth, and in the birth, and after the birth for all eternity. But the Jews and the Ebionites detract from her virginity before the birth, saying that Christ was born from the seed of Joseph. The philosophers, on the other hand, dispute her virginity during the birth, saying that two bodies cannot be in the same place. But Helvidius, a certain idiot and priest, dared to calumniate her virginity after the birth; for, believing chatter to be eloquence, finding some subject to disagree about, he began by blasphemies of the Mother of God, saying that she had been known by Joseph after the birth of Christ. And against him, St. Jerome composed a book.

1. "Before" does not always denote the order to what is future according to the truth of the matter, but sometimes it is said regarding what is expected in the future according to the usual course of things: as in, "before he had reached twenty years of age, he was dead." And so it is in this situation. And likewise, the "until:" sometimes it means that which preceded will be terminated by this coming thing which is expected, as when it is said, "Sit here, until I come"; sometimes, however, not this way, as when it is said in 1 Corinth 15:25: *He must reign until he may place all his enemies under his feet*—not that the time of his reign will be finished at the subjection of his enemies, but the subjection of the enemies is included in the time of the reign.

2. "Firstborn" is said of the one before whom there is no one, notwithstanding there may not be another after him. Otherwise only-begotten sons would not have had the right of primogeniture, nor would they have had to be offered to God according to the Law, which is false.

3. The evangelists did not mention what is more credible, in favor of expressing what is less credible. Less believable is it that a virgin should conceive (which the evangelists said), than that after the birth she should have been

preserved a virgin; and therefore, they did not take the trouble to say it.

4. Joseph is called the "foster father" of Christ, as is evident from Luke 3. And again, Christ was made his adopted son, as certain people say. Others, though, were called the brothers of Jesus by reason of family relation, since they were of the same family: since neither did Mary have another son, nor did Joseph, who was also a virgin, as it is said.

5. This is true according to nature; but by a miracle it can happen that two bodies are in the same place at the same time, as will be shown in *Distinctio 44*. Moreover, that birth and conception was entirely miraculous. Some even say that Christ assumed the gift of subtlety at that time. But the first reason is better.

6. However good might be the state of consummated marriage, nonetheless the state of virginity is much higher. And this befitted the Mother of God.

7. According to St. Jerome, *The more humiliating things He suffered for me, the more I owe Him*; provided that by these things nothing is detracted from the perfection of His virtue. But the privation of virginity would take away from the perfection of His mother as regards the virtue of her soul.

can be perfectly well without sin, and sometimes even without venial sin. If however, the sexual desire (*libido*) for her beauty were the principal cause, he would not have been excused from mortal sin, if it were unbridled sexual desire.

Expositio textus

For if the devil, transforming himself into an angel of light, were believed to be good, this is not a dangerous error. This should be understood, when it does not proceed to the point of adoration, or, if it should, only under the condition that it is Christ; otherwise it would pose the danger of idolatry. *If some heretic by the name of Augustine or Ambrose were to present himself to another Catholic, and were to invite him to imitation of his own faith, if that man were to assent, the expression of whose faith can he be said to have consented to?* This is true when it has not proceeded to the point of the expression of some error; otherwise there would have been the danger of infidelity, if someone consented to him.

She consented to carnal intimacy, not explicitly but implicitly, as was said.

Jacob loved Rachel's comeliness in face and in charming appearance. It should be known that comeliness of face was not a principal reason, but a secondary one; and this

DISTINCTION 31

QUESTION 1

Prologue

After the master has determined the causes by which matrimony itself is constituted, here he determines the reasons for its dignity (*honestas*); namely, the goods of the union, by which the marital act is dignified; and this is divided into two parts: in the first, he determines the goods of marriage as regards marriage, and this is what we now consider; in the second part, he shows how goods of this kind existed in the marriage of the patriarchs, Distinction 33, where he says, *Here we consider the ancient fathers, etc.* The first part is divided into two: first he determines the goods of the union for which the marital act is excused. Secondly, he determines about the marital act, which is excused through the aforementioned goods, according as it has the nature of something owed; Distinctio 32, where he says, *Also it must be known, since although in all other things the man is set over the woman . . . yet in paying the debt of marriage they are equals.* The first of these points is divided in two: first he determines how the goods of the union are found in marriage; secondly he shows when the conjugal act may be excused for their sake: *Therefore when these three goods converge in any marriage at the same time, they avail to the excuse of sexual relations.* The first has two parts: in the first he shows what the three goods of the union are; in the second, how they are ordered to marriage: *It should be known that a marriage is contracted by some people where these three goods do not accompany it.* And regarding this he does two things: first he shows that one of the goods mentioned is found in every marriage, namely, the sacrament; although not the other two—that is, fidelity and offspring—which at times are absent from a marriage in actuality (*in actum*); and second he considers the marriage in which the intention of those two things is not preserved: *It is often asked, when a man and a woman, he not a husband and she not the wife of another, copulate with each other not for the sake of procreating sons, but only for the sake of lying together out of incontinence, etc.* And regarding this he does three things: first he

considers the marriage in which the good of children is not intended; and secondly, one in which it is not only not intended, but even impeded: *Indeed, those who procure drugs of sterilization, are not spouses, but are fornicators*; thirdly, he considers a certain related question: *here those who procure abortions are usually inquired about.*

Therefore, when these three goods concur at the same time in any union, they avail to the excusing of carnal intercourse. Here he shows how the conjugal act is excused by the aforementioned goods, and concerning this he does two things: first, he determines the truth; secondly, he poses objections to the contrary, where he says, *But if lying together, which is the cause of offspring, is free from sin, what does the Apostle permit according to forbearance?* And regarding this he does two things: First, he objects to the excusing of the matrimonial act, showing that marriage does not need an excuse; secondly, he shows that it cannot be excused, if it is free of sin: *But perhaps someone might say, etc.* And regarding this he does two things: first he objects through reasoning; secondly through authority: *Blessed Gregory, however, seems to feel otherwise*; and each of these is divided into objection and resolution, as is clear from the text.

Here is a twofold question. First, concerning the goods of matrimony. Second, excusing the marital acts by the aforementioned goods. Regarding the first, three things are to be sought: 1) whether certain goods should excuse matrimony; 2) what and how many they might be; 3) how they are ordered to matrimony.

Article 1

Whether matrimony should have some goods by which it may be excused

1. It seems that marriage should not be excused by certain goods. For as the conservation of the individual, which occurs through those things that pertain to nutrition, is intended by nature; so also the conservation of the species, which occurs through marriage; and much more, as the good of the species is much better and more godlike than the good of one individual. But no one needs to be excused from the act of nourishing himself. Therefore, neither from matrimony.

2. Furthermore, according to the Philosopher, in Book 8 of the Ethics, the friendship which is between a husband and wife, is natural, and comprises in itself the honorable, the useful, and the pleasurable. But what is honorable in itself does not require any excuse. Therefore neither should excuses be attributed to matrimony.

3. Furthermore, marriage was instituted as a remedy and an office of nature, as was said above in Distinction 23, question 2, articles 1 and 2. But insofar as it is a office, it does not require any excusing, for then it would also have needed excusing in Paradise, which is false: for *there marrying was honorable, and the bridal-bed was immaculate*, as Augustine says. Likewise, nor does it require an excuse as a remedy, for neither do the other sacraments, which were instituted as remedies for sin. Therefore marriage does not need excuses like this.

4. Furthermore, the virtues direct us toward all things that can be done honorably. If therefore marriage can be dignified by certain goods, it requires no other dignifying qualities than virtues of the soul. And thus no other goods should be ascribed to marriage by which it may be dignified, as neither are they ascribed to other things to which virtues direct us.

But to the contrary, wherever an indulgence is given, there is necessarily some *ratio* of excuse. But marriage is conceded to the state of our weakness according to indulgence, as is evident from 1 Cor 7. Therefore it is necessary for it to be excused by certain goods.

Furthermore, matrimonial sleeping together and fornication are of the same species of nature. But fornication is disgraceful in itself. Therefore, for matrimonial intercourse not to be disgraceful, it is necessary that something be added to it which carries with it dignity, and draws it into another species of moral act.

I answer that no wise man should endure any forfeiture unless for the sake of some recompense of something of equal or better good; whence the choice of something which has some forfeiture attached to it requires the acquisition of some good, by which recompense it is ordered and dignified. In the union of a man and a woman, however, the forfeiture of reason occurs: for, at the moment of extreme pleasure, reason is eclipsed, so that it cannot understand anything while it lasts, as

the Philosopher says: on the other hand, because of the tribulation of the flesh, which it befits such people to maintain out of concern for temporal things, as is clear from 1 Cor 7; and therefore, the choice of such a union cannot be ordered, unless through the recompense of certain things by which carnal union is said to be dignified. And these things are the goods which excuse marriage, and render it honorable.

1. In the act of eating there is not so intense a pleasure that it eclipses reason, as in the aforementioned delectation. Both because the generative power, through which original sin is transmitted, is infectious and corrupt, while the nutritive power, by which it is not transmitted, is corrupt but not infectious; and because anyone senses more a defect in himself as an individual than the defect of the species. Whence to stimulate someone to eat, which remedies a defect in the individual, the feeling of that very defect suffices. But to induce someone to the act which remedies the defect of the species, divine providence has attached delectation to that act, which also moves other animals in which there is no infection of original sin. And therefore, there is no comparison.

2. Those goods which dignify marriage belong to the nature of marriage; and therefore it does not need them, like some sort of exterior things that dignify it, but like things within it causing that dignity which arises from its own nature.

3. Marriage by the very fact that it is both office and remedy possesses the *ratio* of useful and dignified; but both of these belong to it because it has goods of some kind, by which it becomes both useful office, and remedy against concupiscence.

4. An act of virtue is dignified both by virtue as by an inducing principle, and by circumstances as by its formal principles. In this way, however, these goods are related to marriage as circumstances are related to an act of virtue, because of which the act can be an act of virtue.

Article 2

Whether the goods of marriage are adequately assigned in the text

1. It seems that the goods of marriage—namely, fidelity, children, and sacrament—are inadequately described in the text. Since marriage does not only occur among men for the procreation and nurturing of children; but also for the *consortium* of a shared life for the sake of sharing the labors, as is stated in Book 8 of the Ethics. Therefore just as offspring are set forth as a good of marriage, so also the sharing of labors should be.

2. Furthermore, the union of Christ and the Church, which marriage signifies, is accomplished by charity. Therefore among the goods of marriage charity should be counted rather than faith.

3. Furthermore, in marriage just as it is required that neither spouse approach the bed of someone else, so it is also required that each one render the marital debt to the other. But the first requirement belongs to fidelity, as is stated in the text. Therefore also justice should be counted among the goods of marriage because of the rendering of the debt.

4. Furthermore, just as indissolubility is required in marriage, insofar as it signifies the union of Christ and the Church, so also unity, that one woman might be for one man. But the sacrament which is counted among the three goods of marriage refers to indissolubility. Therefore there should be something else which refers to unity.

5. But to the contrary, it seems that this list is excessive. For a single virtue suffices for dignifying a single act. But fidelity is a certain virtue. Therefore, it was not necessary to add the other two in order to dignify marriage.

6. Furthermore, something does not receive the account of 'useful' and 'noble' from the same thing, since useful and noble are divided against each other in the genus of 'good.' But marriage receives the nature of 'useful' from offspring. Therefore, offspring should not be counted among the goods which dignify marriage.

7. Furthermore, nothing should be set forth as a property or condition of itself. But these goods are considered certain conditions of marriage. Therefore, although marriage is a sacrament, the sacrament should not be considered among the goods of marriage.

I answer that marriage is a natural office and it is a sacrament of the Church. Inasmuch as it is a natural office, therefore, it is ordered by two things, like any other act of virtue: one of these is required on the part of the agent himself, and this is the intention of the due end, and thus children are counted as a good of marriage; the other is required on the part of the act itself, which is good in its genus by the fact that deals with its due matter; and thus it is fidelity, by which a man approaches his own wife, and no other. But in addition, it has a certain goodness from the fact that it is a sacrament, and this is signified by the very name of sacrament.

1. In the good of offspring is not only to be understood procreation of children but also their education, to which all sharing of labor between a man and a woman joined in marriage, is ordered as to an end, for fathers naturally store up treasure for their sons, as is seen in 2 Cor 12. And thus in the procreation of children another end is included, as a secondary end in a principal end.

2. *Fides* is not taken here as the theological virtue faith, but as a part of justice, according to which it is named fidelity from the fact that things said are done in the observation of promises. For in marriage, since it is a certain contract, is a certain promise, by which a certain man is determined to a certain woman.

3. Just as it is contained in the promise of marriage that neither party may approach the bed of someone else, so also that both must render the debt to each other; and this is even more important, since it results from the mutual power given each to the other; and therefore, both matters belong to fidelity; but in the text is stated what is less manifest.

4. In the good of sacrament, not only indissolubility is to be understood, but all those things which follow upon marriage being a sign of the union of Christ and the Church. Or it should be said that the unity that the objection touches upon belongs to the good of fidelity in the same way that indissolubility belongs to the sacrament.

5. *Fides* is not here taken as a certain virtue, but as a certain condition of virtue, from which fidelity is named, which is counted as a part of justice.

6. Just as the due use of a useful good receives the account of 'noble,' not indeed from something useful, but from reason that

makes the right use of it, so also the ordering toward some useful good can make the goodness of nobility from the power of reason making the due ordination. And in this way, by the fact that marriage is ordained to the procreation of children, is useful; and nonetheless it is noble inasmuch as it is duly ordered.

7. As the Master says in the text, the good of sacrament does not here refer to marriage itself, but to its indissolubility, which is a sign of the same thing of which marriage is the sign. Or it may be said that although marriage is a sacrament, nonetheless, it is one thing for marriage to be marriage, and something else for it to be a sacrament: for it was not only instituted in order to be a sign of a holy thing, but also that it might be an office of nature; and therefore the *ratio* of the sacrament is a certain condition coming to marriage considered in itself, from which also it has dignity; and therefore its sacramentality, as I will say later, is counted among the goods dignifying marriage: and according to this, in the third good of marriage, i.e. sacrament, is not only to be understood indissolubility, but also all those things which belong to its signification.

Article 3

Whether the sacrament is the foremost of the goods of marriage

1. It seems that sacrament is not the principal good among the goods of marriage. For the end is most important in anything. But the procreation of children is the end of marriage. Therefore, the procreation of children is more principal among the goods of marriage.

2. Furthermore, the difference of species, which completes the species, is more important to the *ratio* than the genus, just as form is more important than matter in the constitution of a natural thing. But sacrament belongs to marriage under the *ratio* of its genus; while offspring and fidelity belong to it under the *ratio* of difference, insofar as it is *this kind* of sacrament. Therefore, the other two are more principal things in marriage than sacrament is.

3. Furthermore, just as marriage is found without children or fidelity, so also it is found without indissolubility, as is evident whenever one spouse enters religious life before the consummation of the marriage. Therefore,

sacrament is also not chief according to this reason.

4. Furthermore, the effect cannot be more important than its cause. But consent, which is the cause of marriage, is frequently changed. Therefore, marriage also can be dissolved; and thus indissolubility is not always concomitant with marriage.

5. Furthermore, sacraments which have perpetual effects imprint a character. But in marriage, no character is imprinted. Therefore, it has no perpetual indissolubility; and thus, just as there can be marriage without children, so there can also be marriage without sacrament; and so the same as was said above.

But to the contrary, that which is included in the definition of a thing is the most essential to that thing. But indissolubility, which belongs to the sacrament, is included in the definition given above of marriage, though not offspring, nor fidelity. Therefore, among these things the sacrament is more essential to marriage.

Moreover, divine power, which works in the sacraments, is more efficacious than human power. But offspring and fidelity belong to marriage according as it is an office of human nature, while sacrament belongs to it according as it is divinely instituted. Therefore, sacrament is more important in marriage than the other two.

I answer that something is said to be in a certain thing more principally than something else in two ways: either because it is more essential, or because it is more worthy. If because it is more worthy, then in every way sacrament is more principal among the three goods of the marital union: since it belongs to marriage inasmuch as it is a sacrament of grace; the other two really belong to it inasmuch as it is a certain office of nature. However, the perfection of grace is more noble than the perfection of nature. If, on the other hand, what is more essential were said to be more principal, then a distinction should be drawn: for fidelity and offspring can be considered in two ways. In one way, in themselves, and thus they belong to the use of marriage, by which both children are produced and the conjugal pact is preserved. But indissolubility, which the sacrament brings with it, belongs to marriage in itself. For by the very fact that in their conjugal pact the spouses hand themselves over to each other in perpetuum, it follows that they may not be separated, and for this reason marriage is never

found without indissolubility. However, marriage is found without fidelity and children, since the being of a thing does not depend upon its use. And according to this the sacrament is more essential to marriage than fidelity and offspring. In another way fidelity and children can be considered according as they exist in their own principles, as the intention of having children may be taken in place of the actual children, and in place of fidelity, the obligation of keeping fidelity, for marriage cannot exist without these things, since they are caused in marriage by the conjugal pact itself. So that if something contrary to these should be expressed in the consent which makes matrimony, it would not be a valid marriage. So by taking fidelity and offspring in this way, procreation of children is most essential in marriage, and second is fidelity, and third is sacrament; as also for a man the being of nature is more essential than the being of grace, however much the being of grace may be more worthy.

1. The end according to intention is first in a thing, but according to sequence, it is last; and in the same way children are ordered among the goods of marriage; and therefore in one way this is the more principal end, and in another way not.

2. Sacrament, even considered as the third good of marriage, belongs to marriage as its difference. For sacrament is said because of the signification of this determined sacred thing, which matrimony signifies.

3. Marriage, according to St. Augustine, is a good of mortals; whence in the resurrection they will not marry nor be given in marriage, as is said in Matt 22; and therefore the bond of marriage does not extend beyond the life in which it is contracted; and therefore it is called indissoluble, for it cannot be dissolved in this life; but it can be dissolved through death, either a corporeal death after carnal union, or a spiritual death after the spiritual union alone.

4. Although the consent which makes matrimony is not perpetual materially, i.e., as regards the substance of the act—for the act ceases and a contrary act can succeed it. Yet, formally speaking, it is perpetual, for it is about the perpetuity of the bond, otherwise, it would not effect a marriage. For consent to a certain woman for a time does not bring about a marriage. And I say formally, according as the act receives species from its object, and

according to this marriage receives indissolubility from consent.

5. In those sacraments which imprint a character, the power for spiritual acts is transmitted. But in marriage it is a power for physical acts. Wherefore, by reason of the power which the spouses receive from each other, marriage belongs with the sacraments in which a character is imprinted, and by the fact that it has indissolubility, as is stated in the text. But it differs from those sacraments insofar as that power is for physical acts, and because of this it does not imprint a spiritual character.

QUESTION 2

Next it should be asked how marriage may be excused by the aforementioned goods; and regarding this three things are to be asked: 1) whether the goods mentioned may excuse the marital act, so that it may not be a sin at all; 2) whether without them it might ever be excused from sin; 3) whether when it is without them it is always a mortal sin.

Article 1

Whether the marital act may be excused by the goods named, so that it is not a sin

1. It seems that the marital act cannot be excused by the goods named, so that there is no sin at all. For anyone who endures the loss of a greater good because of a lesser good, sins, for it is disordered to allow this. But the good of reason, which is injured in the conjugal act itself, is greater than these three goods of the conjugal union. Therefore these goods do not suffice to excuse conjugal lying together.

2. Furthermore, if good were added to evil in the genus of moral acts, the whole would be made evil, not good. For one bad circumstance makes an act evil, but one good circumstance does not make it good. But the conjugal act is evil in itself, otherwise it would not need to be excused. Therefore the goods added to marriage cannot make it good.

3. Furthermore, wherever there is immoderation in the passions, there is vice in moral acts. But the goods of marriage cannot make it so that the delectation of the act is not immoderate. Therefore, they cannot excuse it from being a sin.

4. Furthermore, there is no shame (*verecundia*) except from a disgraceful (*turpi*) act, according to Damascene. But the goods of marriage do not remove embarrassment (*erubescencia*) from that act. Therefore they cannot excuse it.

But on the contrary, conjugal lying together does not differ from fornication except by the goods of marriage. If therefore, they did not suffice to excuse it, then marriage would have remained always illicit; which is against what is found above, in Distinction 26, Question 1, Article 3.

Moreover, the goods of matrimony are ordered to its act like due circumstances, as was said. But such circumstances suffice to make an act not evil. Therefore, these goods can excuse marriage so that it is in no way a sin.

I answer that a certain act is said to be excused in two ways. In one way on the part of the one doing it, so that however evil it may be, it is not imputed to the doer in guilt, or at least not in so much guilt, as ignorance is said to excuse sin in whole or in part. In another way, an act is said to be excused on the part of itself, so that it is not evil; and in this way the goods of marriage are said to excuse the matrimonial act. Now the same reason that accounts for a moral act not being evil is the reason that makes it good: for no particular act is indifferent, as was said in the Second Book, Distinction 40, Article 5. However any human act is called good in two ways. In one way, by the goodness of virtue, and thus an act is made good by those things which place it in the mean; and fidelity and the procreation of children do this in the marital act, as is clear from what has been said. In another way, by the goodness of sacrament, according to which the act is not only called good but also holy; and the marital act has this goodness from the indissolubility of the union, according to which it designates the union of Christ and his Church. And thus it is clear that the things said sufficiently excuse the marital act.

1. By the marital act a man does not incur the loss of reason as a habit, but only as regards the act. Nor is it unfitting that sometimes a certain act, better according to its own genus, is interrupted by a certain act of lesser good. For this can be done without sin, as is evident in someone who ceases contemplation so that he may sometimes have time for action.

2. That argument would hold if the evil that inseparably accompanies lying together, were the evil of guilt. In this case, however, it is not the evil of guilt, but only of punishment, which is the disobedience of concupiscence to reason. And therefore the argument does not follow.

3. The overflow of passion which causes vice does not depend on its quantitative intensity, but upon its relation to reason. Wherefore passion is only considered immoderate when it exceeds the limits of reason. However, the delectation which occurs in the marital act, no matter how intense it may

be according to quantity, nonetheless does not exceed the limits fixed for it by reason before its beginning, regardless of how incapable reason may be to establish them during the delectation itself.

4. That baseness (*turpitude*) which is always in the marital act and causes embarrassment (*erubescencia*), is the baseness of punishment, not guilt. For man is naturally embarrassed (*erubescit*) by any defect.

Article 2

Whether the marital act may also be excused without the marital goods

1. It seems that the marital act may also be excused without the goods of matrimony. For whoever is moved to the marital act by nature alone does not seem to intend any good, since the goods of matrimony pertain to grace or virtue. But when someone is moved to the aforementioned act by natural appetite alone, it does not seem to be a sin. For nothing natural is bad, since evil is contrary to nature and contrary to order, as Dionysius says. Therefore, the marital act can be excused even without the goods of marriage.

2. Furthermore, the man who avails himself of his wife in order to avoid fornication does not seem to intend any good of marriage. But such a man does not sin, as it seems, since for this purpose marriage was conceded to human weakness, that fornication might be avoided, (1 Corinthians 7). Therefore also without the goods of marriage this act may be excused.

3. Furthermore, the man who uses at will what is his does not do anything against justice, and thus, he does not sin, as it seems. But through matrimony the wife becomes the husband's, and vice versa. Therefore if they avail themselves of each other at will when sexual desire (*libidine*) moves them, it does not seem to be a sin. And thus, the same as was said before.

4. Furthermore, that which is made good by its genus, is not made bad unless done with an evil intention. But the matrimonial act in which someone knows his own wife, is good by its genus. Therefore, it cannot be bad, unless done with a bad intention. But it can be done with a good intention even if one does not intend any of the goods of matrimony, for

instance, when someone intends to preserve or pursue physical health by it. Therefore it seems that also without the goods of marriage, that act can be excused.

But to the contrary, an effect is removed by its cause being removed. But the marital goods are the cause of the dignity of the marital act. Therefore, without them the marital act cannot be excused.

Furthermore, the act in question does not differ from the act of fornication except by the aforementioned goods. But fornication is always evil. Therefore, if it is not excused by the goods mentioned, the marital act would also always be evil.

I answer that as the goods of matrimony, according as they are habitual, make marriage dignified and holy. So also according as they are in actual intention, they make the marital act dignified as regards those two goods which have to do with the act itself. Whence, when spouses come together for the sake of the procreation of children, or so that they might render the debt to one another, which belongs to fidelity, they are totally excused from sin. But the third good does not pertain to the use of marriage, but to its very essence, as was said; whence it makes marriage itself dignified, but not its act such that through it the act may be made sinless because they come together for the sake of a certain signification. And therefore, only in these two ways do spouses come together without any sin whatsoever, namely: for the sake of the procreation of children, and for rendering the debt. Otherwise, however, it is always a sin, at least venially.

1. Offspring, as a good of the sacrament, adds something beyond offspring as the intention of nature. For nature intends offspring according as the good of the species is preserved in them. But in offspring as a good of the sacrament of matrimony, it is understood that, beyond this, children received are ordained to God. Therefore it is necessary that nature's intention by which she intends children, be referred actually or habitually to the intention of children as a good of the sacrament; otherwise it would be stuck at the level of creation; which cannot happen without sin. Therefore, when nature alone moves someone to the marital act, he is not excused from all sin, unless to the extent that the movement of nature is further ordered actually or habitually to children as a good of the sacrament. Though, neither does it follow that

the impulse of nature is evil, but that it is imperfect, unless ordered further, to some good of matrimony.

2. If someone intended by the marital act to avoid fornication in his spouse, this is not a sin; for this is a kind of rendering of the debt, which belongs to the good of fidelity. But if he intended to avoid fornication in himself, then there is here a certain superfluity; and according to this it is a venial sin: nor was marriage instituted for this, unless according to the forbearance (*indulgentia*) which exists about venial sins.

3. One due circumstance does not suffice for an act to be good; and therefore it is not necessary that however one uses what is his own, that the use be good, but rather when he uses it as he should according to all the circumstances.

4. Although to intend the conservation of health is not bad, still this intention becomes evil, if health is intended from something which is not of itself ordained to it, as if someone sought only bodily well-being from the sacrament of baptism; and it is the same way with the marital act in this argument.

Article 3

Whether someone sins mortally by knowing his wife if he does not intend any good of matrimony, but only delectation

1. It seems that whenever someone knows his wife without intending any good of matrimony, but only delectation, he sins mortally. For Jerome says, as it has in the text: *Pleasures which are taken in the embraces of prostitutes, are damnable in one's wife*. But something is not said to be damnable unless it is a mortal sin. Therefore, to know one's wife because of pleasure alone, is always a mortal sin.

2. Furthermore, consenting to delectation is a mortal sin, as was stated in Book 2, Distinctio 23, Question 2, Article 2 (corpus). But whoever knows his wife for the sake of delectation, consents to delectation. Therefore he sins mortally.

3. Furthermore, whoever does not refer the use of creation to God, enjoys the creature, which is a mortal sin. But whoever avails himself of his wife because of delectation alone, does not refer this use to God.

4. Furthermore, no one should be excommunicated except for mortal sin. But someone knowing his wife for the sake of sexual desire alone (*libidine*) is prevented from entering the Church as if he were excommunicated; as is said in the text. Therefore everyone of this kind sins mortally.

But to the contrary, according to Augustine, this kind of sleeping together is counted among daily sins, for which one may say a Pater Noster, as the text has it. But sins like that are not mortal sins. Therefore, etc.

Moreover, whoever uses food because of its delectation alone, does not sin mortally. Therefore, the same reasoning applies to someone who avails himself of his wife only for the sake of sensual desire (*libidinis*).

I answer that certain people say that whenever sensual desire (*libido*) principally moves someone to the conjugal act, it is a mortal sin. But when it moves someone secondarily (*ex latere*), then it is a venial sin. However when someone refuses delectation altogether, and it displeases him, then it is without any venial sin at all. Thus, to seek delectation in this act would be mortal sin, to accept the delectation offered would be venial sin, but to hate it would be a thing of perfection.

But this cannot be: for according to the Philosopher in Book 10 of the Ethics, the judgment of a delectation and an operation is the same: for the delectation of a good operation is good, and a bad operation carries bad delectation. Whence since the marital act is not evil per se, neither will seeking its delectation be always a mortal sin. And therefore it should be said that if delectation should be sought outside the dignity of marriage, such that, for example, someone should not turn to his wife because she is his wife, but only because she is a woman, prepared to do the same with her as if she were not his wife, that is a mortal sin. And such a man is called a too ardent lover of his wife, for in fact that ardor is borne outside the goods of marriage. If, on the other hand, delectation were sought within the limits of marriage, so that namely such delectation were not sought in any woman but one's wife, then it would be a venial sin.

1. A man seeks a harlot's pleasures in his own wife whenever he sees nothing else in her than what he might look for in a prostitute.

2. Consenting to the delectation of that intercourse which is a mortal sin, is a mortal sin. However, the delectation of the marital act is not so.

3. Although he does not refer this delectation to God in act, nevertheless, he does not place in it the final end of his will; otherwise he would seek it indifferently wherever he could find it. Therefore he does not necessarily rest in the enjoyment of a creature (*fruat*), but he enjoys a creature (*utitur*) for itself. But this is for God's sake habitually, although not actually.

4. This is not said because a man deserves excommunication for this sin, but because he renders himself unfit for spiritual things, by the fact that in this act a man is made to be entirely flesh.

the first case it is always a mortal sin, for children cannot possibly follow, whence the intention of nature is totally thwarted; but in the second way it is not always a mortal sin, as certain men say, but it can be a sign of mortal concupiscence. Sometimes it can be without sin, when the disposition of the body does not permit another mode. Otherwise it becomes more serious, the more one recedes from the natural mode.

Expositio Textus

It is usually asked, when a male and a female, neither one the spouse of the other, . . . come together for intercourse out of incontinence alone. Concerning this it was said in the preceding distinction, since a bad end does not remove the goodness of marriage. *Indeed, those who procure the drugs of sterilization are not spouses, but fornicators.* This sin, although it is grave, and to be counted among wicked deeds, and against nature, for even beasts desire offspring; nevertheless, it is less grave than murder, since a child conceived could still be impeded in another way. Nor is such a person to be judged irregular, unless he should now procure an abortion for the child about to be born.

Seeds are gradually formed, etc . . . Concerning this it is discussed in Book 3, Distinction 3. *And after the abdomen of the wife has swelled, may they not lose the children.* For although the womb is closed after impregnation, yet from delectation, as Avicenna says, it is moved and opened, and because of this, the danger of miscarriage is imminent. Therefore, Jerome censures the approach of a man to his pregnant wife. Not, however, that such a thing would always be a mortal sin, unless perhaps when a probable danger of miscarriage is feared. *Nor may it be changed into that use which is against nature.* The use of one's wife against nature is when it neglects the right vessel, or the right mode instituted by nature as to the position. And in

DISTINCTION 32

QUESTION 1

Prologue

After the Master has considered the goods of the union by which the marital act is excused, here he considers the act itself according as it receives further the character of something owed through the goods of the union; and this is divided into two parts: in the first he shows that both of the spouses are bound to render the debt to each other; and in the second he shows that requesting the debt is impeded because of the solemnity of the time, where he says: *and the debt is always permitted to be fulfilled for the one requesting it, however it is not permitted to request it on any day whatsoever*. The first part is divided into two: in the first part he shows that husband and wife are equals in the rendering of the debt; secondly he proves a certain thing which had been supposed: *Because it is proved by witnesses*.

And it is permitted for the debt always to be paid to the one requesting it, but it is not permitted to request it on any day. Here he considers the times in which the marital act is forbidden; and about this he does two things: First, he shows that a certain time impedes the requesting of the debt; secondly, he shows that also something impedes the celebration of marriage: *Nor are times to be observed only in fleshly work, but also in celebrating nuptials*. About the first he does two things: first he shows the truth; secondly he excludes a certain objection: *However, to the one who was told that to render the debt was not a sin, it seems to go against what Jerome says*.

Here five things are to be asked: 1) Whether both spouses are held to always render the debt to the other by the necessity of a precept, 2) Whether at some time one should not render to the one asking; 3) Whether in rendering the debt husband and wife are equals; 4) Whether one party without consent of the other could take a vow by which rendering of the debt would be impeded; 5) Whether time impedes the rendering of the debt.

Article 1

Whether one spouse is bound to pay the debt to the other by the necessity of a precept

1. Proceeding to the first, it seems that one spouse is not bound to pay the debt to the other spouse by the necessity of a precept. For no one is prohibited from partaking of the Eucharist on account of having fulfilled a precept. But he who pays the debt to his wife is not permitted to eat the flesh of the Lamb, as Jerome says in the text. Therefore to pay the debt is not of the necessity of precept.

2. Furthermore, anyone can licitly abstain from those things which are harmful to his person. But sometimes, to render the debt to the one asking might be injurious to the person, either by reason of infirmity, or by reason of payment already made. Therefore, it seems that the debt may be denied to the one asking.

3. Furthermore, whoever makes himself powerless to do what he is bound to do by a precept, sins. If therefore someone were bound to pay the debt by necessity of a precept, it seems that he would sin if, due to fasting or any other weakening of his body, he rendered himself powerless to perform the debt; which does not seem to be true.

4. Furthermore, matrimony, according to the Philosopher, is ordained to the procreation and education of offspring, and again to the sharing of life. But leprosy is contrary to both ends of marriage, because, since it is a contagious disease, a woman is not bound to live together with a leper; and similarly, too, that disease is frequently transmitted to offspring. Therefore it seems that a wife is not bound to pay the debt to a leprous husband.

But to the contrary, as a slave is in the power of his lord, so also is one spouse in the power of the other, as is clear from I Corinthians 7. But a slave is bound by the necessity of a precept to render any debt of servitude to his master, as is clear from Romans 13: 7: *Render your debts to all men: to whom tribute is due, etc.* . . . Therefore, also one spouse is bound of necessity of a precept to render the debt to the other.

Moreover, marriage is ordained to the avoidance of fornication as is clear from I Corinthians 7. But this could not be done through marriage, if one spouse were not bound to render the debt to the other when the other is

attacked by concupiscence. Therefore, to render the debt is of the necessity of a precept.

I answer that matrimony was principally instituted in the office of nature; and therefore in its act the movement of nature must be considered, by which the nutritive only gives to the generative what is not needed for the conservation of the individual. For this is the natural order, that first something should be perfected in itself, and afterward communicate this perfection to another. The order of charity also is characterized by this, that it perfects nature. Therefore since a wife does not have power over a husband except as to the faculty of generation, but not as to those things which are ordained to the conservation of the individual, the man is bound to render to his wife what he owes in those things which regard the generation of children, although preserving first the safety of his person.

1. Someone fulfilling a certain precept can be rendered incapable of carrying out a certain sacred office, as a judge who condemns a man to death is made irregular by fulfilling a precept. Likewise also that man who fulfilling a precept, pays the debt, and is made unfit for executing the divine office; not because this act would be a sin, but by reason of the carnality of this act. Thus as the Master says, Jerome speaks only of the ministers of the Church, though not of others who are to be left to their own judgment: for they can either forgo out of devotion, or consume the body of Christ without sin.

2. The wife's power over the body of the man does not extend to the endangerment of his person, as was said. Whence if she should make demands beyond this, it is not a requesting of the debt, but an unjust exaction from him, and for this reason, the man is not bound to satisfy her.

3. If someone should be rendered incapable of paying the debt because of something following upon matrimony, for instance, when the debt is rendered beforehand, and he is incapable of paying it further, the woman does not have the right to ask for it again, and she shows herself to be more of a harlot than a wife in asking for it further. If, though, he is rendered incapable by another cause, if it is licit, then again he is not bound, nor can the woman demand it. If it is not licit, then he sins, and the sin of his wife, if she should lapse into sexual sin because of it, in some way would be imputed to him, and

therefore he should take pains as much as he can so that his wife may remain in continence.

4. Leprosy dissolves a betrothal, but not a marriage; whence, even the wife of a leprous man is bound to render the debt to her husband, though she is not bound to cohabit with him; for one is not so quickly infected by intercourse as by frequent cohabitation, and although a sickly child may be generated, nevertheless it is better for it to exist so diseased than not to be at all.

Article 2

Whether a man is bound to render the debt to a wife who is not asking

Quaestiuncula 1

1. It seems that a man is not bound to render the debt to a wife who does not ask for it. For an affirmative precept does not oblige except for at a determined time. But the time determined for the payment of the debt can only be when it is asked for. Therefore, otherwise one is not bound to pay it.

2. Furthermore, we should presume the best of anyone. But it is even better for spouses to restrain themselves than to make use of matrimony. Therefore, unless she should expressly request her due, the man should presume that she would rather be continent, and thus he is not bound to render the debt to her.

3. Furthermore, the wife has power over the husband as a lord over his slave. But a slave is not bound to serve his lord except when the lord commands. Therefore, neither is the husband bound to render the debt to his wife except when required by her.

4. Furthermore, a man can sometimes turn aside his demanding wife with entreaties, so that she does not demand. Therefore, much more should he not render if she does not demand.

But to the contrary, through the rendering of the debt a medicine against the concupiscence of the wife is offered. But a doctor to whom someone sick has been committed, is bound to relieve his sickness, even if the invalid does not ask. Therefore the man is bound to render the debt to the wife who does not ask.

Moreover, a prelate is bound to apply the remedy of correction against the sin of those

placed under him, even if they oppose it. But the rendering of a debt by a husband is ordained against the sins of his wife. Therefore, the man is bound to render the debt even if she does not request it.

Quaestiuncula 2

1. In addition. It seems that it would be licit for a menstruating woman to call in the debt. For under the Old Law, just as a menstruating woman was unclean, so also was a man suffering an outflowing of semen. But a man suffering in this way can request the debt. Therefore, by the same reasoning, a woman in menstruation can also.

2. Likewise, leprosy is a greater infirmity than suffering a menstrual period. And it causes, so it seems, a greater corruption in children. But a leper may request the debt. Therefore, etc . . .

3. Again, if a menstruating woman is not permitted to request the debt, this is only because of a defect which is feared in the children. But if the woman were barren, such a defect would not be feared. Therefore it seems that at least a barren woman may request the debt during menstruation.

But to the contrary, Leviticus 18: 19: *thou shalt not approach the woman who undergoes menstruation*. To which Augustine adds, *although he had sufficiently prohibited it, here again he repeats, so that it would not perhaps seem to be taken figuratively in higher things*.

Again, Isaiah 64:6 *all of your justices are like the rags of a menstruous woman*. About which Jerome says: *At that time men must abstain from their wives, since those damaged in their members are conceivedâ€”blind, lame, leprous; so that if the parents were not ashamed to commingle in their chamber, their sins would be evident to all, and more openly are they rebuked in their little ones*. And thus the same conclusion as above.

Quaestiuncula 3

1. In addition. It seems that a menstruating wife should not render the debt to a husband who asks. In Leviticus 20 it says that if someone approaches a menstruating woman, both are to be punished by death. Therefore, it seems that a woman rendering the debt sins

mortally as much as the one demanding the debt.

2. Again, Romans 1: 32 *not only they that do them, but they also who consent to them that do them, are worthy of death*. But someone who knowingly demands the debt of a menstruating woman sins mortally. Therefore also the woman consenting to him in the rendering of the debt.

3. Again, a sword is not to be handed over to a furious man, lest he might kill himself or another. Therefore, by the same reasoning neither should a woman expose her body to her husband in the time of menstruation, lest he should die spiritually.

But to the contrary, 1 Corinthians 7: 4: *the woman does not have power over her body, but the man does*. Therefore, the woman must render the debt to her husband requesting it even during the time of menstruation.

And again, a menstruating woman must not be an occasion of sin for her husband. But if the husband should ask for his rights and she should not render the debt even in the time of her menstruation, she would be an occasion of sin to her husband: for perhaps he would fall into sexual sin. Therefore, etc.

Quaestiuncula 1

I answer to the first question that requesting the debt is twofold. In one way, expressly, as when in words the two ask each other. In another way, the requesting of the debt is understood, when for example the man perceives by certain signs that the wife wishes the debt to be rendered to her, but because of modesty she is silent. And thus also if she should so request the debt not expressly in words, nevertheless her husband is bound to render it to her, when express signs appear in his wife of her will to have the debt rendered.

1. The time determined is not only when it is asked, but whenever there are signs that a danger is to be feared unless it is rendered then (for rendering the debt is ordered to the avoidance of this).

2. A man can have such an assumption about his wife, when he does not see in her signs to the contrary. But when he does see them, it would be a stupid assumption.

3. The lord is not so embarrassed to ask from a slave what is due from his servitude, as a wife is to ask her husband for the conjugal

debt. If however the lord did not ask because of ignorance, or another cause, nevertheless the servant is bound to fulfill it, if danger is imminent: for this is not to serve the eye, which the Apostle commands to slaves.

4. A man should not turn aside his wife so that she does not request the debt, unless because of some reasonable cause; and then she should not be turned aside with much insistence on account of the imminent dangers.

Quaestiuncula 2

To the second question it should be said that to approach a menstruating woman was prohibited under the Law for two reasons: both because of uncleanness as well as because of the harm which frequently resulted in the children from this kind of commingling. And so as to the first, this precept was ceremonial, but as to the second, it was moral: for since matrimony was principally ordered to the good of offspring, the use of matrimony was ordered by what is employed for the good of offspring; and therefore, this precept also obliges under the New Law because of the second reason, even if not for the first. However the menstrual flow can be natural and unnatural. It is natural namely when women suffer it at the determined times, when they are healthy. However it is unnatural when they suffer a flow of blood inordinately and almost incessantly because of some infirmity. Therefore, in an unnatural menstrual flow it is not prohibited to approach the menstruating woman under the New Law: both because of the infirmity, since a woman cannot conceive in such a state, and also since such an issue of blood is perpetual and long-lasting, whence it would be necessary for her husband to abstain perpetually. But when the woman naturally undergoes the menstrual flow, she can conceive; and again such a period does not last but a little time. Whence it is prohibited to approach such a one, and likewise it is prohibited for the woman in such a period to request the debt.

1. The flow of semen in a man proceeds from an infirmity, nor is semen flowing like that suitable for generation. Furthermore such a condition is long-lasting or perpetual, like leprosy. Whence there is no similar argument.

2. And by this answer the second objection is also resolved.

3. As long as a woman undergoes menstruation, one cannot be certain that she is barren. Certain women are barren in their youth, who become fertile by the process of time, and vice versa, as is stated in Book 10 of the History of Animals.

Quaestiuncula 3

To the third question it should be said that on this matter certain men have said that the menstruating woman should not render the debt, just as she should not request it. For just as she is not bound to render it if she has an infirmity in her own person, from the fact that danger threatens her; so also she is not bound to render in order to avoid danger to the children. But this opinion detracts from matrimony, by which power is given entirely to the man over the body of his wife with respect to the marital act. Nor is the infirmity of the body of the offspring similar to danger to one's own body; for if the woman is unwell, it is most certain that in the carnal act danger would threaten her; but it is not so certain about the children, who perhaps will not even follow. And therefore, others say that the menstruating woman is never allowed to request the debt. If however, her husband should ask; either he asks knowingly, and then she should turn him aside by entreaties and warnings, yet not so categorically that it might be an occasion to him for other condemnable seductions, if he is believed to be prone to that; or else he asks ignorantly, and the woman can give some pretext, or say that she is unwell, so as not to render the debt, unless danger is feared for her husband. However, ultimately, if the man does not cease to request it, she should render the debt when he asks. Indeed, it is not safe for her to indicate her own situation lest perhaps the man should conceive a loathing for her because of it, unless he is presumed a man of prudence.

1. This is to be understood when both consent voluntarily; not however if the woman should render the debt involuntarily as though compelled.

2. Since consent only comes from the will, a woman is not understood to consent to the sin of her husband unless she renders the debt voluntarily: for when it is involuntary, she suffers it rather than consenting.

3. A sword would be given to a furious man when greater danger would be feared if it

were not given; and it is likewise in the case at hand.

Article 3

Whether man and woman are equals in the marital act

1. It seems that man and woman are not equals in the marital act. For what is active is nobler than what is acted upon, as Augustine says, in Book 12 of *On the Literal Meaning of Genesis*, Chapter 16. But in the conjugal act the man is related as the active party, and the woman as the passive. Therefore they are not equals in the conjugal act.

2. Furthermore, the wife is not bound to render the debt to the husband unless he asks; the husband on the other hand is bound to render it to the wife, as was said. Therefore they are not equals in the marital act.

3. Furthermore, in matrimony the woman was made for the sake of the man, as is evident from Gen. 2: 18: *Let us make him a helper similar to himself*. But when something is for the sake of something else, the latter is always more principal. Therefore, etc..

4. Furthermore, marriage is principally ordained to the conjugal act. But in matrimony the man is the head of the woman, as is clear from 1 Corinthians 11. Therefore they are not equals in the act named.

But to the contrary is what is said in 1 Corinthians 7:4: *the man does not have power over his own body*, and the same thing is said of the wife. Therefore they are equals in the marital act.

Moreover, marriage is an equal-sided relationship (*aequiparentiae*), since it is a conjoining, as was said. Therefore, husband and wife are equals in the marital act.

I answer that equality is twofold: namely, of quantity, and of proportion. Equality of quantity is what is found between two quantities of the same measure, like two things that are each a bicubit long. But equality of proportion is what is found between two proportions of the same species, like a double and a double. Therefore, speaking of the first equality, a man and woman are not equals in matrimony, neither with respect to the conjugal act, in which what is nobler is due the man, nor as regards the management of the home, in which the woman is ruled and the man rules.

But as regards the second kind of equality, they are equals in both things. For just as the man is bound to the woman in the conjugal act and in the management of the home in what pertains to a husband, so the wife is bound to the man in those things that pertain to a wife. And according to this it is said in the text that they are equals in rendering and requesting the debt.

1. Although to act is more noble than to be acted upon, nevertheless the proportion of the passive to being acted upon is the same as the proportion of the agent to acting. And according to this there is an equality of proportion.

2. This is accidental. For since the man has the nobler part in the conjugal act, naturally he is not so embarrassed to request the debt as his wife; and this is the reason that the wife is not so bound to render the debt to a husband who does not request it, as a husband is to his wife.

3. By this fact it is clear that they are not absolute equals, though not that they are not equals according to proportion.

4. Although the head is the chief among the members of the body, yet as the members are bound to the head in their functions, so is the head bound to the members in his own; and thus there is here an equality of proportion.

Article 4

Whether the man and woman may take a vow against the marital debt without mutual consent

1. It seems that a husband and wife may take a vow against the marital debt without each other's consent. For the husband and wife are equally obligated to the payment of the debt, as was said. But it is permissible for the man, even with his wife forbidding it, to undertake a crusade in the defense of the Holy Land. Therefore this is also permitted to the wife, and thus since by this vow the rendering of the debt would be impeded, either spouse may take the vow mentioned without the consent of the other.

2. Furthermore, no vow should depend upon the consent of someone who cannot dissent without sin. But one of the spouses cannot dissent without sin if the other should vow continence, either simply or for a time. For to impede spiritual progress is a sin against the Holy Spirit. Therefore, one can vow a vow of

continence simply or for a time without the consent of the other.

3. Furthermore, just as in the marital act the rendering of the debt is required, so also the requesting of the debt. But one can without the consent of the other vow that he will not request the debt, since this is in his power. Therefore, by the same reasoning, he may not vow not to render the debt.

4. Furthermore, no one can be forced by the command of a superior to do what he would not be allowed to vow or to do for himself. For illicit things do not fall under obedience. But the superior prelate may command a man and a woman not to render the debt by imposing upon him some service. Therefore, he himself may vow something that may impede the rendering of the debt.

But to the contrary is what is said in 1 Corinthians 7:5: *do not deprive each other, unless perhaps by common consent, that you may give yourselves to prayer.*

Moreover, no one can make a vow about what belongs to another. But the man does not have power over his own body, but the wife does. Therefore, without her consent he cannot make a vow of continence, either simply, or for a time.

I answer that to vow is of the will, as even the word itself shows. Wherefore a vow can only be made about those goods which are subject to one's will, which are not those matters in which someone is bound to another. And therefore, in such things someone cannot profess a vow without the consent of the one to whom he is bound. For this reason, since spouses are bound to each other in the rendering of the debt, as was said, by this fact continence is impeded. One cannot without the consent of the other vow continence, and if he does vow it, he sins; nor should he keep this vow, but should do penance for having made a wicked vow.

1. It is probable enough that a wife would will continence for a time to assist a need of the general Church. Therefore in consideration of the trouble that a crusade means, it was established that a man may undertake a crusade without the consent of his wife, just as also he may join the army without the consent of the earthly lord from whom he holds a fief. Nor however, is all the woman's right taken away from her in this: for the wife can follow him. Nor is it the same from a wife to her husband, for since the husband should rule the wife, and

not vice versa, the wife is more bound to follow her husband than vice versa. Furthermore, the wife would travel across the lands with much greater danger to her chastity than the man, and with less benefit to the Church. And therefore, the wife cannot make a vow like this without the consent of the man.

2. The spouse who dissents from the other's vow of continence, does not dissent in order to impede that person's good, but so that no disadvantage to himself might be engendered.

3. About this matter there are two opinions. For certain men say that one person may vow not to request the debt without the consent of the other, though not that he will not render it, for in the first instance, both spouses are within their rights, but not in the second instance. But since if one spouse were never to request the debt, it would make the marriage onerous to the other, who would then always have to undergo the embarrassment of requesting the debt. For this reason, others say more probably that one person cannot vow either thing without the consent of the other.

4. Just as the woman receives power over the body of the man, except in what the man owes to his own body, so also is excepted what he owes to another master. Therefore just as the wife cannot request the debt from her husband against the health of his own body, so neither can she impede what he owes to his lord. But beyond this a lord cannot prohibit someone from rendering a debt.

Article 5

Whether in sacred times someone should be impeded from requesting the debt

Quaestiuncula 1

1. It seems that in sacred times no one should be impeded from requesting the debt. For a sick man is to be nursed at these times if he is ailing. But it is possible that on a holy day someone might be afflicted with concupiscence. Therefore, one should attend to him through the requesting of the debt.

2. Furthermore, there is no other reason why the debt is not to be requested on holy days except that they are set aside for prayer. But on these days there are determined hours

for prayer. Therefore, at other hours it is permissible to request the debt.

But to the contrary, just as some places are sacred, for they are set aside for sacred things, so also some times are sacred for the same reason. But in a sacred place it is not permitted to request the debt. Therefore, neither is it permissible at a sacred time.

Quaestiuncula 2

Whether someone who requests the debt during sacred times, sins mortally

1. Again. It seems that someone who requests the debt during sacred times, sins mortally. For Gregory says in 1 Dial., that that woman who was known by her husband during the night, and in the morning joins the Church procession, has been seized by the devil. But this would not be, unless she had sinned mortally. Therefore, etc.,

2. Furthermore, whoever does something against a divine precept, sins mortally. But the Lord commanded in Exodus 19: 15â€”namely when they were about to receive the Law: *do not approach your wives*. Therefore, much more do they sin mortally, if at the time in which it is intended for the sacraments of the New Law, men should commingle with their wives.

But to the contrary, no circumstance makes things worse *ad infinitum*. But an undue time is a certain circumstance. Therefore, it does not worsen a sin infinitely, making mortal what would otherwise be venial.

Quaestiuncula 3

Whether one is bound to render the debt during holy days

1. Again. It seems that one is not bound to render the debt during holy days. For sinners and those who consent to their sins are punished equally, as is evident from Romans 2. But the one who renders the debt, consents to the one requesting, who sins. Therefore he too sins.

2. Furthermore, we are obliged to pray by an affirmative precept, and also at certain determined times. But at that time in which someone is bound to pray, he should not render the debt, just as neither at that time in which he is bound to some special service for a temporal lord.

But to the contrary is what is said in 1 Corinthians 7:5: *do not deprive each other, unless perhaps by consent for a time, that you may give yourselves to prayer*. Therefore, when someone asks, it is to be rendered to him.

Quaestiuncula 4

Whether marriage is forbidden during periods determined in the text

1. Again. It seems that weddings are not forbidden during certain periods determined in the text. For matrimony is a sacrament. But in those times the celebration of the other sacraments is not forbidden. Therefore, neither should be the celebration of matrimony.

2. Furthermore, the requesting of the debt is more unfitting for holy days than wedding celebrations. But in those days the marital debt can be requested. Therefore, so can weddings be celebrated.

3. Furthermore, marriages which happen against the statutes of the Church, should be dissolved. But they are not dissolved if the wedding happens during such periods. Therefore, nor should they be prohibited by the statutes of the Church.

But to the contrary is what is said in Ecclesiastes 3:5: *a time to embrace, and a time to be far from embraces*.

I answer the first question by saying that the marital act, while free from sin, nevertheless, since it brings down reason because of the carnal delectation, renders man unfit for spiritual things. Therefore, in the days in which one is particularly to give oneself to spiritual things, it is not permitted to request the marital debt.

1. At a time like that, other things can be applied for the repression of concupiscence, like prayer, and many other things of this kind, which also apply to those who are bound to perpetual continence.

2. Although one is not bound to pray at every hour, nonetheless one is bound to keep the whole day suitable for prayer.

I answer the second question by saying that to seek the marital debt on a holy day is not a circumstance amounting to another species of sin; wherefore, it cannot become infinitely more grave. Therefore, neither the husband nor the wife sin mortally, if either requests the debt on a holy day. But nevertheless the sin is graver if it is sought only

for the sake of delectation, than if someone should seek the marital debt for himself because he fears for himself because of the fragility of the flesh.

1. That woman was not punished because she rendered the debt; but because afterward she disgraced herself by approaching the divine things against her conscience.

2. From that authority it cannot be proved that this would be a mortal sin, but only that it would be unfitting. For many more things pertaining to the cleanliness of the flesh were required by the necessity of a precept in the Old Law, which was given for carnal men, that are not required in the New Law, which is the law of the Spirit.

To the third question it is to be said that since the woman has power over the body of her husband as far as concerns the act of generation, and vice versa, one is bound to render the debt to the other at any time whatsoever and at any hour whatsoever, preserving due decency, which is required in such things. For it is not fitting that it be rendered immediately in a public place.

1. That person as he is in himself, does not consent, but what is required from him, he renders reluctantly and with sorrow. For this is divinely ordained because of the slipperiness of the flesh that always one may render the debt to the one asking, lest some occasion of sinning be given.

2. There is no determined hour for praying which cannot be compensated in other hours; and therefore, this objection does not compel.

To the fourth question it is to be said that when new brides are given to their husbands, the souls of the spouses are more greatly occupied by the concern for carnal things in this very newness and therefore in weddings many signs of wild rejoicing are wont to be shown; and because of this in those times in which men should particularly elevate themselves to spiritual things, it is prohibited for weddings to be celebrated.

However this is from Advent until Epiphany because of communion, which according to the ancient canons is usually to be made appropriately during the period of the Nativity. And from Septuagesima until the octave of Easter, because of the Paschal communion; and from three days before the Ascension until the octave of Pentecost, because of preparation for consuming communion at that time.

1. The celebration of matrimony has something of worldly and carnal rejoicing joined to it, which is not in the other sacraments. Therefore it is not similar.

2. Such great distraction of souls does not occur in the rendering or requesting of the debt as in the celebration of a wedding, and therefore it is not similar.

3. Since time is not of the essence of matrimony, if it is contracted at an improper time, nevertheless it is a valid sacrament; nor are the contractants separated simply, but for a time, that they may do penance for having transgressed the statutes of the Church; and in this way what the Master says is to be understood.

Exposition

If first he had promised, and afterward prohibited, etc... It seems from this that the man may call his wife back to himself, even if concerning his freedom, he vows chastity. And the word of Augustine is understood in the case when the man has dissembled before full deliberation, which dissimulation indeed seems to be a certain consent. If however, he had expressly consented, he may not revoke the vow. For which reason he speaks about the judgment of the Church, when the promise cannot be proved. Whence because of this danger, such secret vows are not approved. Nor to eat the flesh of the Lamb. On the impediment of consumption of the Eucharist because of carnal delectation in sleep, it was discussed above, Distinction 9.

DISTINCTION 33

Prologue

After the Master has considered the goods of matrimony, here he shows how these goods were in the marriage of the ancients; and this is divided into two parts: in the first part he shows in what way were in marriage of the fathers before the Law; in the second part, how there had been celebrated in marriage in the time of the Law, where he says: *indeed, in the time of the Law Moses forbade carnal intimacy to happen with one's mother, etc...*

The first in two parts: in the first he shows that before the law the patriarchs licitly had several wives; in the second he inquires how with multiple wives the good of fidelity is preserved, where he says: *If someone objected that the fathers did not preserve fidelity in their marriage bed, we say etc...* concerning the first he does three things, first he raises the question, secondly he defines it: *To this we say etc...* And concerning the latter he does two things: first he brings in the authority for testing the principal proposition, that namely the unions of those people who had many wives, were licit: secondly he shows that they even merited as much as virginity does in our time, where he says: *Because indeed, virginal chastity may not be placed before the conjugal chastity of Abraham in merit, Augustine shows. In fact, in the time of the law Moses forbade carnal intimacy to happen with the mother, with a step-mother, etc...*

Here he considers the marriage celebrated in the time of the Law; and concerning this he does three things: first he shows how marriage was determined by the Law of Moses and regarding the determination of eligible persons, and regarding separation: secondly, he inquires whether in the time of the Law it was licit to have several wives, where he says: *But was anyone under the Law allowed to have multiple wives?* ; thirdly he considers virginity from what follows: *however virginity of the mind is better than virginity of the flesh.*

Here is a threefold question. First, about the plurality of wives. Secondly, about the writ of divorce. Thirdly, about virginity.

Concerning the first, three things are to be asked: 1) whether to have multiple wives would be against the Law of Nature 2) whether

it was licit 3) whether to have a concubine is against the Law of Nature.

Article 1

Whether to have several wives is against the Law of Nature

1. It seems that to have several wives is not against the Law of Nature. For custom (*consuetudo*) does not prejudice natural right. But to have several wives was not a sin when it was a custom (*mos*), as is found in the text from Augustine.

2. Furthermore, whoever acts against the natural law, acts against a precept. For just as the written law has its own precepts, so does the natural law. But Augustine says that to have several wives was not against a precept, for it had been prohibited by no law. Therefore, to have several wives is not against the natural law.

3. Furthermore, marriage is principally ordered to the procreation of children. But one man can receive children through many women, by making more of them pregnant. Therefore it is not against natural law to have many wives.

4. Furthermore, natural right is what nature has taught all animals, as is stated in the beginning of the Digests. But nature has not taught all animals this, that there should be one female to one male. For among many animals, one male mates with many females. Therefore, it is not against the law of nature to have many wives.

5. Furthermore, according to the Philosopher in Book 1 of *On the Generation of Animals*, in the generation of offspring the male is ordered to the female as active to passive, and craftsman (*artifex*) to material. But it is not against the order of nature that one active principle should act upon several passive elements, or that one craftsman should work from diverse materials. Therefore, nor is it against the law of nature that one male should have several wives.

6. But to the contrary, that seems particularly to be of natural right what has been put into man in the very institution of human nature. But that one woman should be one man's was instilled in the human being at the very institution of human nature, as is clear

from Genesis 2: 24: *they shall be two in one flesh*. Therefore, it is of natural law.

7. Moreover, it is against the law of nature that man should oblige himself to the impossible, as, for example, that what was given to one might be given to another. But a man contracting with one wife hands over to her the power over his body, so that it would be necessary to render the debt to her when she requested it. Therefore, it is against the law of nature if afterward he should hand over to another the power over his body; for he could not render the debt at the same time to both, if they should request it at the same time.

8. Moreover, it is of natural law that what you do not wish to be done to yourself, you will not do to another. But a man in no way wills that his wife should have other men. Therefore he would act against the law of nature, if he introduced an additional wife.

9. Moreover, whatever is against natural desire (*desiderium*) is against natural law. But the zeal of the husband for his wife, and of the wife for her husband, is natural, for it is found among all people. Since this zeal, therefore, is a love that does not tolerate the sharing of the beloved, it seems that it would be against natural law that many wives should have one husband.

I answer that there are naturally in all things certain principles by which they not only can bring about their proper operations, but also render those operations suitable for their end. These actions may either follow from a thing's generic nature, or they may follow from the nature of its species: as it belongs to a magnet to be borne downwards from the nature of its genus, and to attract iron from the nature of its species. Yet just as in things acting from natural necessity, the principles of their actions are their very forms, by which proper operations proceed fittingly toward their end; so also in those things which participate in reason, the principles of acting are cognition and appetite. For this reason, it is necessary that in the cognitive power there be a natural concept, and in the natural appetite a natural inclination, by which an operation arising from the genus or the species is rendered proportionate to the end. But since, among all the other animals, man knows the reason of his end, and the relation of his work to that end, therefore a natural concept was placed in him, by which he is directed to operating fittingly, which is called natural law or natural right; in

the rest of the animals it is called natural instinct (*aestimatio*). For brutes are more impelled toward appropriate actions by the power of nature than regulated as if they were agents with proper judgment (*arbitrio*). Therefore the natural law is nothing other than a concept naturally bestowed on man, by which he is directed toward acting fittingly in his proper actions, either those appropriate to him by the nature of his genus—as generation, eating, and other things of this kind; or by the nature of his species, as reasoning and the like. But anything that renders an action unfit for the end which nature intends from a certain work, is said to be against the natural law. Nonetheless, an action can be unsuited either to the principal end or to the secondary end; and whether the former or the latter, it happens in a two-fold manner. In one way, from something which impedes the end entirely: as excessive over-indulgence or failure to eat impedes the health of the body as the principal end of eating; and it impedes the ability to manage one's affairs well, which is a secondary end of eating. In the other way, from something that makes the attainment of the principal or secondary end difficult or less becoming, like inordinate eating at an inappropriate time. So if an action were unsuited to the end by entirely preventing the principal end, then natural law prohibits it directly in the first precepts of natural law, which are related to practical matters as general concepts are related to speculative matters. If, on the other hand, it should be insufficient for the secondary end in any way, or simply make the attainment of the principal end difficult or less complete, then it is prohibited not indeed by the first precepts of natural law, but by the secondary ones, which are derived from the first, just as conclusions in speculative matters have credibility from the principles known per se. And it is in this way that the action stated is said to be against the law of nature. For matrimony has as its principal end the procreation and education of children; which end, indeed, befits man according to the nature of his genus, whence also it is common to other animals, as is stated in Book 8 of the Ethics: and thus offspring is considered a good of matrimony. But as the Philosopher says, among humans alone marriage has as its secondary end the sharing of those works which are necessary in life, as was said above; and according to this the two owe fidelity to each other, which is one of the goods

of matrimony. It has beyond these another end, inasmuch as it occurs between two members of the faithful, namely, the signification of Christ and his Church. And thus sacrament is called a good of matrimony. Wherefore the first end corresponds to the marriage of man insofar as he is an animal; the second, insofar as he is man; the third, insofar as he is one of the faithful. Therefore, a plurality of wives neither totally removes nor otherwise impedes the first end, since one man suffices to make several wives fruitful and to educate the children born of them. But even if it does not totally destroy the second end, nevertheless it impedes it greatly, by the fact that it is not easy for peace to exist in a family where many wives are joined to one husband, since one man may not suffice to satisfy all the wishes of many wives. And since the sharing of many in one office causes contention, as potters brawl with each other, and it would be the same way among the many wives of one man. However, it completely destroys the third end of marriage, in which as Christ is one man, so is the Church one bride. And therefore it is clear from what has been said that a plurality of wives is in a certain way against the law of nature, and in another way, not.

1. Custom (*consuetudo*) does not infringe upon the law of nature as far as its first precepts, which are like the general concepts of the mind in speculative things. But custom reinforces and likewise diminishes what is drawn from these precepts as conclusions; and the precept of natural law that there should be one wife is this kind of thing.

2. As Cicero says, *religion and the strength of laws have sanctioned those things perfected by nature and approved by custom*. Wherefore it is clear that those things that natural law dictates, as if derived from the first principles of natural law, do not have compelling force in the mode of a precept absolutely, unless afterward they have been sanctioned by divine and human law. And this is how Augustine says that they were not acting against a precept, for it had been prohibited by no law.

3. To the third objection the solution is evident from what has been said.

4. Natural right is taken many ways. First, indeed, a certain right is called natural from its principle, since it is implanted by nature; and thus Cicero defines in Book II Of Rhetoric, saying: *natural right is what was not born of*

opinion, but a certain innate power instilled. And since also in natural things certain movements are called natural, not because they were from an intrinsic principle, but because they are from a superior moving principle, as the motions which are in the elements because of the influence of heavenly bodies are called natural as the Commentator says in Book 3 of On Heaven and Earth; therefore, those things which are from divine right, are said to be from natural right, since they are from from the impression and infusion of a superior principle, namely, God. And this is how it is taken by Isidore, who says that natural right is what is contained in the Law and in the Gospel. Thirdly, natural right is called not only by its principle, but by its own nature, since it is about natural things. And since nature is divided against reason, by which man is man; then taking natural right in the strictest sense, those things which belong to men alone, even if they were the dictates of natural reason, are not said to be of natural right, but only those things which natural reason dictates about things which are common to man and others. And thus the definition stated is given, namely: natural right is what nature has taught all things. Therefore, plurality of wives although it may not be against natural right taken in the third way, is notwithstanding against natural right taken in the second way, since it is prohibited by divine right; and also against natural right taken in the first way, as is clear from what has been said, because nature dictates to any animal according to the mode befitting its species. Wherefore also certain animals, in which the concern of both male and female is required for the education of the young, preserve by natural instinct the union of one to another, as is evident in the case of the turtledove and the dove, and others of this kind.

5. To the fifth objection the resolution is clear from what has been said.

6. But since the reasons adduced to the contrary seem to show that multiple wives are against the first principles of the law of nature, they should therefore be answered. And so it should be said to the sixth objection, that human nature was established without any defect; therefore not only were implanted in it those things without which the principal end of marriage cannot be had without difficulty, but also those things without which the secondary end of marriage cannot be had without

difficulty; and in this way it is enough for man in his beginning to have one wife, as was said.

7. By marriage a man does not give his wife power over his body in all things, but only concerning those things that marriage requires. However, marriage does not require that a man should render the debt to a wife who is asking at any moment whatsoever, unless as regards what marriage was chiefly instituted for, i.e., the good of offspring, and as much as is necessary for conception. However inasmuch as marriage was instituted as a remedy, which is its secondary end, it does require that one render the debt at whatever moment one's spouse asks for it. And thus it is clear that a man taking many wives does not obligate himself to the impossible when the principal end of marriage is considered; and therefore a plurality of wives is not against the first precepts of natural law.

8. This precept of the law of nature, *what you do not wish to be done to you, do not do to another*, should be understood when the same relation is preserved. For if a prelate does not wish to be opposed by a subordinate, it is not that he himself must not oppose the subordinate. And therefore, it is not necessary from the strength of that precept that if a man does not wish that his own wife should have other husbands, he himself may not have other wives: since for one man to have several wives is not against the first precepts of the law of nature, as was said. But for one wife to have several husbands is against the first precepts of the law of nature, by the fact that by this in a certain respect the good of offspring, which is the principal end of marriage, is totally taken away, and in a certain respect it is impeded. In the good of offspring is understood not only procreation; but also education, as was said. For the procreation of children itself, even if it is not totally destroyed (since it happens sometimes after the first impregnation that the woman is again impregnated, as it says in Book 7 of the History of Animals), is nevertheless much impeded, for it can scarcely happen without damage happening either to one fetus or to the both. But the education of offspring is completely destroyed, for by the fact that one wife has several husbands, would follow an incertitude of the children with respect to their father, whose care is necessary in their education. Therefore by no law or custom is it permitted for one wife to have many husbands, as it is with the reverse.

9. Natural inclination in appetitive things follows the natural concept in cognition; and since it is not so much against the natural concept that a man have many wives as it is that a woman have many husbands, the feeling of a wife does not so shun the sharing of her husband as with the opposite. Therefore, as much among men as among animals a greater zeal is found in the male for the female than the reverse.

Article 2

Whether to have several wives could have been licit at one time

1. It seems that to have several wives could not have been licit at one time. For, according to the Philosopher in Book 5 of the Ethics, natural right has the same power always and everywhere. But a plurality of wives is prohibited by natural right, as is clear from what has been said. Therefore, as it is not licit in this way, it was never licit.

2. Furthermore, if it were allowed at one time, this would not be unless either it were licit per se, or allowed because of some dispensation. If in the first way, then it would also be licit now. But if in the second way, this cannot be: for according to Augustine, since God is the founder of nature, he does not do anything against the reasons which he implanted in nature. Since therefore, God established that one woman should be for one man, as was said, it seems that He Himself would never have given a dispensation from this.

3. Furthermore, if something is permitted by a dispensation, it is not permitted except to those men who receive a dispensation. But no common dispensation is found in the Old Law along with all the other acts. Therefore, since everyone who wanted several wives in the Old Testament, took them indiscriminately; and neither were they reprimanded for this in the Law or in the Prophets; it seems that it was not permitted through a dispensation.

4. Furthermore, where there is the same reason for dispensation, the same dispensation should be made. But the cause of the dispensation cannot be proposed as the multiplication of children for the worship of God, for that is also necessary now. Therefore, the dispensation mentioned should have

endured even until now, especially since it is not written that it has been revoked.

5. Furthermore, in a dispensation a greater good should not be omitted for the sake of a lesser good. But fidelity and sacrament, which do not seem to be preserved in a marriage in which one man is joined to many wives, are greater things than the multiplication of children. Therefore, the dispensation mentioned could not have been in consideration of this multiplication.

But to the contrary, in Galatians 3 it is said that the law was written because of wrong-doers precisely so that it might prohibit them. But the Old Law made mention of the plurality of wives without anything about its prohibition, as is clear from Deuteronomy 21:15: *if a man have two wives, etc.* Therefore, by having two wives they were not wrong-doers, and thus it was allowed.

Moreover, this is seen at the same time by the example of the holy patriarchs, who were written to have had many wives, although they were most acceptable to God, like Jacob, David, and many others. Therefore, it was permitted at one time.

I answer that as is clear from what has been said, a plurality of wives is said to be against the natural law, not as to its first precepts, but as to its second precepts, which are derived like conclusions from the first ones. But since human acts must be varied according to diverse conditions of persons and times, as well as other circumstances, the aforesaid conditions do not proceed from the first precepts of natural law as always having efficacy, but only for the most part. For such is the whole matter of morals, as is evident from the Philosopher in his book of Ethics. And therefore, where they lack efficacy, these things can be licitly overlooked. But since it is not easy to determine when a variance is acceptable, therefore, it is reserved to Him from whose authority the law has efficacy, that He may offer the permission to set aside the law in those cases where the efficacy of the law does not extend; and this kind of permission is called a 'dispensation'. However the law of monogamy is not humanly ordained, but divinely instituted, neither by word or writing handed down, but impressed on the heart, like those things which belong in any way at all to the law of nature. Therefore, in this matter, a dispensation could only have been made by God through interior inspiration, which indeed

happened chiefly to the holy patriarchs, and by their example it was concluded by others at that time that it was fitting for the aforesaid precept of nature to be overlooked, so that the multiplication of offspring to be raised for the worship of God might be greater. For always the more principal end is more to be preserved than the secondary one. Wherefore, since the good of offspring is the principal end of marriage, where the multiplication of offspring was necessary the impediment which might be caused to the secondary ends had to be ignored for a time. And in order to remove this impediment, the precept prohibiting a plurality of wives is ordained, as is clear from what has been said.

1. Natural right, always and everywhere, when it is *per se*, has the same potency. But *per accidens* it can be departed from at certain times and places because of some impediment, as in the same place the Philosopher gives an example from other natural things. For always and everywhere the right hand is better than the left according to nature, but by something accidental it befits some men to be ambidextrous, since our nature is variable. And likewise also is the naturally just, as the Philosopher says.

2. In the Decretals it says about divorce that never was it permitted to anyone to have several wives without a dispensation received by divine inspiration. Nor is such a dispensation given against the reasons that God instilled in nature, but as an exception to them. For those reasons are not ordained for always but rather to be in most cases, as was said: Just as also it is not against nature when something miraculous happens among natural things beyond those things which happen usually.

3. However the law is, so should be the dispensation from the law. And since the natural law is not written in letters, but impressed in hearts, because of this it was not fitting for the dispensation of those things which belong to natural law to be given through a written law, but rather to be made through interior inspiration.

4. With the coming of Christ came the time of the fullness of the grace of Christ, through which the worship of God was diffused in all nations by spiritual propagation; and therefore there was not the same reason for a dispensation that there was before the advent of Christ, when the worship of God was increased and preserved through carnal propagation.

5. Offspring, as a good of matrimony, includes remaining faithful to God. For children are only considered a good of marriage according as they are hoped for in order to be raised to the worship of God. However, remaining faithful to God is more important than remaining faithful to one's wife, which is another good of matrimony, and more important than the signification that belongs to the sacrament, for this signification is ordered to the understanding of the faith. Therefore, it is not unfitting if, for the sake of the good of offspring, something is taken away from the other two goods. Nor indeed are they destroyed in every way, for fidelity also remains for many, and sacrament in a certain way, since although the union of Christ and his Church is not signified as far as there is one bride, still the distinction of levels of the Church is signified by the plurality of wives. Which distinction is indeed not only in the Church Militant, but also in the Church Triumphant. Therefore, the marriages of those men signified in a certain way the union of Christ and the Church, not only the Militant Church, as certain people say, but also the Triumphant Church, in which there are many mansions.

Article 3

Whether it be against the law of nature to have a concubine

Quaestiuncula 1

1. It seems that to have a concubine is not against the law of nature. For ceremonial matters of law are not of natural law. But the prohibition of fornication is included with the other ceremonials of the law which were being imposed for a time on believers who had come from the Gentiles in Acts 15. Therefore, simple fornication, which is to approach a concubine, is not against the law of nature.

2. Furthermore, positive law is a development from natural law, as Cicero states. But according to positive law, simple fornication is not prohibited, but rather to the contrary according to the ancient laws women were condemned to be handed over to brothels as a punishment. Therefore, to have a concubine is not against the law of nature.

3. Furthermore, natural law does not prohibit that what is given simply, may be given for a time and under a certain respect. But an unbound woman could give an unbound man power over her body in perpetuum, so that he could avail himself of her licitly, if she wanted. Therefore it is not against the law of nature if she gave him power over her body for an hour.

4. Furthermore, whoever makes use of his own things as he wishes, injures no one. But a slave-girl is the possession of her lord. Therefore, if the lord makes use of her at will, he does not injure anyone. And thus to have a concubine is not against the law of nature.

5. Furthermore, anyone can give to another what is his own. But a wife has power over the body of her husband, as is clear from 1 Corinthians 7. Therefore, if the wife wished, the man could be joined with other women without sin.

But to the contrary, according to all laws, children who are born of concubines are looked down upon (*vituperabiles*). But this would not be the case unless the intercourse from which they spring were naturally shameful. Therefore, to have a concubine is against the law of nature.

Moreover, as was said above in Distinctio 26, marriage is natural. But this would not be true if without prejudice to natural law a man could be joined with a woman outside of marriage. Therefore it is against the law of nature to have concubine.

Quaestiuncula 2

Whether to approach a concubine is a mortal sin

1. Moreover. It seems that to approach a concubine is not a mortal sin. For to tell a lie is a greater sin than simple fornication: which is evident from the fact that Judah, who was not loathe to fornicate with Tamar, balked at telling a lie, saying, *He will certainly not be able to charge us with lying*. But to lie is not always a mortal sin. Therefore, neither is simple fornication.

2. Furthermore, mortal sin should be punished by death. But the Old Law did not punish lying with a concubine by death, unless

in a certain case, as is clear from Deuteronomy 13.³⁸⁰ Therefore, it is not a mortal sin.

3. Furthermore, according to Gregory, *carnal sins are blamed less than spiritual sins*. But not every instance of pride or avarice is a mortal sin; and these are spiritual sins. Therefore, neither is all fornication, which is a carnal sin.

4. Furthermore, where there is greater incitement, there is less of a sin: for that man sins more gravely who is overcome by a lesser temptation, as was said in Distinction 10. But concupiscence most greatly incites one to sexual things. Therefore, just as an act of gluttony is not always a mortal sin, neither will simple fornication always be a mortal sin.

But to the contrary, nothing is excluded from the kingdom of God except mortal sin. But fornicators are excluded from the kingdom of God, as is clear from 1 Corinthians 6. Therefore, simple fornication is a mortal sin.

Furthermore, only mortal sins are crimes. But all fornication is a crime, as is evident in Tobit 4:13: *Refrain from all fornication, and beside your wife never endure to know crime*.

Quaestiuncula 3

Whether it was ever licit to have a concubine

1. Moreover. It seems that at one time it was licit to have a concubine. For just as to have one wife is of the law of nature, so also to have no concubine. But at one time it was permitted to have many wives. Therefore, also to have a concubine.

2. Furthermore, no woman can be at the same time wife and slave-girl. Wherefore, according to the law by the very fact that a slave-girl was taken in marriage, she was rendered free. But certain of God's most favored (*amicissimi*) are said to have approached their own slave-girls, like Abraham and Jacob. Therefore, these women were not wives, and so at one time it was permitted to have concubines.

3. Furthermore, the woman who is taken in marriage, cannot be sent away, and her son should take part in the inheritance. But Abraham sent away Hagar, and her son was not an heir. Therefore, Hagar was not Abraham's wife.

But to the contrary, those things which are against the precepts of the Decalogue were never allowed. But to have a concubine is against the precept of the Decalogue, namely: *Thou shalt not commit adultery*. Therefore, never was it permitted.

Moreover, Ambrose says in the book on the patriarchs, *What is not permitted to a wife is not permitted to a husband*. But never was it permitted that a woman approach another man, having sent away her own husband. Therefore, neither was it ever allowed to have a concubine.

Quaestiuncula 1

I answer to the first question that, as is clear from what has been said above, that action is said to be against natural law which is not suitable to the due end, either because it is not ordered in itself by the action of the agent, or because it is *per se* disproportionate to that end. However, the end which nature intends from lying together, is the procreation and education of children. And so that this good might be sought, nature has built delectation into intercourse, as Augustine says. Therefore, whoever makes use of intercourse because of the delectation which is in it, without referring it to the end intended by nature acts against nature; and likewise also unless it be such intercourse that it could fittingly be ordered to that end. And since a thing is named for the most part from its end as well as from its excellence: just as the union of matrimony takes its name from the good of offspring, which principally is sought through marriage, so also the name of concubine expresses that union in which only sleeping together (*concubitus*) for its own sake is sought. And even if someone should seek children at some time from such sleeping together, it is still not appropriate to the good of children, which means not only procreation, in which a child is conceived, but also education and instruction, which includes nourishment and discipline from the parents. In these three things parents are bound to their children, according to the Philosopher in Book 8 of the Ethics. Since however, education and instruction are owed to the children by their parents for a long period of time, the law of nature requires that father and mother remain together for a long time for the shared care of the children. For which

³⁸⁰ Actually Deuteronomy 22:19.

reason also birds that nourish their chicks together are not separated from the shared association which began with their mating, until the nurturing of the children has been completed. But this obligation of the woman remaining together with her husband is what makes matrimony. And therefore it is evident that to approach a woman not joined to oneself in marriage, which is called concubinage, is against the law of nature.

1. Among the gentiles, the law of nature was obscured about many things. For which reason, to approach a concubine was not considered evil. But they employed fornication far and wide like something licit, like other things that were against the ceremonies of the Jews, although they were not against the law of nature. And therefore the apostles included the prohibition of fornication with ceremonials, because of the different judgments that existed about both matters among Jews and gentiles.

2. That law arose not from the instinct of the law of nature, but from the aforementioned darkness into which the Gentiles had fallen, not rendering the due glory to God, as it says in Romans 1. For which reason, when the Christian religion prevailed, that law was extirpated.

3. In other matters, just as nothing unfitting follows if someone simply hands over to someone else a certain thing which is in his power, neither would it be unfitting if he handed it over for a time. So neither of these is against the law of nature. However, it is not like that in this matter. Therefore, the reasoning does not follow.

4. Injury is opposed to justice. However, natural law does not only prohibit injustice, but also those things opposed to every virtue. Just as it is against natural law that someone eat immoderately, although such a person using his own things does injury to no one. And furthermore, although a slave-girl is the possession of her lord as far as service goes, she is not however his possession as far as sleeping together goes; and again, it is important how someone uses his own belongings. Such a person also does injury to the children to be conceived, to whose good such a union is not sufficiently ordered, as was said.

5. A woman has power over the body of her husband not simply speaking concerning all things, but only concerning the use of matrimony; therefore she cannot provide the

body of her husband to another woman against the good of matrimony.

Quaestiuncula 2

To the second question as was said in the body of Book 2, Distinction 42, Question 1, Article 4, those acts are mortal sins which, by their genus, violate the covenant (*foedus*) of friendship between man and God and man and man. For these things are against the two precepts of charity, which is the life of the soul; therefore, since the lying together of fornication destroys the due order of parent to child, which nature intends from lying together, there is no doubt that simple fornication is by its own nature a mortal sin, even if it is not a written law.

1. Frequently a man who does not avoid mortal sin, avoids some venial sin, toward which he does not have so much incitement; and so also Judah avoided lying, without avoiding fornication. Although that lying would have been pernicious, having injury joined to it, if he had not fulfilled a promise.

2. A sin is not called 'mortal' because it is punished by temporal death, but because it is punished by eternal death; For which reason also theft, which is a mortal sin, and many other things are sometimes not punished by temporal death under the laws; and fornication is the same kind of thing.

3. Just as not every movement of pride is a mortal sin, so neither is every movement of lust (*luxuria*). For the first movements of lust are venial sins, both in and things of this kind and even in matrimonial lying together. Sometimes, however, certain acts of lust are mortal sins, while certain movements of pride are venial. For in the words cited from Gregory a comparison is understood between vices according to genus, and not as single acts.

4. As was said above, in Dist 16., Question 3, Article 2, quaestiuncula 2, that circumstance makes a sin more serious which makes it closer to the species of sin. Whence although fornication may be mitigated by the greatness of the incitement, nonetheless, because of the matter that it deals with, it has a greater gravity than inordinate eating, since it deals with what pertains to fostering the bond (*foedus*) of human society, as was said. Therefore the argument does not follow.

Quaestiuncula 3

To the third question it must be said that Rabbi Moses says that before the time of the law fornication was not a sin; which he proves from the fact that Judah lay together with Tamar. But this argument is not compelling. For it is not necessary to excuse the sons of Jacob from mortal sin, since they had been *accused to their father of a most wicked crime* (Gen. 37:2), and they had consented to the murder of Joseph and his sale into slavery. Thus it must be said that since it is against natural law to have a concubine not joined to one in marriage, as has been said, at no time was it permitted in itself, nor even by a dispensation. For as is evident from what has been said, to lie with someone to whom one is not married, is not an act suitable to the good of children, which is the principal end of matrimony. And thus it is against the first precepts of natural law, which cannot receive a dispensation. For this reason, wherever it is read in the Old Testament that someone who must be excused from mortal sin had concubines, we have to think of these women as joined in marriage, even though they are called concubines, for they have something of the account of wives, and something of the account of concubines. For as marriage is ordained to its own principal end, which is the good of offspring, a wife is joined to her husband with an indissoluble union, or at least a long-lasting one, as is clear from what has been said; and against this there is no dispensation. But according to the second end, which is the management of the family and the sharing of labor, the wife is joined as a partner (*socia*); and this would have been lacking in those who were called concubines, for in this there could have been a dispensation, since it is a secondary end of marriage; and in that regard they resembled concubines, by reason of which they were called concubines.

1. To have several wives is not against the law of nature in its first precepts, as to have a concubine is, as is clear from what has been said; therefore the argument does not follow.

2. By that dispensation through which the patriarchs had many wives, they approached their slave-girls (*ancillae*) with uxorious affection. For they were wives as far as the principal and primary end of matrimony was concerned, but not as concerns that union

which has to do with the secondary end, to which the condition of servitude is opposed, since they could not be at the same time partner and slave-girl.

3. As in the law of Moses it was permitted by a dispensation to give a writ of divorce in order to avoid killing one's wife, as will be said; so by the same dispensation Abraham was permitted to send away Hagar for the signification of that mystery which the Apostle explained in Galatians 4. And also the fact that that son was not an heir belongs to the mystery, as is evident in the same place; just as also it pertains to the mystery that Esau, a free son, was not heir, as is clear from Romans 9. In the same way because of the mystery it happened that the sons of Jacob born of his slave-girls and of free women were heirs, as Augustine says: *For in baptism they are born in Christ, sons and heirs, both through good ministers, whom the free women signify, as well as through bad ministers, who are signified by the slave-girls.*

QUESTION 2

Prologue

Next it is to be inquired about the writ of divorce; and concerning this there are three things to be sought: 1) whether the indissolubility of marriage is of natural law 2) whether to repudiate one's wife was permitted at any time 3) on the causes of the writ of divorce permitted by the law, and of its inscription.

Article 1

Whether inseparability from one's wife is from natural law

1. It seems that inseparability from one's wife is not from natural law. For the law of nature is common to all. But no law apart from the law of Christ has prohibited sending away one's wife. Therefore, inseparability from one's wife is not of the law of nature.

2. Furthermore, sacraments are not of the law of nature. But the indissolubility of matrimony belongs to the good of sacrament. Therefore, it is not of natural law.

3. Furthermore, the union of man and woman in marriage is ordained principally to the generation, raising, and instruction of children, as was said. But all these things are completed at some certain time. Therefore, after that time it is permissible to send away one's wife without any prejudice to the law of nature.

4. Through matrimony is sought principally the good of offspring. But the indissolubility of matrimony is against the good of children; since, as the philosophers tell us, a certain man cannot receive children through a certain woman, even though he may be able to conceive through another woman, and she also might be impregnated by another man. Therefore, the indissolubility of marriage is more against the law of nature than from it.

But to the contrary, that thing is particularly of the law of nature which nature received well-embedded in its beginning. But the indissolubility of matrimony is this kind of thing, as is evident from Matt 19. Therefore, it is of the law of nature.

Moreover, it is by natural law that man does not go against God. But man would go against God in a certain way, if he separated what God had joined. Since then, the indissolubility of matrimony arises from this, Matt 19, it seems that it would be from natural law.

I answer that matrimony by the intention of nature is ordered to the education of children, not only for a certain time, but for the entire life of the children. For which reason it is from natural law that parents store up their treasure for their children, and children are the heirs of their parents. Therefore, since children are a shared good of the husband and the wife, it is necessary for their association to remain undivided forever according to the dictates of the law of nature. Thus the indissolubility of marriage is of the law of nature.

1. Only the law of Christ brought the human genus to perfection, returning it to the state of newness of nature; for this reason, both in the law of Moses and in human laws what was against natural law could not entirely be erased: for this was reserved to the law of the Spirit and life alone.

2. Indissolubility belongs to matrimony as it is a perpetual sign of the union of Christ and the Church, and as it is ordained in the office of nature for the good of offspring, as was said. But since the dissolution of a marriage is more directly repugnant to the signification of marriage than to the good of offspring, to which it is repugnant in its consequences, as was said, indissolubility of marriage is understood more in the good of the sacrament than in the good of children, although it could be understood in both. And as it belongs to the good of children it will be of the law of nature; but not as it pertains to the good of sacrament.

3. And to the third objection the solution is evident from what has been said.

4. Marriage is principally ordained to the common good under the *ratio* of the principal end, which is the the good of offspring; although under the *ratio* of the secondary end it is ordained to the good of those contracting marriage, as it is *per se* a remedy for concupiscence. Therefore, in the marriage laws more attention is paid to what will be serviceable to all than what may suit one person. Therefore, although the indissolubility of marriage may impede the good of offspring for a certain person, nevertheless, it is fitting to

the good of offspring simply speaking, and for this reason the argument does not follow.

Article 2

Whether it could be permitted for one to put away his wife through a dispensation

Quaestiuncula 1

1. It seems that to put away one's wife could have never been allowed through a dispensation. For what is against the good of offspring in marriage, is against the first precepts of natural law, which do not permit of dispensation. But putting away a wife is this kind of thing, as is clear from what has been said. Therefore, etc.

2. Furthermore, a concubine differs particularly from a wife in the fact that she is not inseparably joined to the man. But to have concubines was not open to dispensation. Therefore, also to put away one's wife.

3. Furthermore, men are now as capable of receiving dispensations as they were in former days. But nowadays a man cannot receive a dispensation in order to divorce his wife. Therefore, neither could he in ancient times.

But to the contrary, Hagar was known by Abraham with husbandly affection, like a wife, as was said. But he himself sent her away by divine command, and he did not sin. Therefore, it could have been made licit through a dispensation that a man send away his wife.

Quaestiuncula 2

Whether under the Law of Moses it was permitted to send away one's wife

1. Ulterius. It seems that under the law of Moses it was permitted to send away one's wife. For one mode of consenting is not to prohibit, when you can prohibit. But to consent to the illicit is illicit. Since, therefore, Moses did not prohibit the divorce of one's wife, nor did he sinâ€”for *the law is holy*, as is said in Romans 7â€”it seems that divorce was allowed at one time.

2. Furthermore, the prophets spoke inspired by the Holy Spirit, as is clear in 2 Peter 1. But Malach 2: 16 states: *if you hate her, send her away*. Therefore, since what the Holy Spirit inspires is not illicit, it seems that divorce of one's wife was not always illicit.

3. Furthermore, Chrysostom says that as the Apostles permitted second marriages, so Moses permitted the writ of divorce. But second marriages are not a sin. Therefore, neither is the divorce of one's wife under the law of Moses.

But to the contrary is what the Lord says, that the writ of divorce was given by Moses to the Jews because of the hardness of their hearts. But the hardness of their hearts did not excuse them from sin. Therefore neither did the law concerning the writ of divorce.

Moreover, Chrysostom comments on Matthew that Moses did not show the righteousness of God in giving the writ of divorce, such that by the law sin did not seem to be sin to those who did it.

Quaestiuncula 3

1. It seems that it would be permissible for a divorced woman to have another husband. For in divorce the iniquity of the man divorcing her was greater than that of the woman divorced. But the man could take another woman as his wife without sin. Therefore the woman could take another husband without sin.

2. Furthermore, Augustine says about two wives, that when it was the custom or *mores*, it was not a sin. But in the time of the Law, there was such a custom (*consuetudo*) that a divorced woman would take another husband, as is clear from Deut 24:2: *and when, having departed, the woman has taken another husband, etc...* Therefore the woman was not sinning by joining herself to another.

3. Furthermore, in Matt 5, the Lord reveals the justice of the New Testament to be superabundant by comparison with the justice of the Old Testament. But he says this belongs to the justice of the New Testament through its superabundance: that the divorced woman does not take another husband. Therefore it was allowed in the Old Testament.

But to the contrary is what is said in Matt 19:9: *whoever takes a divorced woman in marriage, commits adultery*. But adultery was never permitted in the Old Testament. Therefore, neither was it permitted to a divorced woman to take another husband.

Moreover, in Deuteronomy 24 it is said that a divorced woman who has taken another husband, has been defiled, made abominable

before the Lord. Therefore she sinned by taking another husband.

Quaestiuncula 4

1. It seems that it was permitted for a man to take back the wife he had divorced. For it is permitted to correct what was done wrong. But it was wrongly done that the man divorced his wife. Therefore, it was permitted to correct this, by taking her back.

2. Furthermore, it was always permitted to forgive sinners, since it is a moral precept, which remains in every law. But the man who took back his repudiated wife was forgiving that sinner. Therefore it was allowed.

3. Furthermore, Deuteronomy 24 gives as the reason that she cannot be taken again is that she is defiled. But a divorce woman is not defiled unless she takes another husband. Therefore, at least before she has taken another husband, it was permitted to take her back.

But to the contrary is what is said in Deuteronomy 24:4: *the first husband could not take her back*.

Quaestiuncula 1

I answer the first question by saying that a dispensation of precepts, especially those which come in some way from the law of nature, is like changing the course of a natural thing. Natural things can be changed in two ways. In one way, from some natural cause, by which another natural cause is impeded in its course, as it is in all those things which occur for the lesser part (*casualiter*) in nature. But this way does not vary the course of those natural things that always happen, but only of those things that usually happen. In another way, natural things can be changed by an entirely supernatural cause, as occurs in miracles; and in this way not only can the natural course that is ordained to happen usually be changed, but even what is ordained to happen always, as is seen in the immobility of the sun at the time of Joshua, and its back-tracking at the time of Ezechiel, and of the miraculous eclipse at the time of the Passion of Christ.

However, this reason for dispensation from the precepts of natural law is sometimes from lower causes. Thus the dispensation can deal with the second precepts of natural law,

but not the first: for those are like things always existing, as was said about the plurality of wives and things like that. At other times, however, it is only from superior causes, and then the dispensation can be divinely given even from the first precepts of natural law, by reason of some divine mystery of signifying or of showing, as was the case in the dispensation in the command made to Abraham of slaying his innocent son. But such dispensations are not made universally for all men, but for certain particular persons, as also happens with miracles.

If therefore the indissolubility of matrimony were contained among the first precepts of the law of nature, it would only fall under dispensation according to this second way. If however, it were among the second precepts of the law of nature, it could also fall under dispensation according to the first way. But it seems more to be contained among the second precepts of natural law. For the indissolubility of matrimony is not ordained to the good of offspring, which is the principal good of marriage, except as concerns what should be provided for the children by the parents through their entire lives by the due preparation of those things which are necessary in life. However, the acquisition of things like this is not nature's first intention, according to which all things are in common. And therefore sending away one's wife does not seem to be against the first intention of nature, and as a result, neither is it against the first precepts, but against the second precepts of nature. For which reason, it also seems possible for it to fall under the first kind of dispensation.

1. According as it is the first intention of nature, the good of offspring means procreation, as well as nourishment and instruction until the children attain their majority. But what may be provided to them afterward through an inheritance and the discharge of other goods, seems to belong to the second intention of natural law.

2. To have a concubine is against the good of offspring as concerns what nature intends for them by her first intention, namely, their rearing and instruction, which requires that their parents remain together for a long time; which does not occur with a concubine, who is taken up for a time, and therefore it is not the same. Nevertheless, as far as concerns the second dispensation, even to have a concubine

can fall under dispensation, as is clear in Hosea 1.

3. Indissolubility, although it be a secondary aim of matrimony as it exists in the office of nature, nevertheless, relates to its primary aim as it is a sacrament of the Church; and therefore by the fact that it was instituted as a sacrament of the Church, while it remains such an institution it cannot receive a dispensation, unless perhaps the second kind of dispensation.

Quaestiuncula 2

To the second question it is to be said that about this there are two opinions. For certain people say that whoever sent away their wives under the Law by giving a writ of divorce were not excused from sin, although they might be excused from the punishment inflicted according to the laws. And because of this Moses is said to have allowed the writ of divorce; and thus they argue four ways of allowing it: First, through the lack of a precept, as when a greater good is not commanded, the lesser good is said to be permitted by God, just as the Apostle permitted matrimony by not commanding virginity in I Corinthians 7. Secondly, through the lack of a prohibition; as venial things are said to be permitted, since they were not prohibited. Thirdly, through the lack of restraints; and in this way common sins are said to be allowed by God, inasmuch as He does not prevent them, when He could. Fourthly, through the lack of punishment; and in this way the writ of divorce was permitted by the Law, not indeed because of any greater good to follow, as was the case with the dispensation for multiple wives, but because of the greater evil to be prevented, namely, the murder of the wife, to which the Jews were prone because of their corruption of irascibility, as also they were permitted to lend money to outsiders because of a certain corruption in concupiscibility, so that they would not commit usury against their own brethren. And in the same way because of the corruption of suspicion in their reason, a sacrifice of jealousy was permitted, so that not a single suspicion would corrupt their judgment.

But since the Old Law, although not conferring grace, had in fact been given for the sake of revealing sin, as the saints commonly say; therefore it seems to other people that if in

the divorcing of a wife they sinned, this at least should have been indicated to them by the Law or the Prophets; Isaiah 58:1: *announce to my people their sins*. Otherwise it might seem to be extreme neglect, if those things which are necessary to salvation, which they did not know, were never announced to them; and this cannot be said, since righteousness observed in the time of the law merited eternal life. And because of this they say that although to divorce one's wife is bad *per se*, still it was made licit by divine permission. And they confirm this by the authority of Chrysostom, who says that the (Divine) Legislator took away the blame from that sin when He permitted divorce. And although this may be said in probability, nevertheless the first opinion is more commonly held; therefore we must answer both arguments.

1. Someone who is able to prohibit does not sin if he refrains from prohibiting because he does not hope for any correction but judges that he will occasion a greater evil by such a prohibition, and thus it happened with Moses, for which reason relying on divine authority he did not prohibit the writ of divorce.

2. The prophets inspired by the Holy Spirit did not speak of sending away one's wife as if it were the command of the Holy Spirit; but as if permitted, so that greater evils would not happen.

3. That similarity in permission is not to be understood except for having the same cause, since either permission was given in order to avoid baseness.

4. Although hardness of heart would not excuse sin, nonetheless, the permission given because of hardness of heart would excuse. For certain things are prohibited to the healthy which are not prohibited to the sick in body; nor do the sick sin by taking advantage of the permission granted to them.

5. Something good can be neglected in two ways. In one way, because some greater good will result; and then the omission of that good receives its rectitude (*honestatem*) by its order to the greater good, as when Jacob justly (*honeste*) departed from monogamy for the sake of the good of offspring. In another way, something is omitted in order to avoid a greater evil. And then if it is done by the authority of him who has the ability to give a dispensation, the omission of such a good is not culpable (*reatum non habet*), but it also does not acquire rectitude (*honestatem*); and in this way

the indissolubility of marriage in the Law of Moses was overlooked in order to avoid a greater evil, namely, uxoricide: and therefore Chrysostom says, as quoted above, that from the sin he removed the guilt. Although something disordered might remain in divorce, for which it is called a sin; nevertheless, it was not culpable (*habebat reatum*) of penalty either temporal or perpetual, since it occurred by divine dispensation, and so guilt was removed from it. And therefore also Chrysostom says in the same place, because divorce was allowed, it was not indeed evil, but illicit; and indeed those who are of the first opinion refer to this only because it was culpable of temporal penalty.

Quaestiuncula 3

To the third question it should be said that according to the first opinion the wife sinned when she joined herself with another man after her divorce, for her first marriage had still not been dissolved. For while the woman lives, she is bound by law to her husband, as is seen in Romans 7. Nor could she have had several husbands at the same time. But according to another opinion, as it was permitted by a divine dispensation for a man to divorce his wife, so also a woman could have taken another husband. For the indissolubility of marriage, by which the words of the Apostle are understood, was removed by reason of the divine dispensation.

1. Therefore, so that we may respond to both arguments, it must be said to the first, that a man was permitted many wives at the same time according to a divine dispensation; and therefore, having sent away one wife, even if the marriage were not dissolved, he could take another. But never was a wife permitted to have multiple husbands, and therefore it is not the same.

2. In these words of Augustine, *mores* are not taken as "customs," but rather as "just acts" (*actu honesto*), according as from *mores* one is said to be law-abiding or *morigeratus*, because he is of good morals, or as from *mores* moral philosophy is named.

3. In Matthew 5 the Lord shows that the New Law supercedes the Old by its counsels, not only as concerns those things which the Old Law made licit, but also with respect to the things which were illicit in the Old Law, but were considered licit by many because of the

incorrect exposition of the precepts, as for example, in the hatred of enemies; and thus it is also with divorce.

4. These words of the Lord are understood as regards the time of the New Law in which the permission mentioned was taken away; and in this way also are understood the words of Chrysostom, who says that whoever sends away his wife according to the Law, commits four iniquities: for in this he appears as a killer before God, inasmuch as he has the object of killing his wife unless he sends her away; and since he sends away someone who is not a fornicator, which is the only case in which the law of the Gospel allows one to send away his wife; and similarly because he makes of her an adulterer, as well as the man with whom she has relations.

5. A certain interlinear gloss on Deuteronomy 24 says: *she has been defiled and is abominable*: namely in the judgment of the one who first sent her away as though defiled. And thus it is not necessary that she be defiled simply speaking. Or she is called defiled in the way that someone was called unclean if he touched a corpse or a leper: not the uncleanness of guilt, but of a certain legal irregularity; for which reason it was also not permitted for a priest to take a widow or a divorced woman as his wife.

Quaestiuncula 4

To the fourth question it should be said that in the law regarding the writ of divorce two things were allowed: namely, to send away one's wife and for the divorced wife to be joined with another; and two precepts: namely, the writing of writs of divorce, and that the divorcing husband could not take his wife back again, which, indeed, according to those who hold to the first opinion, was done to punish the woman who married another, and in this sin, she was defiled. But according to others, it was so that a man could not divorce his wife lightly, for afterward he was in no way able to recover her.

1. In order to impede that evil which a man committed by divorcing his wife, it was ordained that a man could not remarry the wife he had divorced, as is clear from what has been said. And therefore this was divinely ordained.

2. It was always permissible to forgive a sinner as far as concerns the bitterness of heart,

but not as concerns the penalty divinely exacted.

3. In this there are two opinions. For certain people say that it was allowed for a man to be reconciled with the wife he had divorced, unless she had been joined in marriage with another: for then because of the adultery to which the woman had voluntarily subjected herself, she was given the penalty that she could not return to her first husband. But since the law universally prohibits it, therefore others say that even before she has married another, she cannot be taken back, because of the fact that she was divorced: for this defilement is not understood as guilt, but as was explained above.

Article 3

Whether hatred of one's wife would have been a reason for divorce

Quaestiuncula 1

1. It seems that hatred of one's wife was a cause of divorce, according to what is said in Malachi 2:16: *if you have hatred for her, send her away.*

2. In Deuteronomy 24:1 is said: *Since she has not found grace in his eyes because of some foulness, he shall write a writ of divorce.* Therefore, the same as before.

3. But to the contrary, barrenness and fornication are more opposed to matrimony than hatred. Therefore, they should have been the cause of divorce rather than hatred.

4. Moreover, hatred can be engendered because of the virtue of the one who is hated. If therefore, hatred is a sufficient cause, then the woman could be divorced because of her own virtue; which is absurd.

5. Moreover, in Deuteronomy 22 it is said: *if a man has taken his own wife, and afterward has hatred for her, and has charged her with unchastity or carnal union . . . if he fails to prove it, he will be flogged, and he will be fined a hundred shekels of silver, and he will not be able to send her away all the days of his life.* Therefore, hatred is not a sufficient cause of divorce.

Quaestiuncula 2

1. Ulterius. It seems that the causes of the divorce should have been recorded in the writ. For by the writ of divorce the husband was absolved from the penalty of the law by what was written. But this seems unjust in every way, unless sufficient causes for the divorce were specified. Therefore, it was necessary to write them in the writ.

2. Furthermore, it seems that those things written availed to nothing but displaying the causes of the divorce. Therefore, if they were not written, that writ was served in vain.

3. Furthermore, the Master says this in the text.

But to the contrary, the causes written were either sufficient or not. If sufficient, they prevented the woman from seeking a second marriage, which was conceded to her according to the law. If, though, they were insufficient, the divorce was shown to be unjust. And thus the divorce could not happen. Therefore, in no way were the causes of the divorce to be detailed in the writ.

Quaestiuncula 1

To the first question I answer that the reason for the permission to divorce one's wife was the avoidance of uxoricide, as the saints have commonly said. However, the proximate cause of homicide is hatred; and therefore the proximate cause of divorce is hatred. But hatred is caused by a certain cause, just as love is; and therefore also it is necessary to state certain other remote causes, which were the reason for the hatred. However, Augustine says in the Gloss on Deuteronomy 24: *many were the reasons in the Law for sending away one's wife: Christ excepted only fornication; he commands other troubles to be endured for the sake of the fidelity and chastity of the union.* However these reasons are understood as foulness in the body, like infirmity or some observable stain; or in the soul, like fornication, or something of this kind, which makes dishonor in morals. But certain people restrict these reasons more, saying more probably that it was not permitted to divorce one's wife unless because of some reason arising after marriage; nor for any of these reasons whatsoever, but only on account of things that can impede the good of offspring, either in the

body, as sterility or leprosy or something like that, or in the soul, as if she were of bad morals, which her sons might imitate from spending time with her. But a certain gloss over that verse of Deuteronomy 24: *when she has not found grace, etc.*, seems more strict, namely, for sin, when he says there, *by foulness is understood sin*. But the sin the gloss names is not only in the habits of the soul, but also in the nature of the body.

1,2. Thus therefore we concede the first two points.

3. Sterility and other things of this kind, are causes of hatred; and thus they are remote causes.

4. No one is worthy of hatred because of his virtue, speaking *per se*; for goodness is a cause of love; and thus the argument does not follow.

5. This is given to the man as punishment, that he may not send away his wife forever in this case, as also in other cases when he had deflowered the girl.

Quaestiuncula 2

To the second question it is to be said that the causes of divorce are not recorded in the writ in particular, but in general, so that the divorce might be shown to be just. But according to Josephus, it was so that a woman having a written writ of divorce may marry another: for otherwise, it would not have been given to her; wherefore, according to him, the writing was thus: *I promise to you that I will never be together with you*. But according to Augustine, the writ was written for this reason, that in the period of time intervening, and by the dissuading advice of the scribes, the man might desist from his plan of divorcing.

And by this the solution to the objections is evident.

QUESTION 3

Prologue

Next we will inquire about virginity, and regarding this three things are to be sought: 1) What virginity is; 2) Whether it is a virtue; 3) Its comparison with the other virtues.

Article 1

Whether virginity is the perpetual meditation of incorruption in corruptible flesh

1. It seems that virginity is not a perpetual meditation in corruptible flesh, as Augustine says in his book *On marriage and concupiscence*. For after the Resurrection the holy virgins will not lose their virginity. But at that time they will not be in corruptible flesh. Therefore the corruptibility of the flesh should not be placed in the definition of virginity.

2. Furthermore, virginity is counted as a part of continence, which can be reduced to temperance. But meditation is not an act of temperance, but rather of intellectual virtue. Therefore, it should not be included in the genus of virginity.

3. Furthermore, virginity is not a stronger good than charity or other virtues, but on the contrary, a more fragile one. But perpetuity is not in the *ratio* of charity: otherwise it would not happen that charity once possessed could be lost; which was disproved in Book 3, Distinction 31, Question 1, Article 1. Therefore neither should perpetuity be placed in the definition of virginity.

4. Furthermore, the perpetual meditation of incorruption is destroyed by corruption of mind, about which it is said in Matthew 5:28: *Whoever has looked upon a woman with lust (ad concupiscendam eam), has already committed adultery with her in his heart*. But virginity is not removed by this, for such a corruption can be repaired, but virginity cannot, as it says in the text. Therefore, virginity is not the perpetual meditation of incorruption.

5. Furthermore, the perpetual meditation of incorruption is lost without lying together, not only in the mind, but also in the flesh, as is seen in those sins which are against nature. But virginity is not lost without lying together, for as Augustine says in the book, *On Virginity*,

virginity is abstinence from any lying together by a faithful continence. Therefore, the same as above.

6. Furthermore, Ambrose states in his book *On Virginity* that virginity is an integrity that has no share in contagion. But the body is contaminated by nocturnal emissions. Therefore, virginity is lost by this. But the perpetual meditation of incorruption is not lost: therefore, etc...

7. Furthermore, virginity can be destroyed by violation: otherwise, the man who contracts marriage with someone who has been deflowered by another through violence, would not be made irregular. But such an event would not affect the perpetual meditation of incorruption.

I answer that virginity, as is clear from the words of Ambrose, is a certain integrity; for which reason it is called from the absence of corruption which occurs in the act of generation, where there is a threefold corruption. First, a bodily corruption only, in the fact that the hymen (*claustra pudoris*) is broken. Another is the spiritual and physical at the same time, from the fact that through settlement and movement of semen, delectation in the senses is generated. Third is spiritual only, from the fact that reason subjects itself to this delectation, in which it loses integrity as far as act goes; since it is impossible to understand something in itself, as the Philosopher says in Book 7 of the *Ethics*. For this reason, the very absorption of reason is called a corruption. However, this third corruption is not an act of reason, but a certain passion, coming to it *per accidens* from the passion of the inferior parts, as through sleep or madness or other bodily passions it happens that the act of reason is impeded *per accidens*. Since therefore virtue and vice are brought about in reason's act of consenting and dissenting, sufficient reason for virtue or vice is not found in any of the corruptions mentioned above, but it is necessary to add the consent or dissent of reason. And since virginity in the genus of moral acts belongs to virtue, therefore St. Lucy said that *the body is not defiled without consent of the mind*, namely by that defilement which is opposed to the purity of virginity. Therefore the first corruption, which is only bodily, is not a matter of virtue or vice, unless *per accidens* by some mediating passion of the soul; for which reason, if by some incision the hymen were ruptured, there would

not be in this a greater detriment to virginity than if a foot or hand were cut off by a sword. But the second and third kinds of corruption are matters of virginity and its opposites, as also other passions of the soul are matters of moral virtue and the opposed vices. But finally in the act of reason choosing or rejecting the corruptions named is effected the defilement that deprives a person of his virginity, and as a result, the virginity itself; and therefore Augustine included in the definition mentioned above that it is ordered by reason: namely, *meditation*, as the genus of virginity, taking the act in place of the habit, as is often done; *incorruption*, however, he included as the object or matter, but he adds a determined subject by saying *in corruptible flesh*; for privation and possession are bound to happen about the same thing.

1. Although after the Resurrection, the saints may not have corruption of the flesh, still they do have the nature of the flesh, which was corruptible. Therefore, in them virginity will be able to be as in a subject; but not in the angels, in whom the corruption which virginity is a lack of, was not ever intended to be. And this especially suffices for the *ratio* of virginity, that not only does it concern what is present, but what is past. For someone is not a virgin only by the fact that he is not corrupted, but also by the fact that he never was corrupted.

2. Although a moral act of virtue is perfected in the will, yet reason puts in it the form of virtue, as is said in Book 6 of the *Ethics*; indeed, for this reason the Socratics called all the virtues 'knowledge.' And Augustine uses this way of speaking here by setting down 'meditation' in place of choice.

3. In the act of virtue not only is discretion required on the part of reason, but also a certain firmness from a habit tending toward the act through the mode of nature. And just as natural causes, as far as they are *de se*, are immoveably ordained to their proper effects, by reason of which we can say, 'a stone always descends downward' although this can sometimes be impeded; so also the habit of virtue, as much as it is *de se*, is immoveably ordained to its proper act, although sometimes the one having it performs a contrary act; and by reason of this lasting immoveability, permanence is usually included in the definitions of virtues, as is stated in *Princ. Digestorum*, that *justice is a constant and perpetual will*; and thus also Augustine includes perpetuity also in the

definition of virginity, although sometimes those possessing virginity lose it; as thus in the aforementioned definition the discretion of choice, which the act of virginity has as far as it belongs to the genus of morals, is understood by 'meditation,' but immobility is understood from 'perpetuity.'

4. Corruption of the mind, as can be taken from the things we have said, is twofold. One corruption is like a passion of the mind, when the mind is subject to the delectation which usually occurs in intercourse. And since this delectation is completed in the release of semen, such a corruption of mind cannot happen without a corruption of the flesh, which is said to occur by the settling of semen. However, there is another corruption of mind, which is its act: namely, the consent to or the choice of the corruption described above. But since the inferior powers follow the movement of the superior ones, it sometimes happens that by the act of the mind thinking about the corruption of the flesh, and intending to experience its delectation, heat is excited in the body, and semen is released and delectation is caused in which the mind is suffocated just as in intercourse. And then without a doubt virginity is lost. If though, the corruption remains in the mind's act of consenting, virginity is indeed lost according to what is formally held in the mind, but not by reason of what is materially in it. For which reason such a person cannot be called a virgin except materially. And therefore, this loss of virginity can be restored, but not that loss of virginity in which also what is material is taken away. For virginity on the part of its act has to do only with present or future, as it is in any other virtue. For choice has to do with present or future, but not past. But on the part of the matter, it does not just have to do with the present, but also the past. For someone is called a virgin who has chosen incorruption, which is the matter in virginity, which he has never lost and does possess and intends to preserve. But it is not required that he had never made the opposite choice, but never the opposite corruption. For this reason though, lost virginity can never be restored, since what transpired in the past cannot be recovered.

5. As for those who corrupt themselves without lying together, there is no doubt that they lose their virginity, even as concerns what is material in it. For also if lying together does not take place, still delectation does take place,

which causes the corruption of virginity in lying together. If though lust against nature occurs before adulthood is reached, since there is no settlement of semen, and as a result neither does complete delectation suffocate the mind, virginity is not lost as to what is material in it.

6. The passions of the sensitive part cannot be the matter of virtue unless according as they are ordered by reason establishing a mean in them, just as the concupiscible appetite and the irascible appetite obey reason; and therefore the delectation which occurs during sleep with the settlement of semen is not a matter of virtue; and because of this neither does such corruption destroy the incorruption which is the matter of virginity; and therefore by this reason virginity is not lost by such pollution. And the same reasoning holds true of women who, while sleeping and drunk or senseless, are known by men, unless perhaps they went to sleep with this intention, that they should be known by a man.

7. Something whose principle is completely outside it is not orderable by reason; and thus by the same token, neither do those women lose their virginity who are corrupted through violence either by a man, or by a demon (*incubo*), if as much as they can they resist, so that they keep their bodies free from corruption, or at least their minds opposed to consenting. For still it is more intended in the signification of the sacraments that something external is carried out than that something internal is done; that irregularity which is caused by a defect in the signification of the sacrament nevertheless was brought upon that man who took a violently deflowered virgin as his wife. And particularly since reason is suffocated because of the extreme delectation of that act, it is most difficult to dissent to such delectation in that state; and therefore the presumption seems to be that she consented.

Article 2

Whether virginity is a virtue

1. It seems that virginity is not a virtue. For all virtue consists in a mean. But virginity does not consist in a mean, but precisely in an extreme. For it consists in abstaining from everything delectable, which is what chastity is about. Therefore, it is not a virtue.

2. Furthermore, the use of a virtue, since it is from natural right, was allowed in all times. But in the state of created nature it was not permitted to keep one's virginity, for that was against the precept, as Genesis 1:28 has it: *increase and multiply*; likewise, neither in the time of the Law of Moses, when whoever did not leave behind on the earth any of his progeny, were subject to the malediction of the law. Therefore, virginity is not a virtue.

3. Furthermore, there is no virtue which can be lost without sin, and which cannot be recovered by repentance. But virginity is lost without sin in the marital act, nor can it be restored by repentance. Therefore it is not a virtue.

4. Furthermore, every virtue is an acquired or infused habit. But virginity is in those who have no acquired or infused habit, as in unbaptized children. Therefore, it is not a virtue.

5. Furthermore, every virtue is ordained to some act. But not virginity; but it imports more the privation of an act. Therefore it is not a virtue.

6. Furthermore, whoever has one virtue, has all virtues. But someone who lacks virginity sometimes has other virtues. Therefore, virginity is not a virtue.

7. Furthermore, no one uses virtue badly. But some people use virginity badly, as is the case with the foolish virgins in Matthew 25. Therefore it is not a virtue.

8. Furthermore, virginal continence is divided against marital continence and that of widows. But marriage is not considered a virtue, nor is widow-hood. Therefore, neither is virginity a virtue.

But against this is what is said in 1 Corinthians 7:7: *each one has his proper gift from God*, and he speaks of virginity. But the spiritual gifts of God are virtues. Therefore virginity is a virtue.

Moreover, Ambrose states in his book *On Virginity: the love of virginity invites us to tell something of virginity, lest as if by a certain omission, we should seem to pass by what is the chief virtue*.

Moreover, nothing merits a reward except virtue. But a reward is owed to virginity, namely the hundredth fruit, as the saints say, and the golden crown. Therefore it is a virtue.

I answer that just as giving and receiving are the matter of liberality, so are sexual delectations the matter of chastity and

continence. However, within its genus, an abundance of giving and receiving requires a special virtue, which is called magnificence, because of its difficulty. And since temperance or chastity involves great difficulty in restraining delectations, therefore especially that which has the most difficulty in these matters, namely fortification against every corruption of carnal delectation, requires a special virtue, which is called virginity. Wherefore if virginity is taken for its complete notion, as was said, then virginity is a special virtue. For thus it imports nothing else but the choice of preserving incorruption; and this choice, if it is carried out, must proceed from some habit of virtue. Nonetheless, virginity adds beyond this the status of virtue, in which the habit may result in the act. But it cannot result in the act of choosing to preserve one's incorruption, unless one be incorrupt; for there is no choice of an impossible thing; but it is impossible to recover incorruption once lost. But it is possible to recover the matter of magnificence once lost, and in this lies the dissimilarity between magnificence and virginity. Others say, though, that virginity is not named a virtue, but a perfect state of virtue; and by this understanding the saints sometimes call it a virtue; and according to this opinion it is easy to answer the objections. However, the objections should be answered by supporting the first opinion.

1. Among theologians, certain people say that virtue is not always a mean. But those saying this do not know what the mean of virtue is. For when the mean of virtue is taken according to right reason then if something is not in the mean, it is not according to right reason. And thus it can be neither praiseworthy nor virtuous. And therefore it is to be said that virginity is in the mean of right reason, because indeed the mean is not always taken according to the quantity of whatever the virtue deals with, which quantity is between too much and too little. For certain virtues exist which attain the maximum quantity in their proper matter, as, for example, no one dignifies himself in greater ways than the magnanimous man, nor does anyone make greater expenditures than the magnificent man, as is evident from Book 4 of the Ethics. But it is taken according to the proportion of all circumstances attending the act. And thus that man who gives the most gifts, attains the mean by preserving moderation in giving to whom he should and

what he should and for the correct reason; and there is excess in what is given where it should not be or for a reason that it should not be, even if great things are given. It is the same way also with virginity, although it lies at the extreme as far as what it deals with, since it abstains from every corrupting delectation; yet it is in the middle inasmuch as it observes the other due circumstances in a moderate way; and it would be excess if someone wanted virginity when he should not, as in the time of the Law of Moses, or for a reason that he should not, as with the vestal virgins; and likewise according to the other circumstances.

2. As was said, the mean of virtue is taken according to the relation of circumstances to right reason. And since time is one of the circumstances, it is not unfitting that something be not allowed at one time, which is permitted or virtuous if it were done at another time. And therefore, if at the time in which God willed to pursue the multiplication of the human race or men for the conjugal work of divine worship, someone who preserved incorruption by his own idea would have been at the extreme of diminution, for he would have abstained from pleasurable things when he should not have; but afterward, once the multiplication of the human race or of those worshiping God was sufficiently completed, he would not have sinned by keeping his virginity also under the Law of Moses, or in the state of unfallen nature, if man had not sinned. Nor would he have acted against a precept, but above a precept, since multiplication could have occurred though others.

3. That state of virtue in which virtue may result in its own act, can be lost just as easily with or without sin. However it is recovered by penance, as the richest, most generous person can give all his belongings to the poor, and thus without any sin of his own, it happens to him that he will not be able to continue in an external act of this virtue. If however, he consumes his own resources in base uses, this will be like a sin; nor will he recover the first state by penance. And so virginity which he calls that state of virtue in which virtue can result in an act; and it is lost by sin in fornication, and without sin in the marital act; nor is it ever recovered by penance.

4. That which is the matter of virginity can be in those people who have not habit of virtue, as in children before baptism, in whom there is the first level of virginity which nature has

given. And just as in those who wish to preserve the aforesaid incorruption for a time, but with the design of marrying in its own time, who have the second level of virginity, though they are not called virgins unless materially. But the complete *ratio* of virginity, as it is a virtue, does not exist except in those who have made a choice of preserving the integrity guarded thus far, until the end, either with a vow, or without a vow. And this choice cannot be carried out without a habit informing it. If it be unformed, the act of virtue will be as if preceding virtue, just as also happens with other acts of virtues.

5. Temperance as was stated in Book 3, Dist. 33, Question 3, Article 2, questiuicula 1, consists chiefly in controlling delectations; for which reason it has as its principal intention a certain interior act, namely the choice of restraining concupiscence. But it does not have an external act as concerns what is principal in it, unless per accidens and as a result, namely in the fact that it employs certain external acts to control delectations, like turning away from sight of concupiscible things, which acts it commands more than it elicits. For to enjoy delectations according to the measure of reason, is of the secondary intention of temperance. And since virginity is the chief virtue in temperance, therefore it does not have an external act unless as a consequence, but it restrains any use whatsoever of concupiscence.

6. That man who has one virtue, has all of them in a certain way, but not according to everything which is in a virtue; as (for example) whoever has liberality, sometimes does not have magnificence as far as concerns that state which could result in an external act. And likewise, not everyone who has temperance has the state which he calls virginity because of its imperfection. Although he may have what constitutes the *ratio* of virtue in virginity; as on the other hand, because of his perfection Christ has charity, but not faith, because of the state of imperfection that faith carries with it; and so he may have whatever is of perfection and virtuousness in faith.

7. Someone can employ badly the matter of virginity, which the foolish virgins can possess. But not if virginity is considered under its full account.

8. Widowhood and matrimony do not carry with them any other level of material temperance like virginity; wherefore the account is not similar.

Article 3

Whether virginity is greater than all other virtues

1. It seems that virginity is greater than all virtues. For beauty (*decor*) is of the *ratio* of virtue. But the beauty of virginity is the greatest. Therefore, it is the greatest of the virtues. Proof of the mean. Ambrose says in his book *On Virginity: who can deem a greater comeliness than this beauty, namely that of a virgin who is loved by the king, is tried by the judge, is dedicated to her lord, is consecrated to God, always a bride, always untouched, so that neither will her love come to an end, nor her chastity to loss*. However, there is nothing lacking from this true comeliness, which alone deserves to hear from the king: *you are completely lovely, etc.*

2. Furthermore, Cyprian states: *now the word is from us to the virgins; for there is greater care of those in whom there is a more sublime glory. Their flower is that of the ecclesiastical seed, their splendor and adornment that of spiritual grace, their portion the more illustrious of the flock of Christ*. Therefore, the same as above.

3. Furthermore, the greater prize is owed to the greater virtue. But to virginity is owed the greatest prize, namely the hundredfold fruit and the golden crown. Therefore, etc.

4. Furthermore, the greatest dignity of the virtues is that by them we are joined to God. But virginity joins one to God most closely; for incorruption brings one close to God, as is said in Wisdom 5; and in the Book of Revelation it is said that virgins follow the Lamb wheresoever He may go. Therefore it is the greatest of the virtues.

5. But to the contrary is what is said in the text, that the celibacy of John is not preferred to the marriage of Abraham.

6. Moreover, Bernard says it was written about the Gospel, that the humility of Mary pleased (God, that is) more than her virginity. Therefore virginity is not the greatest of virtues.

I answer that one virtue, both as concerns its act and as concerns its habit, can be said to be more excellent than another in two ways: namely, *per se* and *per accidens*. Indeed, an act of virtue is measured *per se* by reason of its object, from which it has its species. But *per accidens* on the part of its subject, as an act is called better even in small things, if it is done

with a more prompt will, or at a more opportune time, and so on infinitely in other ways, for *per accidens* causes are infinite. And because of this they are left out on purpose. Whence, having omitted this comparison, it must be known that although spiritual good is nobler and better than the good of the body, those virtues which have as their object a spiritual good are simply speaking better than those which have something bodily or related to the body as their object; and thus intellectual and theological virtues are nobler than moral virtues, which in a certain way deal with physical acts and passions; and among moral virtues, that one is better, speaking *per se*, which approaches most closely to the other ones mentioned, which closeness indeed can be noticed in two ways. In one way, as to the suitability of the subject, and thus justice, which is in the will, is the highest and most noble; and after this, fortitude, which is in the irascible appetite, which is like a certain border between reason and sensuality, as was said in Book 3, Dist 26, Question 1, Article 1; and lastly temperance, which is in the concupiscible appetite. In another way the closeness of moral virtue to intellectual virtue can be seen in the degree to which it is disposed to it. And thus among the other moral virtues, the closest is temperance, because through delectations, which are its matter, reason is bound to be weakened the most. And among the parts of temperance, particularly chastity, because in the delectations that it deals with, reason is completely overcome. For which reason the Commentator says in Book 7 on the Physics, that chastity is worth the most to the speculative sciences; and in the genus of chastity, especially virginity. Thus therefore it must be said that virginity is not nobler than the other virtues, but it is nobler in a certain way than all the other moral virtues, and *per se* and simply speaking, than all the other species of temperance.

1. Those delectations which temperance is concerned with are the basest by the fact that they are shared by us and animals, as is evident from Book 7 of the Ethics. Wherefore temperance, which controls them, particularly assumes that beauty which is common to all the virtues, as fortitude assumes difficulty, and justice rectitude. And because of this, virginity, which is the highest level of temperance, earns for itself the highest beauty; though it does not follow that it is the noblest virtue.

2. All the words of Cyprian cited above, which display the excellence of virginity, pertain to its beauty; wherefore they must be answered in the same way as the first objection. Or by saying that virgins have with virginity other virtues; but others do not have virginity with other virtues; and therefore there is no basis for comparison between virginity and other virtues, and virgins and other people.

3. The golden crown is an accidental prize, and so is the fruit. But an essential prize is nobler than an accidental one; therefore, simply speaking, those virtues are more powerful in which a greater prize is due more essentially. Yet the accidental prize does not have as much to do with the root of virtue as the state of virtue. And furthermore, the golden crown is not only due to virgins, but also to martyrs and doctors; but the fruit is only due to continence, in which virginity holds the highest place. And because through continence those delectations are repressed which most greatly impede the taste of spiritual sweetness, which the fruit signifies by its name.

4. Incorruption makes something close to God in whom there is no corruption, by a certain resemblance of imitation. And since we are more able to be like God in our minds than in our flesh; therefore incorruption of the mind, which is opposed to all sin, and exists through every virtue, makes something to be like God. But virginity has both kinds of incorruption; and therefore with regard to many things, it makes us like God, namely in body and soul, by which reason it is said that it follows the Lamb wherever He may go; and Ambrose says that nothing is lacking from it. But it does not follow that virginity makes someone more like God than other virtues do, but according to more things.

5. In the text the marriage of Abraham is equated with the celibacy of John as far as the merit of the persons is concerned; since Abraham merited as much in marital union as John did in virginity. For he served God with the same promptness according to the state of his time; and this comparison is through things accidental to virtue.

6. Humility seems to be most closely related to the virtues, since by it man subjects himself to God out of reverence, and as a result, to others because of God. Therefore, simply speaking, humility surpasses virginity.

Exposition

The unfruitful woman was cursed, who did not leave behind of her seed upon the earth. This curse is not of guilt, but of punishment; though not concerning the defect of nature which virginity has in the lack of children; but concerning disrepute, since it was held to be a reproach. *The immoderate use of marriage in our time almost resembles the baseness of fornication of that time.* This is said concerning the intention of those nowadays who contract marriage mostly because of the affliction of sensual desire, which is the same reason the ancients used to fornicate. Therefore, he adds 'almost,' since all fornication was a mortal sin, but not every immoderate use of marriage is.

They may have been able to be continent more easily even than we ourselves can be, because of the greatness of virtue which was in them; either they could be joined in marriage, having considered the force of decency (*honestatis*), which attracts the just; so that it would be difficult to them to sin, or to decline from the perfect state of virtue in something.

The grace of public office masks private guilt. It should be known that although Lot is believed to have been protected from mortal sin, yet his daughters are not in any way excused from mortal sin, but they sinned less because of the piety of their intention. For they decided based upon a lightly-taken judgment. And furthermore, if they believed for certain that the entire human race had perished, they should have sought divine counsel and that of their father in such a horrible deed, which was against the first institution of matrimony, where father and mother are prohibited: *because of this a man shall leave his father and mother* (Genesis 2). *Nevertheless when these things are regulated and restrained by temperance to the natural use, sexual appetite cannot exist.* This regulating is not found as to the quantity of delectation in the act, but as to the due limiting of circumstances.

John . . . had continence in his works. Continence is taken here as the cessation from every carnal act whatsoever.

Scripture sometimes calls these women wives, sometimes concubines. Certain people say that they were not truly wives; but because they were joined to them by uxorious affection and the intention of children, sometimes they

are called wives. Others say that they were truly wives, but they are called concubines since they remained slave-girls, and their sons were born not in their name but in those of their mistresses; and this seems more true.

To have many wives, not too many. They are said to be 'too many' with whom carnal activity cannot happen enough for conceiving without a weakening of his mind: for such great frequency of the act altogether weakens the mind.

Flesh cannot be corrupted without the mind having been first corrupted. This is understood in the sense of the corruption belonging to the genus of moral acts, which excludes virginity.

It is better to die of hunger than to feed on what has been sacrificed to idols. Against this see 1 Timothy 4:4: *nothing is to be rejected which is received with thanksgiving.* And it must be said that it should be understood before one eats in veneration of idols, or with a certain external profession of idolatry, whether it were demanded by a persecutor as a sign of having crushed one's Christian faith.

DISTINCTION 34

QUESTION 1

Prologue

After the Master has considered marriage and determined its causes, here he considers those persons contracting matrimony. And this is divided into two parts: in the first he determines the impediments to matrimony that do not make the persons entirely ineligible to contract it; in the second, those by which the persons are rendered entirely ineligible for marriage, (Dist. 37), where he says: *Therefore there are certain orders in which a marital union can in nowise be contracted.* The first is divided into two: in the first he considers a certain impediment to marriage which makes a person ineligible, not simply but in a certain respect. It consists in a defect of nature, namely, impotence; secondly, of the impediment of condition according to the customs (*mores*) and statutes of men, namely, servitude (Dist. 36), where he says: *Now let us see about condition, whether it be strong enough to divide a marital union.* The first is divided into two: In the first part he considers the impediment of impotence, which impedes the contracting of marriage; in the second of the impediment by which the act of a marriage already contracted is impeded, namely fornication, as it is a cause of separation (Dist. 35): where he says: *This also must be noted, etc...* The first is divided into two parts, in the first he pursues the impediments of the persons contracting marriage in general; in the second he descends specifically to the impediment which he intended first to address, where he says: *For concerning those who cannot render the debt by reason of impotence, Gregory counseled that they remain.* And this is divided into two: in the first he shows that impotence preceding the marriage impedes it from being contracted; in the second he shows that impotence occurring unexpectedly in the marriage itself may not dissolve it, where he says: *Also this must be known, etc...* The first in two parts: In the first, he considers the effect of nature impeding matrimony, by which a man is rendered incapable of carnal intimacy; in the second he considers the effect of sin, by which man is rendered unfit for the same, which also impedes marriage, namely, incest, where he

states: *Also it must be seen concerning those men who sleep with two sisters, or those women who sleep with two brothers.* The first in two: in the first he considers the impediment in which a man is rendered by nature incapable of the carnal act; in the second, the impediment in which he is rendered incapable of consenting to conjugal intimacy, where it says: *Also the mad, while they are in senselessness, are not able to contract matrimony.* The first in two parts: In the first he considers inability to have intercourse from natural causes, which is impotence; in the second, the inability that results from a curse, where he states: *But it is declared that this must be held to be the impediment of a curse.*

Here five things are to be asked: 1) Concerning the impediments of marriage in general; 2) Whether impotence impedes matrimony; 3) Whether a curse does; 4) Whether madness or mental handicap; 5) Whether incest does.

Article 1

Whether the impediments to marriage are fittingly enumerated

1. It seems that the impediments to matrimony are not fittingly assigned. For marriage is a certain sacrament distinct from the others. But to the others no impediments are ascribed. Therefore, neither should any be ascribed to matrimony.

2. Furthermore, whenever something is less perfect, it can be impeded in that many fewer ways. But marriage is the least perfect among the sacraments. Therefore, either no impediments or few impediments should be assigned to it.

3. Furthermore, wherever there is a sick person, it is necessary for there to be a remedy for the sickness. But concupiscence, for whose remedy marriage was granted, is in everyone. Therefore, there should not be any impediment that would make someone intrinsically ineligible for contracting it.

4. Furthermore, something is called ineligible which is against the law. But impediments of this kind which are assigned to marriage are not against the law of nature, since they are not found in the same way in every condition of the human race; for more degrees of consanguinity are found to be

prohibited at one time than at another. But human law cannot, it seems, lay down impediments to matrimony, for matrimony is not of human institution, but of divine, as also are the other sacraments. Therefore, certain impediments to marriage should not be assigned making persons ineligible for contracting it.

5. Furthermore, ineligible and eligible differ according to what is against the law or not against the law, between which there falls a mean, since they are opposed according to affirmation and negation. Therefore there can be certain impediments to marriage, by which persons in the mean between eligible and ineligible are constituted.

6. Furthermore, no impediment can remove from something what is included in its own definition. But indissolubility is included in the definition of marriage, as was evident above in Dist 27, Question 1, Article 1, *questiuncula* 3. Therefore there cannot be certain impediments which nullify the marriage contract.

7. Furthermore, the union of man and woman is not licit except in matrimony. But every illicit union can be nullified. Therefore, if something should impede marriage from being contracted, this would invalidate the contract by that very fact: and thus there should not be some impediments listed which prevent marriage from being contracted and but which do not invalidate the marriage contract.

8. But to the contrary, it seems that there should be infinite impediments to matrimony. For matrimony is a certain good. But there are infinite ways of falling away from the good, as Dionysius says. Therefore the impediments to marriage are infinite.

9. Furthermore, the impediments to matrimony are taken according to the conditions of particular persons. But conditions of this kind are infinite. Therefore, so are the impediments to marriage.

I answer that in marriage there are certain things which are of the essence of matrimony, and certain things which belong to its solemnity, as is the case also with the other sacraments. And since when those things are removed which are not of necessity for the sacrament, the validity of the sacrament remains, therefore, impediments which oppose those things that are of the solemnity of the sacrament, do not obstruct it from being a valid sacrament; and such things are said to impede

the contracting of marriage, but they do not invalidate the contract; for example, the prohibition of the Church, and period of holy days. And this is where we get the verse: *Though the forbidding of the Church as well as the holy days impede it from happening, they permit those who have been joined together to remain bound.* However, impediments which go against those things that are essential to matrimony, prevent it from being a valid marriage. Therefore they are said not only to impede the marriage from being contracted but to invalidate the contract; and these impediments are contained in the following verse: *error, condition, vow, relation, crime, disparity of cult, force, holy orders, previous bond, decency, if you are related by affinity, if perhaps you will be unable to have intercourse: these things taken together forbid marriage, or, when already done, annul it.* However the number of these can be taken in this way. For marriage can be impeded on the part of the contract of matrimony, or on the part of the ones contracting. If in the first way, since the contract of marriage is made by voluntary consent, which is removed by ignorance or violence, there are two impediments to marriage, namely *force*, which is compulsion, and *error* arising from ignorance. Therefore the Master considered these two impediments above, where the causes of marriage were treated. But now he treats the impediments that are taken on the part of the persons contracting, which are distinguished thus. For someone can be impeded from contracting marriage either simply, or with respect to some certain person. Simply, as when a marriage can be contracted with no one; and this only happens because one is impeded from the marital act; which indeed, may occur in one of two ways. First, if *de facto* one cannot; either because one cannot at all in any way, and thus is established the impediment of *impotence* in intercourse; or because one cannot freely, and thus is established the *condition of servitude*. Secondly, if one cannot licitly, because one is obligated to continence: which may happen in two ways, since one is either obligated by the office one has received, and thus it is the impediment of *holy orders*; or because of a vow taken, and in this way, the *vow* impedes marriage. If however, someone is impeded from marriage not simply, but with respect to some particular person, then it is either because of an obligation to another person, as someone

who is joined to one person in marriage cannot be joined to another, and thus is a *previous bond*, namely, of marriage; or because the proper relation is lacking to the other person: and this happens three ways. First, because the person is extremely distant from one, and thus is *disparity of cult*. Secondly, because the person is extremely closely related, and thus a threefold impediment is included: namely, *family relation*, which consists in a close relation of two persons by reason of a third person having been joined in marriage to one of them; and the *justice of public decency*, in which there is a close relation of two persons by reason of a third person having been joined by betrothal to one of them. Thirdly, because of an undue union already formed with that person; and thus the *crime* of adultery previously committed with the same woman impedes marriage with her.

1. Other sacraments can also be impeded, if something which is of the essence or of the solemnity of the sacrament is taken away, as was said. But still more impediments are assigned to marriage than to the other sacraments, for three reasons. First, because marriage consists in two persons: and therefore it can be impeded in more ways than other sacraments, which only involve one person individually. Secondly, because marriage has its cause in us, but the other sacraments only in God; for which reason the Master also assigned to penance, which has its cause in us in a certain way, certain impediments, like hypocrisy, playing, and things of this kind (Distinction 16). Thirdly, because there are precepts or counsels about the other sacraments, as about more perfect goods; but about marriage there is indulgence, as if about a less perfect good; and therefore, that an occasion might be given for progressing in better things, more impediments are assigned to marriage than to the other sacraments.

2. More perfect things can be impeded in many ways, inasmuch as many things are required for them. If however, there were something imperfect for which many things were required, that thing would also have many impediments, and this is the way with marriage.

3. That argument would hold if there were not other remedies, by which also the sickness of concupiscence could be relieved effectively; which is false.

4. Those persons ineligible for contracting marriage are named from the fact that they are against the law by which marriage is constituted. But marriage, inasmuch as it is an office of nature, is founded on natural law; inasmuch as it is a sacrament, it is founded on divine law; inasmuch as it is an office of the community, it is founded on civil law; and therefore, by any one of the laws named a certain person can be made ineligible for marriage. Nor is it similar with the other sacraments, which are sacraments alone. And because natural law received diverse determinations according to diverse states, and positive law is also varied according to the diverse conditions of men in diverse times, therefore the Master counts different persons to have been ineligible in different times.

5. Law can prohibit something either universally or in part according to certain cases; and therefore, between being completely legal, and being completely against the law, which are opposed as contraries and not according to negation and affirmation, being in a certain way according to the law and in a certain way against it lies as a middle. And for this reason, certain persons are counted a mean between simply eligible and simply ineligible.

6. The aforementioned impediments are not said to destroy the marriage contract as though dissolving a valid marriage which has been contracted properly; but because they dissolve that marriage which has been contracted *de facto* and not *de jure*. Wherefore if the impediment appears in some marriage properly contracted, it does not suffice to dissolve it.

7. Those impediments which prevent the marriage contract sometimes impede the contracting of the marriage, not so that it does not happen, but so that a valid marriage is not made licitly. And nonetheless, if it is made, the marriage is a valid contract, although those contracting it sin; just as if someone consecrated the Host without fasting, he would sin, acting against the statutes of the Church. Nevertheless, he would perform a valid sacrament; since the fast of the consecrator is not of necessity to the sacrament.

8. There are infinite impediments by which a certain good is impeded per accidens, as is the case with all incidental causes. But the causes that corrupt a certain good *per se* are determinate, as is the case with constituent causes; for causes of construction and

destruction are from some opposed things, or from the same thing taken in opposite modes.

9. The conditions of particular persons in the singular are infinite; but in general they can be reduced to a certain number; as is evident in medicine, and in all the practical arts, which consider conditions of the particulars, for actions are about particulars.

Article 2

Whether impotence impedes the marriage from being contracted

1. It seems that impotence does not impede marriage from being contracted. For carnal intimacy is not of the essence of marriage; since those marriages are more perfect which are accompanied by a vow of continence, as was said above in Distinction 26. But impotence takes away nothing from marriage except carnal intimacy. Therefore, it is not a diriment impediment to contracting marriage.

2. For, just as extreme impotence impedes carnal intimacy, so also does extreme heat (*caliditas*), which dries a man out. But heat is not counted among the impediments to marriage. Therefore, neither should impotence be counted.

3. Furthermore, all old men are impotent. But old men can contract marriage. Therefore, impotence does not impede marriage.

4. Furthermore, if a woman knows a man to be impotent when she contracts marriage with him, it is a valid marriage. Therefore, impotence, in itself, does not impede marriage.

5. Furthermore, it happens in a certain instance that a man can have a healthy dryness sufficiently moving him to carnal intimacy with an experienced woman, but not with a virgin; for immediately the heat (*calidum*) evaporates because of its own weakness, so that it is not sufficient for penetrating a virgin. And likewise, in a certain man there may be sufficient heat to move him with respect to a pretty girl, who inflames more his concupiscence, but not sufficient to move him toward an ugly girl. Therefore it seems that impotence also may impede with respect to one person, but not simply speaking.

6. Furthermore, a woman is universally more frigid than a man. But women are not

impeded from marriage by this fact. Therefore, neither should impotent men be impeded.

But to the contrary is what is said [in the Decretal] *Extra*, concerning the impotent and those under a spell: *just as a child, who cannot render the debt, is not suited to this union, so also those who are incapable are considered least suited to contracting marriage*. But the impotent are among these. Therefore, etc.

Furthermore, no one can oblige himself to the impossible. But in marriage man obliges himself to carnal intimacy, since he thereby gives another power over his own body. Therefore, the impotent, who cannot engage in sexual intercourse, cannot contract marriage.

I answer that in marriage there is a certain contract, by which one person is obliged to the other to discharge the carnal debt. Whence just as in other contracts there is no obligation agreed upon if someone obliges himself to something which he cannot give or do, so it does not befit the contract of marriage, if it is made by someone who cannot discharge the marital obligation. And this impediment is called inability to have intercourse by the general name, which indeed can occur by either intrinsic and natural causes, or from extrinsic accidental causes, such as by witchcraft (*maleficium*), of which we will speak later. If however, it is from natural causes, this can be in two ways: since either it is temporary, which can be remedied by the benefits of medicine or the progress of time; and then it does not dissolve the marriage. Or it can be perpetual, and then it does dissolve the marriage; so that that man of whom the impediment is alleged may remain perpetually without hope of marrying; another may marry whom he wills in the Lord. However, in order to know whether the impediment is perpetual or not perpetual, the Church has employed a determined time, in which this matter can be tested; namely three years. So that if after three years in which both parties have faithfully applied themselves to the accomplishment of carnal intimacy, the marriage is found not to have been consummated, it is dissolved by the judgment of the Church. However, in this the Church sometimes errs; since sometimes three years is not enough to prove perpetual impotence. Wherefore, if the Church finds itself deceived by the fact that a certain man in whom there was formerly this impediment, is found to have accomplished carnal intimacy with the same woman or another woman, it may restore the

preceding marriage and annul the second, however much may have occurred from allowing it.

1. Although the act of carnal intimacy may not be of the essence of matrimony, still the power for it is of this essence; for through marriage the power over the body of the other is given to both of the spouses with respect to carnal intimacy.

2. An excessive heat can scarcely be a perpetual impediment. Yet if it were found that for three years it impeded carnal intimacy, it would be judged perpetual. Still since impotence impedes in a greater way and more frequently (for it takes away not only the commingling of seeds but also the rigidity of the member, by which the union of bodies occurs); therefore impotence is considered more of an impediment than excessive heat, since every natural defect may be reduced to impotence.

3. Sometimes the elderly although they may not have sufficient heat for generation, nevertheless they have sufficient heat for carnal intimacy; and therefore, marriage is granted to them, according as it is a remedy; although it is not their duty as an office of nature.

4. In any contract whatsoever, this is universally binding, that the person who is unable to fulfill something, is not considered fit for the contract by which he obliges himself to its fulfillment. Yet incapacity can be in three ways. In one way, if it cannot be fulfilled *de jure*. And in this way such an incapacity makes the contract null in every way, whether the one with whom the contract is made knows about this incapacity or not. In another way, when it may not be fulfilled *de facto*; and then if the one with whom the contract is made should know about this incapability, and nevertheless agree to the contract, it reveals that in this contract he is seeking another end, and therefore the contract stands. If however he does not know, then the contract is null. Therefore, impotence, which causes such an incapacity that a man cannot acquit his obligation *de facto*, and the condition of slavery, by which a man cannot render freely concerning the deed, both impede marriage when one spouse is ignorant that the other cannot render the debt. Yet the impediment by which someone cannot render the debt *de jure*, such as consanguinity, annuls the marital contract whether the other party knows or not; and because of this the Master counts these two

as impediments which make persons entirely ineligible.

5. There cannot be a perpetual natural impediment in the man with respect to one person and not to another; but if he were unable to complete the carnal act with a virgin, but he could with one who is not, then the hymen could be broken medically by some instrument, and they could be united. Nor would this be against matrimony, since it would not be done for the purpose of delectation, but for a medical reason. However loathing the woman is not a natural cause, but an extrinsic, accidental cause, and therefore it is adjudged the same as a curse, about which it will be discussed later.

6. The male is the active principle in generation, but the female is the passive principle; and therefore, greater heat is required in the man than in the woman for the work of generation; whence impotence makes a man incapable, but frigidity would not make a woman incapable. But in the woman there can be a natural impediment from another cause, namely, *arctation* (extreme tightness); and then the judgment of *arctation* in the woman is the same as that of impotence in the man.

Article 3

Whether a curse (maleficium) can impede marriage

1. It seems that a curse cannot impede marriage. For evil spells of this kind are the work of the demons. But demons do not have the power of impeding the marital act any more than other bodily acts, which they cannot impede. For if this were so, the whole world could be disturbed--if eating and walking and other things like this were impeded. Therefore, marriage cannot be impeded by evil spells.

2. Furthermore, the work of God is stronger than the work of the devil. But an evil spell is a work of the devil. Therefore it cannot impede marriage, which is a work of God.

3. Furthermore, no impediment voids the marriage contract unless it is a perpetual impediment. But an evil spell cannot be a perpetual impediment: for since the devil does not have power except over sinners, when the sin was driven out it would remove the spell, either through another spell, or through the exorcisms of the Church, which are ordained to repressing the force of the demons. Therefore, an evil spell cannot impede marriage.

4. Furthermore, carnal intimacy cannot be impeded unless the power of generation, which is its principle, is also impeded. But the reproductive power of one man has the same capacity toward all women. Therefore, by an evil spell there cannot be an impediment in a man with respect to one woman, unless it were with respect to all women.

But against this is what is said in the Decretals, 33, Question 1: *if through sorcery or evil spells ; and further: if they were not able to be cured, it is worthwhile that they be separated.*

Moreover, the power of the demons is greater than that of man: *There is no power upon the earth which compares to it* (Job 40:24)³⁸¹. But by a human deed some man might be made incapable of carnal intimacy because of a certain power or through castration; and by this marriage is impeded. Therefore much more can this be done by the power of the demons.

I answer that certain people have said that witchcraft was nothing in the world, except in the impressions of men, who attribute natural effects whose causes are hidden to evil spells. But this is against the authorities of the saints, who say that demons have power over bodies, and over the imagination of men, when they are permitted by God. Thus sorcerers can work certain works of magic through them. However, the opinion mentioned above proceeds from a root of lack of faith, or disbelief, for they do not believe that the demons exist except in the imagination of the common people alone, such that the terrors that a man makes for himself out of his own mind, he imputes to a demon. And since also from a vigorous imagination certain figures may appear to the senses just as a man thinks them, and then he believes that he sees demons. But these notions are repudiated by the true faith, by which we believe the angels to have fallen from heaven, and the demons to exist, and to be capable from the subtlety of their nature of many things which we cannot do. Therefore, those men who summon them for doing these kinds of things, are called sorcerers. And therefore, others have said that through evil spells an impediment to carnal intimacy can be established, but nothing of this kind is perpetual, so that it does not void the marital contract, and they say that the laws that were

saying so, were revoked. But this is against experience, and against the new laws which agree with the old ones. And therefore a distinction must be drawn: for inability to have intercourse because of an evil spell is either perpetual, and then it invalidates the marriage, or it is not perpetual, and then it does not invalidate it. And to test this the Church has fixed a period of time in the same way, namely three years, just as was stated for impotence. Still, there are these differences between being under an evil spell and impotence: for someone who is incapacitated by impotence is just as incapable with one woman as with another. And therefore when the marriage is nullified, he is not granted permission to unite with another. But under a curse a man can be unable to unite with one woman and not with another; and therefore when by the judgment of the Church the marriage is nullified, both parties are granted permission to seek union with another.

1. Since the first corruption of sin, by which man was made slave to the devil, is passed on to us by the generative act, therefore the power of sorcery is permitted to the devil by God in this act more than in others; just as the power of witchcraft is displayed more in serpents than in other animals, as is said, since through the serpent the devil tempted the woman.

2. The work of God can be impeded by the work of the devil by divine permission; not that the devil could be stronger than God such that he could destroy His work through violence.

3. Witchcraft is so enduring that it may not have a remedy in human action; although God may furnish the remedy by forcing out the demon or even the demon might stop. For it is not always the case that what was done by one spell could be destroyed by another spell, as sorcerers themselves admit. But if the remedy could be applied by witchcraft, nevertheless it would be considered perpetual, since in no way should someone invoke the help of a demon through witchcraft. Likewise, it is not necessary that if because of some sin power was given to the devil over someone, this power should end when the sin ends: for sometimes punishment remains once guilt has passed away. Likewise also the exorcisms of the Church are not strong enough for always repressing demons as concerns all corporeal troubles, when divine judgment requires this; but they are always strong enough against those

³⁸¹ Actually Job 41:24.

infestations of demons that they were instituted against.

4. Sometimes witchcraft can establish an impediment with everyone, sometimes with just one person: since the devil is a voluntary cause, not acting from the necessity of nature. And furthermore the impediment of witchcraft can occur from the oppression of a demon on the imagination of a man, by which the concupiscence moving him toward a certain woman but not toward another is removed.

Article 4

Whether madness impedes marriage

1. It seems that madness does not impede marriage. For spiritual marriage, which is contracted in baptism, is nobler than carnal marriage. But the insane can be baptized. Therefore, they can also marry.

2. Furthermore, impotence impedes matrimony inasmuch as it impedes carnal intimacy, which is not impeded by madness. Therefore, neither is marriage.

3. Furthermore, marriage is not invalidated unless by some perpetual impediment. But concerning madness it is impossible to know if the impediment be perpetual. Therefore it does not invalidate the marriage.

4. Furthermore, the above-mentioned verses sufficiently contain the diriment impediments to matrimony. But no mention is made there of madness. Therefore, etc.

But to the contrary, madness takes away the use of reason more than error. But error impedes marriage. Therefore, so does madness.

Moreover, the insane are not fit for making any contract. But marriage is a certain contract. Therefore, etc.

I answer that madness either precedes marriage or follows it. If it follows, it cannot invalidate the marriage in any way. But if it precedes, either the madman has lucid intervals or not. If he does, then although when he is in that interval it may not be safe for him to contract matrimony, since he doesn't know how to educate children; yet if he does contract marriage, it is a marriage. If however he does not have lucid intervals, or if he should contract marriage while he is not having one, then since there can be no consent where the use of reason is lacking, it will not be a valid marriage.

1. The use of reason is not required for baptism as its cause, as it is required for matrimony. Therefore there is no similarity. But concerning baptism of the insane, see above, Distinction 6.

2. Madness impedes marriage in its cause, which is consent, although not in its act, as is the case with impotence. But nevertheless the Master considers it at the same time as impotence because both arise from defects of nature.

3. A temporary impediment that impedes the cause of marriage, namely, consent, completely voids matrimony. But an impediment that impedes the act must be perpetual in order to void matrimony.

4. This impediment is reduced to that of error: for on both sides there is a defect of consent on the part of reason.

Article 5

Whether the incest by which someone knows the sister of his own wife, invalidates marriage

1. It seems that incest by which someone knows the sister of his wife does not invalidate marriage. For the woman should not be punished for the sin of the man. But she would be punished if the marriage were dissolved. Therefore, etc.

2. Furthermore, he sins more who knows his own relative than who knows the relative of his wife. But the first sin does not impede marriage. Therefore, neither does the second.

3. Furthermore, if this is inflicted as punishment for sin, then it seems that also if, once his wife is dead, the incestuous husband should contract with someone else, they should be separated too, which is not the case.

4. Furthermore, this impediment is also not enumerated among the others listed above. Therefore, it does not invalidate matrimony.

But to the contrary, by the fact that he has known the sister of his wife, the man forms an affinity with his wife. But affinity does invalidate the marriage contracted. Therefore, so does the incest described.

Moreover, whoever sins in something is punished in that thing. But such a person sins against matrimony. Therefore he should be punished by being deprived of his marriage.

I answer that if someone knows the sister or another relative of his wife before the

marriage is contracted, even after the betrothal, it is necessary for the marriage to be dissolved by reason of the affinity contracted. But if it occurs after the marriage is contracted and consummated, the spouses cannot be completely separated; but the man loses his right of requesting the marital debt, nor can he ask for it without sin. But he should still render the debt to his wife if she asks, for she should not be punished for the sin of her husband. Yet after the death of his wife, he should remain entirely without hope of marriage, unless he receives a dispensation from this due to his own fragility, because of which illicit intercourse is feared. If however he should contract marriage without the dispensation, he sins against the statutes of the Church by so doing. Still, this is not enough reason that the marriage should be broken up.

And through this the answers to the objections are evident. For incest is considered an impediment to marriage not just by reason of the fault, but by reason of the affinity which it causes, and therefore, also it is not enumerated among the other impediments, but is included in the impediment of affinity.

Exposition

Let both remain unmarried. This is understood when the impediment is alleged of both: otherwise that one only should remain unmarried on whose part the impediment is brought forth.

Because if the wife should plead, and should say: I wish to be a mother, and to bring forth children, etc... It seems from this that by reason of sterility marriage could be dissolved. And to this it must be said, no. For in the sterile even if marriage does not attain its own aim, according as it is in the office of nature, yet it does act as a remedy through carnal intimacy; wherefore here the procreation of children is said for the sake of carnal intimacy, which women are too modest to ask for.

By the hands of seven family members he may swear that they never came together carnally. In this way separation should take place. When impotence in intercourse is alleged, if both the husband and the wife should admit it; or if there is an evident impediment, as in the case of eunuchs, they can be separated immediately. But if it is not evident, it is to be commanded of them that

they continue to live together, applying themselves to carnal intimacy in good faith. Because if it is unable to be done for three years, then both will swear that applying themselves in good faith, they were unable to be joined carnally; and so that separation may not be granted too easily, it is required that seven of the closest relations, who can better know the truth of the matter by probable signs, swear that they believe that the two spoke the truth.

Let perjurers be bound by the crime of the matter; That is, let their testimony be so counted for nothing as if they were perjurers. Not though that they incur the guilt or disrepute of perjurers, if they believed them to speak the truth.

But if a husband asserts that he has rendered the debt to his wife, and she denies, it is sought who is more trustworthy in merit. The same thing must be known that when the man asserts that carnal intimacy had occurred and the wife denies, it must be established by the oath of the man, unless by the state of her own body the woman wishes to prove the man has lied. But if the man swears falsely, and the wife cannot prove the contrary, she can protect herself by sleeping separately, lest by the attack of the man she should be provoked to sexual desire, and the danger of incontinence should threaten. If however, the man should deny that carnal intimacy had taken place, it is not to be established by his oath, although he is the head of his wife, if the wife affirms it: for in this way, it would be easy for many men to send away their wives.

What is contained in the end of this chapter, must be understood as said more from strict interpretation than from equity of the canons. It must be known that if a curse rendering someone impotent were generally with respect to anyone, then if he married another, the impediment would be shown to have been not perpetual. Wherefore he should return to the prior union. If however the impediment was relative, that is, with respect to a particular person, since both were given permission to marry other people, then once this power to marry has been granted, they cannot return to the unconsummated marriage, since it was null, and the second is the valid marriage.

But if it was contracted, they would not be separated. This is understood to mean that if it

was contracted when they were having lucid intervals.

Nor is it permitted for him to render the debt to his own wife. This is no longer held. Or it should be said that he universally calls carnal intimacy rendering the debt, which the man was deprived of as to his own part, although his wife's right remains. For although marriage cannot stand on one leg, yet the right of requesting the marital debt can exist in one and not in the other.

DISTINCTION 35

Prologue

After he has considered inability to have intercourse, which impedes the marital act, here he considers *a toro* separation because of the sin of fornication, which similarly takes away the marital act although the marriage bond endures; and this is divided into two parts, in the first he shows how adultery following marriage removes the marital act although the marriage bond endures; in the second part he shows how adultery preceding the marriage removes also the marriage bond, where he states: *it is also customary to ask whether it is valid for someone to be taken in marriage who has already been corrupted by adultery*. The first has two parts: in the first part, he shows when it is permitted to put away one's wife because of fornication; in the second part he asks whether to put her away is of necessity or whether one may also keep her, where he states: *However, John Chrysostom says . . .* The first part is divided in two: first, he shows how it is permitted to the husband to send away his wife and vice versa, because of fornication committed; in the second he shows that neither may marry after the separation because the prior marital bond remains: *But if someone completely free from fornication has sent away a fornicator, he cannot have intercourse with another*. Concerning the first point he does two things: first he shows that either spouse may send away the other because of fornication, when the one who dismisses is innocent of fornication; secondly he shows that this cannot happen when he himself is guilty of the same crime, and there he says: *If it is truly asked whether an adulterer can dismiss an adulterous wife because of fornication, we say etc...*

Here we will ask six things: 1) Whether it be permitted for the husband to send away his wife because of fornication; 2) Whether he is bound to do this; 3) Whether he may send her away by his own judgment or whether the judgment of the Church is required. 4) Whether husband and wife are of equal condition in this matter; 5) Whether after this separation they must remain unmarried; 6) Concerning reconciliation.

Article 1

Whether because of fornication it is permitted to a husband to put away his wife

1. It seems that it is not permitted for a husband to put his wife away because of fornication. For evil is not to be rendered for evil. But a man putting away his wife because of fornication seems to render evil for evil. Therefore, this is not permitted.

2. Furthermore, it is a greater sin if both should fornicate than if only one should. But if both should fornicate, they will not be able to be separated for this. Therefore neither should they if only one of them fornicates.

3. Furthermore, spiritual fornication and certain other sins are more serious than carnal fornication. But a separation *a toro* cannot be made because of these. Therefore, neither should it occur because of carnal fornication.

4. Furthermore, a vice against nature is more removed from the goods of matrimony than fornication, which is done in the mode of nature. Therefore it should have been counted as a cause of separation more than fornication.

But to the contrary is what is said in Matthew 5.

Moreover, one is not bound to keep faith with someone who breaks faith. But by fornicating a spouse breaks the faith that he owes to another. Therefore, one can send the other away because of fornication.

I answer that the Lord allowed a husband to dismiss his wife because of fornication in penalty to the one who broke faith, and in favor of the one who kept faith, so that the faithful spouse would not be constrained to render the debt to the one who had broken faith. And because of this, seven instances are excepted in which the husband may not dismiss his wife for fornication, in which either the wife is free from guilt, or both are equally culpable. The first is if the husband himself was also a fornicator. Second, if he had prostituted his wife. Third, if the wife married another, believing in all probability her husband to be dead because of his long absence. The fourth is if she was known by someone who secretly entered her bed in the guise of her husband. Fifth, if she was violated by force. Sixth, if her husband were reconciled to her after the adultery took place, and knew her carnally. Seventh, if the marriage had been contracted while both were unbelievers, the man had given

his wife a writ of divorce, and the wife had married another; for then if both are converted to the faith, the man is bound to take her back.

1. The man sins if he dismisses his fornicating wife for revenge in spite; but if he does it to guard against disgrace falling upon himself, lest he seem a participant in the offence, or for the sake of correcting the vice of his wife, or for avoiding incertitude about his children, he does not sin.

2. Separation because of fornication occurs by one party accusing the other; and since no one can accuse who is guilty of the same offence, when both are fornicators, separation cannot be enforced, regardless of whether the marriage was more sinned against by one party who fornicated than by the other.

3. Fornication is directly against the goods of matrimony; for the certitude of the paternity of children is ruined by it, and faith is broken, and the signification is not preserved when one spouse divides his own flesh among many. But since unbelief, which is called spiritual fornication, is also against a good of matrimony, i.e. raising children to the worship of God; so this can also cause a separation; but nevertheless in another way than fornication does. For it is possible to move for a separation because of one act of carnal fornication, but not because of one act of unbelief, but only for a habit that is shown to be obstinate, in which unbelief is the result.

4. Also because of a vice against nature a separation can be sought; but mention is not made of it in this way, both because it is an unnameable passion, and because it occurs more rarely, and because it does not cause incertitude about children like this.

Article 2

Whether a man is bound by precept to dismiss a wife who fornicates

1. It seems that a man is bound by precept to send away a wife who fornicates. For the man, since he is the head of his wife, is bound to correct his wife. But separation *a toro* is introduced for the sake of correcting a fornicating wife. Therefore, he is bound to separate her from himself.

2. Furthermore, whoever consents to someone sinning mortally, mortally sins himself. But someone who retains a fornicating

wife, seems to consent to her, as it says in the text. Therefore, he sins unless he casts her away from himself.

3. Furthermore, in 1 Corinthians 6: 16, it states: *whoever cleaves to a harlot becomes one body with her*. But someone cannot be at the same time a member of a prostitute and a member of Christ, as is said in the same place. Therefore, a husband cleaving to a fornicating wife ceases to be a member of Christ, for he sins mortally.

4. Furthermore, just as blood relation voids the marriage bond, so also fornication causes separation *a toro*. But after a man has known the sister of his wife, he sins mortally by knowing his wife. Therefore, if he knows his wife after he finds that she is a fornicator, he sins mortally.

But to the contrary is what the gloss on 1 Corinthians 7 says, that the Lord permitted a man to send away his wife because of fornication. Therefore, it is not commanded.

Moreover, anyone can forgive another what sin he has committed against him. But a wife sins against her husband by fornicating. Therefore the man can spare her, such that he does not send her away.

I answer that the dismissal of a fornicating wife was introduced for the correction of the wife by such a penalty. However, a corrective penalty is not required where emendation has already taken place; and therefore if the wife repents of her sin, the husband is not bound to send her away; but if she does not repent, he is bound, lest he seem to consent to her sin while he does not employ the due correction.

1. The sin of fornication in a wife can be corrected not only by such a penalty, but also by words and blows. And therefore, if she were otherwise provided with correction, the husband would not be bound to apply the aforesaid penalty for her correction.

2. The man seems to consent to his wife when he does not hold her to refrain from her past sin; but if she has amended, he does not consent to her sin.

3. By the fact that she has repented the sin of fornication, she can not be called a harlot; and therefore, the man uniting himself with her does not become the member of a harlot. Or it should be said that he is not joined to her as harlot, but as wife.

4. It is not the same, for consanguinity makes it so that the marriage bond will not be between them, and for this reason carnal

intimacy would be illicit. But fornication does not remove the bond mentioned above; and for this reason the act remains licit in itself, unless it should become illicit by some added circumstance, if for example it should seem that the man consents to the disgrace of his wife.

5. That permission is to be understood in the lack of a prohibition, and thus it is not divided against a precept; for also what falls under a precept is not prohibited.

6. The wife does not only sin against her husband, but against herself, and against God; and for this reason the man cannot totally forgo a penalty unless amendment should follow.

Article 3

Whether the man can dismiss his fornicating wife by his own judgment

1. It seems that a man can dismiss his fornicating wife by his own judgment. For an automatic sentence (*latae sententiae*) from the court may be carried out without a trial. But God, the Just Judge, gave this sentence, that because of fornication a man may dismiss his wife. Therefore another judgment is not required for this.

2. Furthermore, in Matthew 1 it is said that Joseph, since he was a just man, thought about sending Mary away secretly. Therefore it seems that a man may seek a separation secretly without the judgment of the Church.

3. Furthermore, if a man after having known about the fornication of his wife renders the debt to her, he loses the legal recourse that he had against the fornicator. Therefore, refusing the debt, which pertains to the separation, should precede the judgment of the Church.

4. Furthermore, that which cannot be proved should not be brought before the judgment of the Church. But the offence of fornication cannot be proved, since *the eye of the adulterer observes darkness*, as Job 24: 15 says. Therefore, the separation mentioned should not be made by the judgment of the Church.

5. Furthermore, a formal charge should precede an accusation, by which someone may oblige himself to damages, if he should fail to prove his case. But this cannot happen in this matter, for then however the thing should go,

the man would attain his own aim, either he would dismiss his wife or she would dismiss him. Therefore, it should not be brought before the judgment of the Church by an accusation.

6. Furthermore, a man is more bound to his wife than to strangers. But a man should not defer to the Church the offence of another, even of a stranger, unless he has already admonished him in secret, as is evident from Matt 19. Therefore, much less can he defer the offence of his wife to the Church, if he has not already privately rebuked her.

But to the contrary, no one should avenge himself. But if a husband dismisses his fornicating wife by his own decision (*arbitrio*), he avenges himself. Therefore, this should not be done.

Moreover, no one is both a prosecutor and a judge in his own cause. But the man is prosecuting his wife for the offense she committed against him. Therefore he cannot be the judge; and thus he should not dismiss her by his own decision.

I answer that the man can send away his wife in two ways. In one way, only from the bed; and in this way he can dismiss her by his own judgment as soon as he discovers the fornication of his wife; nor is he bound to render the debt to her when she requires it, unless he is compelled by the Church; and in that case rendering the debt prejudices none of his rights. In another way, both *a mensa et toro*; and in this way she cannot be sent away except by the Church's verdict. And if she had been dismissed in any other way, he ought to be forced to cohabit with her, unless her husband could prove the fornication of the incontinent one. Now this dismissal is called separation (*divortium*); and therefore it must be admitted that separation cannot be granted unless by the judgment of the Church.

1. A sentence is the application of a general law to a particular fact; whence the Lord promulgated the law, according to which the sentence should be formed in the court.

2. Joseph did not want to send away the Virgin as though he suspected her of fornication, but out of reverence for her holiness, fearing to cohabit with her, as was said above; nor is it similar, for at that time the crime of adultery did not lead simply to separation, but rather to stoning; although that is not what happens in the judgment of the Church today.

3. And to the third objection, the answer is evident from what has been said.

4. Sometimes a man having suspicions about his wife may lie in wait for her, and he can apprehend her in the crime of fornication in front of witnesses, and in this way he can proceed to the accusation. And furthermore, if he cannot establish the fact, there can be forceful suspicions of fornication, which, when they are proved, it seems that fornication is proved, for example if a man and a woman are found alone together at suspect times and places, or naked.

5. A husband can accuse his wife of adultery in two ways. In one way for a separation *a toro* before an ecclesiastical judge, and then charges should be brought without obligation to the law of damages. For the husband attains his aim, as the objection proves. In another way for the punishment of the crime in the secular court; and for this it is necessary that charges be brought first, by which the man obliges himself to the payment of damages if he should lose the trial.

6. As a Decretal says, in criminal matters things proceed in three ways. First, by inquiry, which must be preceded by public infamy, which takes the place of accusation. Secondly, by accusation, which must be preceded by filing suit. Thirdly, by denunciation, which must be preceded by fraternal admonition. Thus the word of the Lord is understood as concerning the way of denunciation, not the way of accusation; for in that case, it is not only a question of correcting the delinquent, but of punishing him for the sake of preserving the common good, which perishes when justice is lacking.

Article 4

Whether a husband and a wife should be judged equals in the matter of separation

1. It seems that a husband and wife should not be judged equals in the matter of separation. For separation is conceded in the New Law in place of divorce, which existed under the Old Law, as is evident from Matt 5. But in divorce the husband and wife were not judged equals: for the man could divorce his wife, but not the reverse. Therefore, neither should they be judged equals in separation.

2. Furthermore, it is more against the law of nature that a wife should have several husbands than that a man should have several wives: for the latter was allowed at certain times, but the former never at all, as was said in Distinction 33, Question 1, Article 1, ad 7. Therefore, the wife sins more in adultery than the husband, and so they should not be adjudged equals.

3. Furthermore, where there is greater harm to one's neighbor, there is a greater sin. But an adulterous wife harms her husband more than an adulterous husband harms his wife: for the adultery of the wife causes uncertainty about the children, but the adultery of the man does not. Therefore, the sin of the wife is greater, and they should not be judged equals.

4. Furthermore, separation is sought for the correction of the crime of adultery. But it belongs more to the husband, who is the head of the wife (I Corinthians 11), to correct his wife than vice versa. Therefore they should not be judged equals in divorce, but the man should have a better standing.

5. But to the contrary, it seems that the wife should have the better standing. For the greater the fragility of the sinner, the more the sin is worthy of forgiveness. But in women there is a greater fragility than in men, by reason of which Chrysostom says that the proper passion of a woman is lust (*luxuria*). And the Philosopher says in Book 7 of the Ethics that women are not said to be incontinent properly speaking, because of their easy inclination to concupiscence, for neither are brute animals able to be continent because of the fact that they have nothing which could stand against their desires. Therefore, in the punishment of separation, women should be spared more.

6. Moreover, the man is considered the head of the woman, so that he might correct her. Therefore he sins more gravely than the woman, and thus he should be punished more.

I answer that in cases of separation the husband and the wife are judged equals, such that the same things are licit and illicit to one as to the other. However they are not to be judged equally in these things: for the reason for a separation is greater in one party than in the other, although there may be sufficient cause in both for separation. For separation is the penalty for adultery, inasmuch as it is against the goods of matrimony. Yet, as concerns the

good of fidelity, to which both the spouses are equally bound, the adultery of one sins as much against marriage as the adultery of the other, and this reason in either is sufficient for a separation. But as concerns the good of children, the adultery of the wife is a greater sin than the adultery of the husband, and therefore it is a greater cause of separation in the wife than in the husband. And thus they are bound to equal things, but not for equal reasons: nor is this unjust, since in either one there is sufficient cause for this penalty: just as it is when two people are condemned to punishment for the same person's death, although one may have sinned more gravely than the other.

1. Divorce was not permitted unless for the sake of avoiding homicide; and since there was greater danger of this in men than in women, for this reason it was permitted for a man to send away his wife, not vice versa.

2,3. These arguments proceed from the fact that in comparison to the good of offspring there may be a greater reason for separation in an adulterous wife than in an adulterous husband. But it does not follow that they should not be judged as equals, as is clear from what was said above.

4. Although the man is the head of his wife, he is head as governor, not as if he were the judge of her, just as neither is she the judge of him. Therefore, in those things which must be done by a judgment, the man can do no more than his wife, and vice versa.

5. The same character of sin is found in adultery as in simple fornication, and even more, because it is made worse by the wound to marriage. If therefore what is common to adultery and fornication is considered, the sin of a man and the sin of a woman are related as things that go too far and things that have been pushed too far. For in women there is more of the humors, and therefore they are more able to be drawn by their desires; but in the man there is more fieriness (**calore**) which excites concupiscence. But even simply speaking, with all other things equal, the man sins more in simple fornication than the woman does, for he has more of the good of reason, which is stronger than any movements of bodily passions. But as concerns the wound to marriage which adultery adds to fornication, for which reason separation is sought, the woman sins more than the man, as is clear from what has been said. And since this is graver than simple fornication, therefore, simply

speaking, the adulterous woman sins more than the adulterous man, with all other things being equal.

6. Although the rule over the woman which the man receives may be an aggravating circumstance, nonetheless, by the circumstance of wounding marriage, which changes the species of the act, the sin is made much more serious, for it turns it into a species of injustice in which someone else's children may secretly be passed off as one's own.

Article 5

Whether after a separation the man may marry another

1. It seems that after a separation a man may marry another. For no one is bound to perpetual continence. But the man in some cases is bound to separate himself from a fornicating wife, as is clear from what has been said. Therefore, it seems that at least in such a case he may marry another.

2. Furthermore, a sinner must not be given a greater occasion of sinning. But if someone who has been sent away because of the fault of fornication is not allowed to seek another union, a greater occasion of sinning is given to him. For it is not probable that someone who could not be continent in marriage will be able to be continent afterward. Therefore it seems that he or she should be allowed to pass to another union.

3. Furthermore, the wife is not bound to the man except in the rendering of the debt, and in cohabitation. But by separation she is absolved of both. Therefore she is free from the law of her husband; therefore she can marry another, and the reasoning runs the same for the man.

4. Furthermore, Matt 19:9 states: *whoever sends away his wife and marries another, except by reason of fornication, commits adultery*. Therefore it seems that if the wife was dismissed by reason of fornication and he has married another, he does not commit adultery. And thus it would be a valid marriage.

But to the contrary, I Corinthians 7:10: *Not I command, but the Lord commands the wife not to leave her husband, but if she has left, to remain unmarried*.

Moreover, no one should reap advantage from sin. But he would, if it were allowed for

an adulterer to pass over to some other more desired marriage, and it would be an occasion of committing adultery to those wishing to seek another marriage. Therefore it is not permitted to the husband or to the wife to seek another union.

I answer that nothing introduced into the marriage may dissolve it; and therefore adultery does not do this either, if it be a valid marriage: for the conjugal bond remains, as Augustine says, between them while they live, because neither separation nor union with another can remove it; and therefore it is not permitted to one, when the other is living, to pass over to another embrace.

1. Although *per se* no one is obliged to continence, nevertheless *per accidens* it can happen that someone is obliged; as if one's wife should contract some incurable illness, which could not allow carnal intimacy. And likewise, too, if she should suffer incorrigibly from some spiritual infirmity, like fornication.

2. The very embarrassment which is the result of separation, should restrain such a person from sin. For if it cannot restrain her, it is a lesser evil if she alone should sin, than if her husband should be a participant in her sin.

3. Although after their separation the wife is not bound to render the debt to and to cohabit with an adulterous husband, nevertheless the matrimonial bond, by which she was bound to this, remains even after. Therefore she may not pass over to another union while her husband lives. Yet she can take a vow of continence against her husband's will, unless the Church seems to have been deceived by false witnesses when it was granting the separation: for in such a case, even if she had made a vow of religious profession, she would be restored to her husband, and bound to render him the debt. But she would not be allowed to demand it.

4. That exception which is in the words of the Lord refers to the dismissal of the wife: and therefore the objection proceeds on a false understanding.

Article 6

Whether after the separation, the husband and wife may be reconciled

1. It seems that after a separation, the husband and wife may be not be reconciled. For this is the rule in the law: what has once

been well determined should be retracted by no appeal (*iteratione*). But it has been determined by the judgment of the Church that they should be separated. Therefore they cannot be reconciled afterward.

2. Furthermore, if a reconciliation were possible, it seems particularly that after the repentance of the wife the man would be bound to take her back. But he is not bound to do this, for even in the trial a wife cannot cite her own repentance as a defence against a husband accusing her of fornication. Therefore in no way can they be reconciled.

3. Furthermore, if a reconciliation were possible, it would seem that the adulterous wife would be bound to return to a husband who is inviting her back. But she is not bound to this; for they have already been separated by the judgment of the Church. Therefore, etc.

4. Furthermore, if it is allowed to reconcile with an adulterous wife, it should especially happen when the husband is found to have committed adultery after the separation. But in that case the wife cannot force him to a reconciliation, since the separation was justly granted. And therefore there is no way for them to be reconciled.

5. Furthermore, if a secretly adulterous husband sends away his wife, convicted of adultery by the judgment of the Church, the separation does not seem to be justly done. But nonetheless the man is not bound to be reconciled with his wife; for the wife cannot prove the adultery of the husband in court. Therefore, much less when the separation is justly granted, can a reconciliation take place.

But to the contrary is what is said in 1 Corinthians 7:2: *if she has left, she must remain unmarried, or be reconciled to her own husband*.

Moreover, the husband need not have sent her away after the fornication. Therefore, by the same reasoning he can reconcile himself to her.

I answer that if after the separation the wife has amended her life and done penance for her sin, her husband can reconcile with her. But if she remains incorrigible in sin, he should not take her back to himself, by the same reasoning by which he was not permitted to retain her when she did not wish to cease sinning.

1. The sentence of the Church granting a separation did not compel a separation, but only granted permission. Therefore without

retraction of this sentence a reconciliation can take place.

2. The repentance of the wife should induce the husband not to accuse or to send away the wife who fornicated. But nevertheless, he cannot be forced to this, nor can the wife through her repentance prevent him from making the accusation: for in the person who withdraws from sin as regards both the act of sin and the stain, something still remains of the culpability (*reatu*). And even someone having no more culpability (*cessante reatu*) before God, may remain culpable of penalty under human judgment. For man does not see the heart as God does.

3. What is introduced in someone's favor does not prejudice any of his rights; wherefore, when separation is granted in the husband's favor, it does not take away from him the right of asking for the marital debt, or of taking back his wife. For which reason the wife is bound to render it to him, and to return to him if she is invited, unless with his permission she has taken a vow of continence.

4. According to the strict interpretation of the law, a formerly innocent husband should not be forced to take back his adulterous wife because of the adultery which he committed after the separation. But in the interest of justice, the judge by reason of his office should urge him to be careful of the danger to his soul and the scandal to others, although the wife cannot request a reconciliation.

5. If the adultery of the husband is hidden, it does not remove the adulterous wife's right of bringing it as a defense against the accusation of the husband, although the proof may be lacking to her. Therefore, the husband sins by requesting a separation; and if after the granting of separation the wife should request the debt or a reconciliation, the husband is bound to both.

Exposition

He is a patron of disgrace who conceals the crime of his wife. Against this, Proverbs 11:13: *Faithful is the one who conceals the crime of his friend.* And it must be said that this is to be understood when the concealment is not in prejudice of correction; otherwise, the one who conceals offers his protection to the disgrace.

It is often asked whether it is valid to take someone in marriage who has already been polluted by adultery. It should be known that there are many offences which because of their enormity prevent marriage from being contracted. The first is incest; the second, uxoricide; the third, kidnapping the bride of another; fourth, when someone conspires in marriage to receive his own godchild; fifth, killing a priest; sixth, when someone feigns (*peragit*) solemn repentance. But the crimes mentioned do not invalidate a marriage that has been contracted. Yet there are certain crimes which void a marriage that has been contracted. One of these is when someone lies with a certain married woman, and because of this plots the death of her husband and does it. For in this instance the two should not contract with each other; and if they have contracted, they are separated. The second is when someone keeps his word to his partner in adultery that he will take her as his wife. But this is to be understood when the adulterous man as well as the adulterous woman knew the impediment; otherwise the marriage is not voided after it was contracted. The third is when someone has already contracted with someone *de facto*, for the first marriage prevents the second one from being valid; wherefore if the first was not a valid marriage, the second would stand. For it must be known that in the second and third cases, that is, when a promise is given that a marriage will be contracted, and when a marriage has been contracted *de facto* by words of the present, unless carnal defilement took place, the marriage following from a new contract is not voided because of this, after the death of the husband.

DISTINCTION 36

Prologue

After the Master has considered impotence to have intercourse, which *de facto* impedes the marital act from taking place at all, here he addresses the impediment of servile condition, which impedes the marital act from taking place freely; and this is divided into two parts: in the first he considers the servile condition, in the second he gives an epilogue, continuing from what he has said before to consequences: *We have accomplished these two things, etc...* The first part is divided into two parts: in the first he considers the servile condition, in the second the impediment of insufficient age, since such a person is no different from a slave, as long as he is under his guardians (Galatians 4): *Here also it must be known that according to the laws, a boy before he is fourteen years of age, or a girl before she is twelve years of age are unable to enter marriage.* The first is divided into two: first, he considers when servitude precedes the marriage; secondly, he addresses the slavery that is introduced to an existing marriage, where he states: *It is also to be noted, etc...*

The first is divided into two: first he considers the pre-existing slavery which is the condition of only one party in the marriage; secondly, that servitude which is pre-existing in both parties, where he states: *Also it is to be inquired if one person's slave receives the slave-girl of another, whether there may be a union between the two of them.*

Here five things will be sought: 1) Whether the condition of slavery impedes marriage; 2) Whether a slave can contract marriage without the consent of his master; 3) Concerning the servitude which is introduced during the marriage; 4) Whether the children follow the condition of their mother; 5) Whether a defect of age impedes marriage.

Article 1

Whether the condition of servitude impedes marriage

1. It seems that the condition of servitude does not impede marriage. For nothing impedes marriage except what is contrary to it in itself. But slavery has nothing in it contrary to

marriage; otherwise, there could not be marriages between slaves. Therefore, slavery does not impede marriage.

2. Furthermore, what is against nature cannot impede something that is according to nature. But slavery is against nature; for as Gregory says, *it is against nature for a man to want to dominate another man*, which is also evident from what is said to man in Genesis 1:26: *let him be master of the fish of the sea, etc.*, but not that he should be master of a man. Therefore, it cannot impede marriage, which is natural.

3. Furthermore, if marriage is impeded, either this occurs by natural law or by positive law. But this does not occur by natural law, for according to natural law, all men are equal, as Gregory states in the place quoted above; and in the beginning of the Digests it is stated that slavery is not of natural law; for positive law comes to us from natural law, as Cicero says. Therefore, according to no law can slavery impede marriage.

4. Furthermore, what impedes marriage impedes it equally whether it be known or unknown, as is clear in the case of consanguinity. But the slavery of one person which is known by another, does not impede marriage. Therefore, slavery in itself, poses no impediment to marriage. Therefore, it should not be counted as an impediment to marriage, *per se* and distinct from all the others.

5. Furthermore, just as it happens that there is error about the condition of servitude, so that someone may be believed a free man who is really a slave; so also there can be error about freedom, so that someone is believed to be a slave who is in fact free. But freedom is not considered an impediment to matrimony. Therefore, slavery should not be considered one either.

6. Furthermore, the disease of leprosy endangers the partnership of marriage and impedes the good of offspring more than slavery does. But leprosy is not counted among the impediments to matrimony. Therefore, neither should slavery be.

But to the contrary is what the Decretals say about the marriage of slaves, that an error about their condition impedes marriage from being contracted, and voids the contract.

Moreover, marriage concerns goods desirable in themselves, and as such, it has dignity. But slavery is to be shunned in itself.

Therefore, marriage and slavery are contraries, and thus slavery impedes marriage.

I answer that in the marriage contract one spouse is obligated to another in the rendering of the debt; and therefore, if the one who obliges himself is unable to acquit himself, the ignorance of this inability in the person to whom the obligation is made, destroys the contract.

However, just as by impotence in intercourse someone becomes unable to pay the debt, so that it cannot be resolved in any way; likewise in slavery he becomes unable to render the debt freely; and therefore just as unknown impotence in intercourse impedes marriage, but not if it is known; so also the unknown condition of slavery impedes marriage, but not if the servitude is known.

1. Slavery is contrary to marriage as concerns its act, for which someone is obliged to another in marriage, which act cannot be accomplished freely; and also as concerns the good of offspring, who are given a worse condition by the slavery of their parents.

But since anyone is able of his own accord to submit to some loss in what is due to him, then if one spouse knows the other's condition of slavery, the marriage would hold nevertheless. Likewise, also, since in marriage there is an equal obligation on both parties for the rendering of the debt, someone cannot require a greater obligation on the part of another than he can fulfill himself; and because of this, even if a slave should contract with a slave-girl whom he believes to be free, the marriage is not impeded because of this. Thus it is clear that slavery does not impede marriage unless it is without the knowledge of one of the spouses, even if it be that party who is of a free condition; and therefore, nothing prohibits marriage between slaves, or between a free man and a slave-girl.

2. Nothing prevents something from being against nature as concerns nature's primary intention, but not against nature as concerns its secondary intention; just as all corruption and defect and decay is against nature, as is stated in Book 2 of *On the Heavens and the Earth*, for nature intends being and perfection; but it is not against the second intention of nature, for by the fact that nature cannot preserve being in one, it preserves it in another, which generates the corruption of the first; and when nature cannot bring something to a greater perfection, it leads it to a lesser one; as when it cannot

make a male, it makes a female, which is "a defective male," as it says in Book 2 of *On the Generation of Animals*. Likewise also I say that slavery is against the first intention of nature, but not against the second; for natural reason inclines to this, and nature seeks this: that anything may be good; but by the fact that someone sins, it is also nature's inclination that sin incurs punishment; and thus slavery was introduced as a punishment for sin. Nor is it unfitting for something natural to be impeded by something that is unnatural in this way; for in the same way marriage is impeded by impotence in intercourse, which is against nature in the way stated.

3. Natural law dictates that punishment be inflicted for fault, and that nothing without fault should be punished. But to determine the punishment according to the condition of the person and the fault, is for positive law; and therefore, slavery, which is a certain determinate penalty, concerns positive law, and departs from natural law as the determined from the undetermined; and with the same positive law determining, it has happened that unknown slavery may impede marriage, lest someone without fault be penalized: for it is a certain penalty for a wife that her husband be a slave, and vice versa.

4. There are some impediments which make marriage illicit. And since our wills do not make something to be illicit or licit, but rather the law to which our wills should be subject, therefore, such ignorance of the impediment that removes willing or knowledge, does nothing to the validity of the marriage. And such an impediment is affinity, or a vow, or others like these. However, there are some impediments which make marriage incapable of fulfilling what is owed; and since it is within the power of our wills to release a debt that is owed to us, therefore, this kind of impediment, if it be known, does not take away matrimony, but only when ignorance makes willingness impossible. And slavery is an impediment of this kind, as is impotence in intercourse. And since they also have in themselves a certain *ratio* of impediment, they are counted as specific impediments beyond the impediment of error. But a change in the person is not considered a specific impediment beyond error, for another person substituted does not have the *ratio* of impediment, unless from the intention of the one contracting marriage.

5. Liberty does not impede the marital act; wherefore, an unknown free condition does not impede marriage.

6. Leprosy does not impede marriage as concerns its first act, by the fact that lepers can freely render the marital debt, although they impose certain difficulties on the marriage as concerns its second effects; and therefore, it does not impede matrimony in the same way that slavery does.

Article 2

Whether a slave can contract marriage without the consent of his master

1. It seems that a slave cannot contract marriage without the consent of his master. For no one can give to someone else what belongs to another, without his consent. But a slave is the belonging of his master. Therefore he cannot give the power over his own body to his wife by contracting marriage without the consent of his master.

2. Furthermore, a slave is bound to obey his master. But his master can command him not to consent in marriage. Therefore, without his consent, he cannot contract marriage.

3. Furthermore, after having contracted marriage, a slave is bound to render the debt to his wife by command of divine law. But at the same time that the wife requests it, the master could impose some other service upon the slave, which he could not do if he wished to be free for carnal intimacy. Therefore, if without the consent of his master a slave could contract marriage, the master would be deprived of the service owed him through no fault of his; which should not happen.

4. Furthermore, a master can sell his slave into foreign lands, where the wife could not follow him either because of physical weakness, or because of imminent danger to her faith, if he were sold to infidels, or even because her master did not permit it, if she were a slave; and thus the marriage would be dissolved, which is unfitting. Therefore, a slave cannot contract marriage without the consent of his master.

5. Furthermore, an obligation in which a man binds himself to divine service is preferable to that in which a man subjects himself to his wife. But a slave cannot enter religious life or be promoted to the priesthood

without the consent of his master. Therefore much less can he be joined in marriage without his consent.

But to the contrary, Galatians 3:28 says: *In Christ Jesus there is neither slave nor free.* Therefore, in the faith of Christ Jesus the same freedom for contracting marriage belongs to slaves and free men.

Moreover, slavery comes from positive law. But marriage comes from divine and natural law. Since therefore positive law does not prejudice natural or divine law, it seems that a slave can contract marriage without the consent of his master.

I answer that since positive law, as was said, proceeds from natural law, for this reason slavery, which comes from positive law, cannot prejudice those things which are of natural law. Yet as the natural appetite is ordered to the conservation of the individual, so it is ordered to the conservation of the species through generation. Wherefore, as a slave is not subjected to his master without being free to eat and to sleep, and other things of this kind which belong to the necessity of the body without which nature cannot be preserved, so also he is not subject to him such that he cannot freely contract marriage, even if his master does not know or forbids it.

1. A slave is his master's belonging as regards those things which are super-added to nature; but as to natural things they are equals. For this reason in those things which pertain to natural acts, a slave can furnish to another the power over his own body in marriage, against the will of his master.

2. A slave is bound to obey his master in those things that the master can licitly command. But just as the master cannot licitly command his servant not to eat or sleep, neither can he command that the slave abstain from contracting marriage. For how someone uses what is his own does not concern the legislator; therefore if the master commands his slave not to contract marriage, the slave is not bound to obey.

3. If a slave contracts marriage with his master's permission, then he should leave undone the service that his master commands, and render the debt to his wife: for by the fact that the master allowed the slave to contract matrimony, it is understood that he conceded all the things that marriage requires. But if the marriage was contracted without the master's knowledge or permission, the slave is not

bound to render the debt but rather to obey his master, if both cannot be done at the same time. But nevertheless, in these things many particulars should be considered, as also in all human acts; for example, the imminent danger to the chastity of the wife, and the impediment that it will generate to the service commanded if he renders the debt, and other things like this. By thinking through these things properly it could be decided whom the slave would be bound to obey, his master or his wife.

4. In such cases it is said that the master should be compelled not to sell his slave such that he places rather heavy burdens on the marriage, especially when he doesn't lack the possibility of selling his slave at a just price somewhere else.

5. Through religious life and holy orders someone is obliged to undertake divine service all the time; but a man is not bound to render the debt to his wife at all times, but at suitable times; and therefore it is not the same. Furthermore, someone who enters religious life and receives holy orders, obliges himself to works which exceed those natural things to which a master's power extends. But this is not the case in those natural things to which one obliges himself in marriage; for which reason one could vow continence without the consent of one's master.

Article 3

Whether slavery can be introduced during marriage

1. It seems that slavery cannot be introduced into a marriage, such that the husband be sold as a slave. Since what is done in fraud and prejudice of another's rights should not be enforceable (*ratum*). But someone who sells himself as a slave, does this sometimes in fraud against matrimony, and to the detriment of his wife. Therefore, such a sale should not be able to bind someone in slavery.

2. Furthermore, two favorable things outweigh one not favorable thing. But marriage and freedom enjoy the favor of the law, and are contrary to servitude, which is not favored by the law. Therefore, this kind of slavery should be thoroughly cancelled.

3. Furthermore, in marriage the husband and the wife are judged equals, as was stated above in Distinction 31. But the wife cannot give her self as a slave against the will of the

husband. Therefore, neither can the husband against the will of the wife.

4. Furthermore, in nature, what impedes the generation of a thing, destroys also the thing generated. But the slavery of the man without the knowledge of his wife impedes the marriage contract made beforehand. Therefore, if it could be introduced into the marriage, it would destroy the marriage, which is unfitting.

But to the contrary, anyone can give to another what is his own. But a man is *sui juris*, when he is free. Therefore, he can give to another the right to himself.

Moreover, a slave can take a wife against the will of his master, as was stated. Therefore, by the same rationale, a man may subject himself to a master against the will of his wife.

I answer that a man is subject to his wife only in those things which pertain to the act of nature, in which they are equals, to which the subjection of slavery does not extend; and therefore, a man can give himself as a slave even against the will of his wife: not that his marriage would be dissolved by this, though, for no impediment superimposed upon an existing marriage can dissolve it, as was stated above, Distinction 34, Question 1, Article 1, ad 6.

1. Fraud can easily injure the one who commits it, but it cannot generate prejudice of another's rights; and therefore, if a man defrauds his wife by giving himself as a slave, he himself will reap the blame, losing the inestimable good of freedom. But by this he can do nothing to prejudice the rights of his wife, since he is bound to render the debt to her when she asks, and to all those things which marriage requires: for he cannot withdraw from these things at his master's command.

2. As far as slavery is contrary to matrimony, matrimony takes precedence over servitude: for then the slave is bound to render the debt to his wife, even against the will of his master.

3. Although in the marital act and those things which have to do with nature, the husband and wife are judged equals, the condition of slavery does not extend to this. Nonetheless, as regards the management of the home, and other things like this superadded, the man is the head of the woman, and should correct her, but not the reverse; and therefore, the wife cannot give herself as a slave against the will of her husband.

4. This argument proceeds from corruptible things, in which many things also impede generation which are not enough to destroy the thing generated. But among things that endure perpetually, an impediment can have the effect that something perpetual will not begin to be, but not that it will stop being once it exists, as, for example, the rational soul; and it is also the same way with marriage, which is a bond remaining perpetually during the present life.

Article 4

Whether the children should follow the condition of their father

1. It seems that the children should follow the condition of their father. For denomination happens from the more noble. But the father is nobler in generation than the mother. Therefore, etc.

2. Furthermore, the being of a thing depends more on its form than on its matter. But in generation, the father gives the form, the mother the matter, as is stated in Book 2 of On the Generation of Animals. Therefore, the children should follow the father more than the mother.

3. Something should especially follow what it resembles more. But a son is more like his father than his mother, as a daughter is more like her mother. Therefore, at least a son should follow his father's condition, and a daughter her mother's.

4. Furthermore, in sacred Scripture genealogy is not computed through the women, but through the men. Therefore, children should follow more their father than their mother.

But to the contrary, if someone sows in the land of another, his fruit belongs to whoever owns the land. But the womb of the woman is related to the seed of the man as land is related to seed.

Moreover, we see this among other animals that are born from animals of diverse species, that the young follow more the mother than the father; for which reason a mule that is born from crossing a mare and a male donkey resembles horses more than one which is born from crossing a she-donkey and a stallion. And it should be the same way among humans.

I answer that according to civil laws, the young follow the womb. And this is reasonable, for children have from their fathers their formal complement, but from their mothers they have the substance of their bodies. Yet slavery is a corporeal condition, since a slave is as the instrument of his master in operating. Therefore, children follow their mother in their condition of freedom or servitude; but in those things which pertain to dignity, which is the form of a thing, they follow their father, as it is in honors and citizenship (*municipiis*) and inheritance and other things: and in this the canons and the law of Moses agree, as is clear from Exodus 21. However, in certain lands which are not ruled by civil law, the offspring follow the lower condition; so that if the father is a slave, even if the mother is a freewoman, the children will be slaves; but not if, after the marriage is officiated, the father should indenture himself as a slave against the will of his wife, and likewise if it be the other way around. However, if both are of a servile condition, and belong to different masters, then they divide the children, if there are many of them, or if there is only one, one master compensates the other for the price, and he receives the child born into his own possession. Yet it is not credible that such a custom could be as reasonable as the one that was determined by many wise men through long study. This is found also in natural things that something is received by the recipient in the mode of the recipient, and not in the mode of the giver; and therefore, it is reasonable that the seed received by the mother is endowed with her condition.

1. Although the father is a nobler principle, the mother gives corporeal substance, on which the condition of slavery depends.

2. In those things which belong to the *ratio* of the species, a son is more like his father than his mother; but in material conditions he should be more like his mother than his father, for a thing has specific being from its form, but material conditions from its material.

3. A son resembles his father by reason of the form which he has in his own complement, as his father does too; and therefore this argument does not address the issue.

4. Since the honor of the son is more from his father than from his mother, therefore in genealogies in Scripture and according to the common custom sons are named more from

their father than from their mother; nevertheless, in those things which regard slavery, they follow their mother more.

Article 5

Whether a defect in age impedes marriage

1. It seems that a defect in age does not impede matrimony. For according to the laws children receive a guardian up until twenty-five years of age. Therefore, it seems that up to that time their reason is not sound enough for the consent, and so it seems that that should be the age established by law for entering marriage. But before that time marriage can be contracted. Therefore, a defect of the age established by law does not impede marriage.

2. Furthermore, just as the bond of religious life is perpetual, so also is the bond of matrimony. But before eighteen years of age one cannot make the profession of religious life, according to the new statutes. Therefore, neither would it impede the contracting of marriage if there were a defect of age.

3. Furthermore, just as consent on the part of the man is required for matrimony, so it is also required on the part of the woman. But the woman can contract marriage before the fourteenth year. Therefore, so can the man.

4. Furthermore, impotence to have intercourse, unless it be perpetual and unknown, does not impede matrimony. But the defect of age is neither perpetual nor unknown.

5. Furthermore, it is not contained in any of the aforementioned impediments. And so it does not seem to be an impediment to matrimony.

But to the contrary is what the Decretals say, that a boy who cannot render the debt is not suited to marriage. But before fourteen years of age, for the most part, he cannot render the debt, as is evident from Book 9 of the History of Animals. Therefore, etc.

Moreover, nature has fixed a limit to size and growth for all constant things: and thus it seems, since marriage is natural, that it should have a determined time, by the defect of which it would be impeded.

I answer that because it is made in the mode of a certain contract, marriage is subject to the ordering of positive law, just as other contracts are. For this reason, according to law it is determined that before that time of

discretion in which both parties can sufficiently deliberate about marriage, and render the debt to each other, marriage cannot be contracted; and if this has not happened, it would be invalidated.

However, this time, for the most part, is at fourteen years for males, but twelve years for females, and the reason for this was given above in Distinctio 27, Quaestio 2, Article 3 (Corpus). For although the precepts of positive law follow what happens for the most part, if someone should arrive at the required maturity before the time established, such that the strength of his nature and his reason should supply the defect of age, the marriage is not dissolved; and therefore, if the parties contracting before the age of puberty were joined carnally before the age established, nevertheless, the marriage would stand as indissoluble.

1. In those things to which nature inclines, not as much strength of reason for deliberating is required, as in other things. And therefore, someone considering marriage can consent sufficiently before he would be able to manage his own affairs in other contracts.

2. And the same thing must be said to the second objection: for the religious vow is for those who are above the inclination of nature, for it is more difficult than marriage.

3. A woman arrives sooner at the age of puberty than a man, as is stated in Book 9 of the History of Animals, and as was said above, in Distinctio 37, Question 2, Article 2, ad 3. And therefore it is not the same for both.

4. In this instance, there is not only an impediment because of the inability to have intercourse, but because of a defect of reason, which until then is not sufficient for properly making that consent which could endure perpetually.

5. Just as the impediment of madness is reduced to the impediment of error, so also is the impediment of insufficient age, since a man does not have full use of his free will.

Exposition

Because if she were detained in servitude, if he can buy her back from servitude, let him do it. If he cannot, let him take another if he wishes. It should be known, that if before the slavery of his wife were discovered, if there was a doubt about it, let him request the debt. If

a man be moved by a light suspicion, he should request the debt: nor would any prejudice to his rights be generated by this. However, if he has probable grounds to wonder about it, or if he should strongly suspect it, or if he should know it for certain, he should not render the debt to her, by the command of the Church, since he would either prejudice his own rights, if he should know her with husbandly affection, or else he would be fornicating.

DISTINCTION 37

Prologue

After the Master has treated of impediments which make persons something in-between wholly eligible and wholly ineligible, here he considers the impediments which make persons wholly ineligible; and this is divided into two parts: in the first, he considers the impediments which make persons wholly ineligible with respect to any other person; in the second part he considers impediments which make persons ineligible with respect to certain persons, and not everyone (Distinction 39), where he states: *after these things, the disparity of cult must be seen*. The first is divided into two: first, he addresses the impediment of holy orders; secondly, he addresses the impediment of the religious vow (Distinction 38), where he states: *Now let us look closely at religious vows*. The first part is divided in two: In the first, he shows how marriage is impeded by holy orders; in the second, how it is impeded by the crime of uxoricide, where he says: *To these things must be added, etc...*

Here is a twofold question: First, concerning the impediment of holy orders. Second, concerning uxoricide.

Regarding the first question, two things are to be sought: 1) Whether pre-existing holy orders impedes marriage; 2) Whether marriage should be allowed to follow existing holy orders.

Article 1

Whether holy orders impedes matrimony

1. It seems that holy orders does not impede matrimony. For nothing is impeded unless by its contrary. But orders is not the contrary of marriage, since both are sacraments. Therefore, it cannot impede it.

2. Furthermore, we have the same holy orders as the Eastern church. But marriage is not impeded in the Eastern Church. Therefore, it should not be in the western church.

3. Furthermore, marriage signifies the union of Christ and the Church. But it is fitting that precisely this be signified among those men who are ministers of Christ, namely, those

ordained. Therefore, holy orders does not impede matrimony.

4. Furthermore, every level of holy orders are ordained to something spiritual. But holy orders cannot impede marriage unless for a spiritual reason. Therefore, if any level of orders impede marriage, all levels should impede it. Which is false.

5. Furthermore, all those ordained can have ecclesiastical benefits, and can enjoy the privilege of clerics, and do so equally. And if therefore, because of this holy orders impede matrimony, so that those bound to wives cannot have an ecclesiastical benefit, nor enjoy the privileges of clerics, as the jurists say, then any orders would impede marriage; which is false, as is apparent from the Decretals of Alexander, and thus no orders, as it seems, should impede marriage.

But to the contrary is what the Decretals say in the same place: *if in the subdiaconate and other superior orders, wives are known to have been taken, compel them to send away their wives*. And this would not be the case, if it were a valid marriage.

Moreover, no one vowing continence can contract matrimony. But there are certain orders which have a vow of continence attached, as is evident from the text. Therefore, such orders impede matrimony.

I answer that the order of priesthood by its its very nature is characterized by a certain congruence that it should impede marriage; for in holy orders sacred vessels are constituted and they handle the sacraments; and therefore it is becoming that they should preserve a physical purity through continence. But what impedes matrimony does so by the decision of the Church, although differently in the Roman rite than in the Greek rite. For among the Byzantines, it impedes marriage from being contracted by virtue of orders alone; but among the Roman Catholics, it impedes by virtue of orders, and also by the vow of continence, which is attached to holy orders; because even if someone does not profess that in words, by the very fact that he receives orders, according to the western rite of the Church he is understood to have taken that vow. And therefore, among the Greeks and other Eastern churches, holy orders impedes marriage from being contracted, but not the use of a marriage already contracted; for they can avail themselves of a marriage contracted beforehand, although they cannot contract

marriage again. But in the Western church, it impedes marriage and the use of marriage; unless perhaps a man has received holy orders without his wife's knowledge and against her will. For by this no prejudice to her rights can be generated. However, on the fact that holy orders are distinguished from non-holy orders now, as in the early Church, see above, Distinction 24, Question 2, Article 1, *questiuncula* 3.

1. Although holy orders may not be contrary to marriage as a sacrament, it does have a certain repugnance to it by reason of its act, which impedes spiritual acts.

2. Now it is clear that this objection proceeds from false premises. For both orders impede marriage from being contracted, although both do not have the vow attached to them.

3. Those who are established in holy orders, signify Christ by nobler acts than those who are joined in marriage, just as was evident in the treatise on orders (Distinction 23, Question 2, Article 1, Question 3). And therefore the argument does not follow.

4. Those who have had minor orders conferred on them are not prohibited from contracting matrimony by virtue of orders, for although those orders are deputed with certain spiritual things, they do not however have immediate access to handling sacred things as those who are in the order of priesthood. But according to the statutes of the Western church, the use of matrimony does impede the exercise of lower orders for the sake of conserving a greater rectitude in the duties of the Church. And since someone is bound by his benefice to the exercise of orders, and by this very fact enjoys clerical privilege, therefore these things are taken away from married clerics in the Roman rite.

5. And by this the solution to the last objection is clear.

Article 2

Whether holy orders can be received after marriage

1. It seems that holy orders cannot supervene upon marriage. For the stronger prejudices the rights of the less strong. But the spiritual bond is stronger than the corporeal. Therefore if someone joined in marriage should receive orders, a prejudice would be generated

to the wife, that she could not demand the debt; since orders is a spiritual bond, and marriage a corporeal one; and thus it seems that someone could not receive holy orders after having consummated his marriage.

2. After the marriage has been consummated, one spouse cannot vow continence without the consent of the other spouse. But holy orders has a vow of continence attached to it. Therefore, if a man received holy orders against his wife's will, the unwilling wife would be forced to keep continence, for it would not be possible to marry another, while her husband is living.

3. Furthermore, a man cannot even be free for prayer for a time without the consent of his wife, as is shown in 1 Corinthians 7. But among those of the Eastern rite, the men who are ordained in holy orders are bound to continence at the time in which they execute their office. Therefore, neither can they be ordained without the consent of their wives, and much less can Latin rite men.

4. Furthermore, a husband and wife are judged equals. But a Greek priest whose wife has died cannot take another. Therefore, neither can the wife if her husband has died. But the ability to marry after the death of her husband cannot be taken away from her by the act of that husband. Therefore, a man cannot receive orders after matrimony.

5. Furthermore, as much as marriage is opposed to orders, so much are orders opposed to marriage. But pre-existing holy orders impede marriage. Therefore, the reverse is also true.

But to the contrary, religious are bound to continence just as those who are in holy orders. But after marriage someone can enter religious life if his wife permits or if she has died. Therefore, he may also receive orders.

Furthermore, someone can become a slave to men after marriage. Therefore, he may also become a slave to God through the reception of holy orders.

I answer that marriage does not impede the reception of holy orders, for if a married man undertakes holy orders, even if his wife contradicts it, nevertheless he receives the character of orders, but he lacks the faculty of exercise of orders. If however, with the permission of his wife, or after her death, he receives holy orders, he receives orders and their exercise.

1. The bond of orders overrules the bond of matrimony as regards the rendering of the debt, by reason of which it creates a certain tension with marriage on the part of the one who receives orders. For he cannot request the debt, nor is his wife bound to render it to him. But nevertheless the marriage is not dissolved on the part of the other spouse, for the husband is bound to render the debt to his wife, if he cannot induce her to remain continent.

2. If the wife should know, and the man should receive holy orders with her consent, she is bound to vow perpetual continence. But she is not bound to enter religious life, if she does not fear for her own chastity because of the fact that her husband has taken a solemn vow. But not so if he has taken a simple vow. If, however, he has received holy orders without her consent, she is not bound; for by this fact none of her rights are prejudiced.

3. It seems more probable (although certain people have said the contrary), that even the Greeks do not undertake holy orders without the consent of their wives, since at least at the time of their ministry, their wives would be cheated of the rendering of the debt, and they are not able to be cheated of this according to the order of the law, if their husbands received orders against their will or knowledge.

4. As is said, by the very fact that, among the Greeks, the woman consents that her husband receives orders, she obliges herself to never marry another for the rest of her life; for the signification of marriage is not preserved, which is particularly required in the marriage of a priest. If however, he is ordained without her consent, she does not seem to be held to this.

5. Marriage has our consent as its cause; however, orders does not, but rather has a sacramental ordination from God; and therefore marriage can be impeded by pre-existing orders, such that it is not a valid marriage; but orders cannot be impeded by marriage such that it is not a true ordination; for the strength of the sacraments is immutable, but the act of a man may be impeded.

QUESTION 2

Prologue

Here uxoricide is to be considered. Concerning it two things are to be asked: 1) whether in any case it could be licit to kill one's wife; 2) whether uxoricide impedes matrimony.

Article 1

Whether it may be permitted for a man to kill his wife if he has apprehended her in the act of adultery

1. It seems that it would be licit for a man, apprehending his wife in the act of adultery, to kill her. For divine law commanded that adulterous women be stoned. But that person who executes divine law does not sin. Therefore, neither does someone sin by killing his own wife, if she be an adulterer.

2. Furthermore, that which is permitted to the law, is permitted to the one to whom the law entrusts it. But it is permitted for the law to kill an adulterous woman, or any person who is condemned to death. Since, therefore, the law has committed to man the killing of a wife apprehended in the act of adultery, it seems that it permits him to do this.

3. Furthermore, a man has greater power over an adulterous wife than he has over the one who committed adultery with her. But if a man struck a cleric whom he found with his wife, he is not excommunicated. Therefore, it seems that also it is permitted to kill one's own wife when one catches her in adultery.

4. Furthermore, it is for the man to correct his own wife. But correction is made by the infliction of just penalties. Therefore, since the just penalty for adultery is death, which is a capital crime, it seems that it is permitted for a man to kill an adulterous wife.

But to the contrary is said in the text that the Church of God, which is never constrained by secular laws, has no sword except the spiritual one. Therefore, it seems that for someone who wants to be in the Church, it would not be a licit use of its law which would permit uxoricide.

Furthermore, a husband and wife are judged equals. But it is not permitted for a wife to kill her husband when she has caught him in

adultery. Therefore, no more is it permitted to the husband to kill his wife.

I answer that for a man to kill his wife happens it two ways. In one way through civil judgment; and thus there is no doubt that without sinning, from a zeal for justice, not motivated by the desire for revenge or hatred, a man is able to accuse an adulterous wife criminally in a secular court, and request the death penalty established by law; just as also he can accuse someone of homicide, or of another crime. Nevertheless, such an accusation cannot be made in ecclesiastical courts; for the Church does not have a physical sword, as it says in the text. In another way, he can slay her himself, without her having been convicted in court. And to kill her this way, outside the act of adultery, no matter how much he may know her to be adulterous, is not allowed either by civil laws or according to the law of conscience. But civil law counts it almost licit to kill her if she was caught in the very act--not as though commanding it, but by not inflicting the penalty for homicide,³⁸² because of the extreme provocation which a man has to kill his wife in such a situation. But in this the Church is not bound by human laws, so it may judge him liable to eternal punishment, or to punishment to be applied by ecclesiastical judgment, from the fact that he is not liable to a penalty through the secular courts. And therefore, in no case is it permitted for a man to kill his wife by his own authority.

1. The law has not committed that penalty to be inflicted by private persons, but by public persons, who hold the office deputed for this; however, a husband is not the judge of his wife; and therefore, he cannot kill her, but only accuse her before the judge.

2. Civil law has not committed the execution of a wife to her husband as though commanding it (for if it were so, he would not be sinning, as neither does the minister of the court sin by executing a thief condemned to death), but it has permitted it, by not applying the penalty; for which reason it has also set forth certain obstacles, by which men might be prevented from uxoricide.

3. From this fact it is not proved that it is simply allowed, but only as regards immunity

³⁸² Parma edition has *quasi poenam homicidii inferens*; we have translated according to the Piana edition: *quasi poenam homicidii non infligens*.

from some penalty; for excommunication is also a certain penalty.

4. Community can be in two ways: certain communities are domestic, like any family; and certain are political, like a city or kingdom. Therefore, the man who rules the second kind of community, such as a king or judge, can inflict a penalty both in order to correct a person, and to expell for the purification of the community that he cares for. But that man who rules in the first kind of community, like a paterfamilias, cannot inflict punishment unless it is a corrective punishment, which does not extend beyond the boundaries of reform, but the death penalty does cross these limits. And therefore, a husband, who is set over his wife in this way, cannot kill her, but only reprove her in other ways.

Article 2

Whether uxoricide impedes matrimony

1. It seems that uxoricide does not impede matrimony. For adultery is more directly opposed to marriage than homicide. But adultery does not impede marriage. Therefore, neither does the homicide of one's wife.

2. Furthermore, it is a graver sin to kill one's mother than to kill one's wife, for it is never permitted to strike one's mother, but it is permitted to strike one's wife. But killing one's mother does not impede marriage. Therefore, neither does killing one's wife.

3. Furthermore, someone who kills the wife of another because of adultery sins more than someone who kills his own wife; inasmuch as he has less motive, and her correction is less his business. But whoever kills the wife of another is not impeded from marriage. Therefore, neither is someone who kills his own wife.

4. Furthermore, an effect is removed by the removal of its cause. But the sin of homicide can be removed by penance. Therefore, so can the impediment to marriage which is caused by it; and thus it seems that after the completion of penance it is not prohibited to contract marriage.

But against this is what the canon states: *Someone who kills his own spouse is to be directed to the sacrament of penance, and marriage is completely denied to him.*

Moreover, in that matter in which someone sins, he should also be punished. But the man who slays his wife sins against marriage. Therefore, he should be punished by being deprived of marriage.

I answer that uxoricide impedes marriage by the statute of the Church. But although it impedes marriage from being contracted, it does not annul the contract; for example, when a man kills his wife because of adultery or because of hatred; nevertheless, if his continence is feared for, he can be granted a dispensation by the Church, so that he may contract marriage licitly. Sometimes it also voids the contract, as when someone kills his wife so that he may marry the one with whom he committed adultery: for then a person becomes simply ineligible for contracting marriage with that woman; so that if he does in fact contract marriage with her, it is invalidated.

But the person is not made simply ineligible with respect to other women; wherefore, if he has contracted with another woman, although he sins against the statutes of the Church by doing it, nonetheless the marriage contracted is not invalidated because of this.

1. Homicide and adultery in certain cases impede marriage from being contracted and void the contract, as is here said of uxoricide, and of adultery, as was treated above in Distinction 35. Or it may be said that uxoricide is against the substance of the union, but adultery is against the good of fidelity owed it. And thus adultery is not more against marriage than uxoricide; and so the argument proceeds from false premises.

2. Simply speaking, it is a graver sin to kill one's mother than one's wife, and more against nature; for a man naturally reveres his mother; and therefore, he is less inclined to kill her, and more prone to killing his wife; and for the repression of this proneness the marriage of a wife-killer is forbidden by the Church.

3. Such a person does not sin against marriage as the man does who kills his wife; therefore, it is not the same.

4. It is not necessary that when guilt is blotted out, all penalty is blotted out as well; as is evident from the case of irregularity. For penance has not restored original dignity, although it may restore one to a pristine state of grace, as was said above in Distinction 14.

Exposition

A virgin wife, etc. This is understood under a hypothesis; that is, if a man about to advance to the priesthood desires to return to the clerical state.

The Holy Church of God does not have a sword etc. . . . Against this is what Bernard says to Eugene, that the Church has both swords. And it should be said that it has only a spiritual one with regard to execution to be imposed by its own hand; but it also has a temporal one as concerns its bidding: for someone is released by its command, as Bernard says.

DISTINCTION 38

QUESTION 1

Prologue

After the Master has considered the impediment of orders, here he considers the impediment of religious vows; and this is divided into two parts: in the first, he shows how someone is impeded from contracting marriage through a vow by which he obliges himself to God; in the second, how a marriage is impeded by another marriage already contracted, by which a man has obliged himself to a wife, where he states: *When a man and a woman etc. . .* The first part is divided in three: first he shows what a vow is; in the second he distinguishes many kinds of vows, where he states: *It must be known truly that something is common to all vows, but something else is particular*; in the third he shows that a vow also in a certain way impedes marriage, where he says: *those who make a private vow of continence, should not contract marriage*. And this part is divided into two parts: in the first he shows that a vow of continence impedes marriage; in the second he shows what is to be done with those who marry after such a vow: *concerning virgins you do not veil if they have strayed . . . We have such a decree*. And concerning this he does three things: first he shows that they should do penance; second, he objects to the contrary: *here what Pope Innocent decreed regarding widows and young girls is not to be omitted*.

When a man and woman etc. Here he addresses the other impediment to marriage, which was called above 'previous ties'. And this is divided into two parts: in the first he shows that while a preceding marriage stands, it impedes another marriage from being contracted; in the second, he shows how even with a marriage standing until now, the union of a second marriage can exist without sin, although it is not a valid marriage: *here it is asked about those women who, believing their husbands to be murdered, or in captivity, or never to be freed from some evil domination, have passed on into other unions*. And he sets forth these things in two parts according to two cases. The second part begins thus: *But if someone, having left his wife behind in his own*

homeland, and going away to a distant region, should take another wife, etc.

Here is a two-fold question. First, concerning the vow. Second, concerning scandal, which is connected with some vows, as it states in the text. Concerning the impediment of previous ties, the same thing should be asked as about multiple wives, and about the indissolubility of matrimony, which was discussed in Distinction 33.

Concerning the first question, five things are to be asked: 1) On the vow in itself; 2) On the division of the vow; 3) On the obligation of the vow; 4) On the dispensation of the vow; 5) On the veiling of virgins, which is done as a certain sign of the vow.

Article 1

Whether the vow is fittingly defined in the text

Quaestiuncula 1

1. It seems that the vow is unfittingly defined in the text. For a vow, by reason of its own name, conveys a certain fixed purpose of will without any promising. For vows are said to be made which are done voluntarily: which is also clear from a certain definition given for a vow: *a vow is the conception of a good intended with confirmed deliberation, by which someone obliges himself before God to doing something or not doing something*. Therefore, it should not include a promise in the definition of a vow.

2. Furthermore, to promise proceeds from the mind, just as to believe does. But there can be no belief but willing belief. Therefore, neither can there be a promise that is unwilling. And thus it is added unnecessarily, *spontaneae*.

3. Furthermore, a promise is not the same thing as bearing witness to a promise. But a vow is a certain promise, as is evident from the definition of Hugh of St. Victor, who says that a vow is a voluntary pledge of the mind. Therefore, the Master says incorrectly that a vow is bearing witness to a promise.

4. Furthermore, that which is included in the definition, should be universally fitting to the thing defined. But not every vow is made to God, for vows are also made to the saints. Therefore, it is unfittingly included in the definition of the vow that it should be made to God.

5. Furthermore, jurists define a vow thus: *a vow is the promise of a certain good, made with deliberation*. But not every good concerns those things which pertain to God; rather some pertain to one's neighbor. Therefore, it should not be included in the definition of a vow, that it concerns those things which pertain to God.

6. Furthermore, deliberation of mind is required for a vow, as is evident through a certain definition of the vow given by the teachers, which is thus: *a vow is the promise of a better good, confirmed by deliberation*. When, therefore, in the definition which is set forth in the text, no mention is made of deliberation, it seems insufficient.

Quaestiuncula 2

1. Moreover. It seems that a vow does not only concern a better good. For that which is of necessity, is not considered a better good, but a common good. But a vow can be made about what is of necessity, as Jacob vowed that the Lord would be his God. Therefore, it is not necessary that it concern a better good.

2. Furthermore, certain vows are made about indifferent matters, as women are especially wont to vow that they will not comb their hair on such or such a day. But indifferent matters are not included among better goods. Therefore, a vow does not always have to do with a better good.

3. Furthermore, what is illicit is not good, so neither may it be better. But a vow can be about something illicit, as is clear in the case of Jephthe, who because of his vow killed his innocent daughter, who, as Jerome says, is counted in the canon of the saints; for his soul pleased God by making the vow. Therefore, a vow does not always have to do with a better good.

4. Furthermore, better goods seem to be those which are counseled. But those things that can turn to the danger of the person, are not counseled. Nevertheless, certain men vow these things, like those who abstain from food for two or three days, which cannot be endured without danger to one's person. Therefore, a vow does not always concern a better good.

But to the contrary is the definition of a vow set forth above, namely: *a vow is a promise of a better good, strengthened by deliberation*.

Quaestiuncula 3

1. Ulterius. It seems also that he who is not *sui juris* would be able to vow something. For an obligation which is made to someone inferior, cannot impede the service owed to a superior master. But by a vow someone obligates himself to the service of God. Therefore, the obligation by which a slave is bound to his master, who is nevertheless a man, cannot prevent him from fulfilling a vow.

2. Furthermore, the son of a family is in the power of his father. But he can make a vow even against his father's wishes; for it occurs daily that young men enter religious life against their parents' will. Therefore, someone who is not *sui juris* can take a vow.

3. Furthermore, no one is more under the power of another than a monk who has vowed obedience. But a monk can vow, as it seems, since in certain things he is arbiter of his own will. For he is not bound to obey his superior in all things, as Bernard says, but only in those things which pertain to religious life. Therefore, etc...

4. Furthermore, a wife is also under the power of her husband, as is evident in Genesis 3. But a wife can vow certain things without the consent of her husband. Therefore, etc.

But to the contrary is the fact that it is not permitted to offer a sacrifice to God out of the possessions of another. But the person who makes a vow, offers a certain sacrifice to God. Therefore, if he is in the power of another, he cannot make a vow.

Moreover, a vow, since it is characterized as a freely-given promise (*spontaneam promissionem*), requires liberty. But he who is in the power of another, does not have liberty. Therefore, he cannot make a vow.

Quaestiuncula 1

I answer to the first question that a vow, by its very name, expresses a certain obligation assumed by one's own will; and since someone cannot be bound in his will unless to Him who is the guarantor (*cognitor*) of the will, who is God alone; therefore, it consequently brings with it an obligation made to God, and by consequence, it concerns those things that are related to God (*spectant ad deum*), since an obligation made to someone about things which are not related to God, would be nothing.

However an obligation is made to a man through words expressed externally; whence it is said in Proverbs 6, 2: *you are entrapped by the words of your mouth*. And therefore, to Him who looks into the heart, it is fitting that a voluntary obligation be made by an interior word; and therefore it is fitting that it be made by an act of that power to which it belongs to enunciate, which is reason; and therefore, the promise, which is the very act of reason, is the essence of the vow. For, since a promise is an act of reason, it is clear that, on the one hand, it is a certain enunciation and, on the other, the one promising directs his promise to someone else. However, every directing comes from reason. Yet a promise made outwardly is sometimes called "a naked promise," when it does not have something added that confirms the obligation; and then it does not have the full force of binding. Likewise, in order that an inward promise made to God have full binding force, it is necessary that it not be "a naked promise," but should have something by which it is confirmed; and indeed, this confirmation occurs through three steps. First, by the simple deliberation; second, by the intention of binding oneself under a certain penalty; third, by the fact that the witness of men is summoned for the inner promise. And thus many definitions are given for a vow, according to the various different things which are required for a vow included in those definitions; and many more could be given still. However, the definition, as the Master establishes it, seems to be the most complete; since he includes both the *promise*, which is the essence of the vow; and he touches the will, which is the cause of the obligation, in the fact that he says, *spontaneae*; and the final confirmation of the promise, which he includes elsewhere, by the fact that he says, *a bearing-witness*; as well as the end of the vow, since it is an act toward another, in the fact that he says, *which must be done for God*; as well as the matter, in the fact that he says that it *concerns things which are of God*.

1. To will something is not to vow; and therefore, an intention (*propositum*) is not a vow, but only the announcement of that intention in the mode of a promise; and since an interior announcement is called the conception of the heart, for this reason in that definition is included that a vow is the conception of a good intended (*propositum*). If a vow were said to be an intention simply

speaking though, the predication would be from the cause, since the intention is the principle of the vow; just as also sometimes a desire (*desiderium*) itself is called a prayer (*oratio*), as was said above in Distinction 15.

2. A promise is sometimes made by the mouth and not by the heart; and such a thing is not a vow to God; and for this reason, it is fitting to add *spontaneae*.

And furthermore, although man cannot be sufficiently compelled to make a true promise, he can nevertheless be compelled to make the external promise by a certain subtle pressure, just as with other external works of the will; but not in the interior promise, just as no one can be forced to faith. However, the Master is defining the vow that is pronounced externally, because it can impede marriage. For this is the vow he means here; and this vow is the evidence of an interior promise, not the interior promise itself.

3. And by this, the answer to the third is clear.

4. A vow is not made to saints, unless according as by their intercession they are the mediators between us and God; just as also prayer is made to the saints; and therefore every vow is ultimately directed to God, just as with prayer too.

5. That definition of the jurists is to be understood not as referring to any good whatsoever, but to that good which belongs to the religious life of piety; and this is of God, whether it be done toward one's neighbor, as the closest matter, or toward oneself, or toward God.

6. Deliberation is included in bearing witness, as was said.

Quaestiuncula 2

To the second question it must be said that, as was already mentioned, a vow cannot exist unless it concerns some good pertaining to the worship of God in some way or another; and therefore, on the part of Him to whom the obligation is made, every evil goes against a vow; but on the part of the will, from which such an obligation proceeds, any necessity in some way goes against a vow. However, necessity can be of two kinds. One is absolute necessity; and such necessity prevents vowing entirely; as if, for example, someone were to vow never to die, or things which were not at

all in his power, the vow would be worthless. The other kind of necessity is conditional for the attainment of an end; and thus we have a necessity of doing those things without which we cannot attain salvation; just as there are commands that we are otherwise bound to follow. And the second necessity does not prevent every kind of vow; for sometimes it is found, taking vow in a broad sense, to be about those things which are under such necessity; but such necessity does exclude a vow, properly so called; and therefore if 'vow' were taken according to its own *ratio*, it is properly concerning those goods to which all men are not bound, which are supererogatory; and therefore they are called "better goods," since they are super-added to those goods without which there is no salvation; and therefore, a vow, taken properly, is said to be about a better good.

1. That promise of Jacob was more a certain recognition of an obligation rather than the cause of the obligation; and therefore it cannot be called a vow properly, but only in the larger sense. Or it could be said that the vow of Jacob was not concerning something that was of necessity but rather it concerned worship in a special way by the construction of an altar; and therefore, it had to do with a better good.

2. These kinds of promises of women are more superstitions than vows; for they are a certain relic of idolatry, in the way that days and months were observed; and therefore they are not to be taken for vows, and the people vowing such things sin by doing so; since, as Jerome says, we should not even have a word in common with infidels.

3. A vow, if it be about something that is simply evil, is not a vow unless by equivocation; and thus in no way does it bind. If, however, it concerns something which could be good in one contingent case and evil in another, if the vow were in any event, it is imprudent (*indiscretum*); if though, the outcome were good through the intention of the one vowing, it is prudent, and it would not oblige if there were an evil outcome. Thus, the vow of Jephtha was about something that in a certain case could have turned out well, namely if an animal were encountered for the sacrifice; and in another case it would not have been good, namely if no animal were encountered for the sacrifice. And since he vowed to do it in any event, the vow lacked discretion. Therefore, in his vow, as far as the taking of the

vow goes, there is something praiseworthy, namely devotion, and faith by which he hoped for victory from God; and in this way it is said to be motivated by the Holy Spirit; but the determination of the vow was imprudent; and as for its execution, that deed was cruel, though it was a figure of something laudable. And thus, although the vow was in one way praiseworthy, the man himself is not excused from sin, since he was stupid in vowing it, and wicked in fulfilling it, as Jerome says. Nevertheless, he is counted in the canon of saints because of the victory that he obtained from God, as also with other saints.

4. A vow which endangers the person is not a vow to be kept, since no one can vow something that endangers his own person; and therefore it is safer that in such matters the dispensation of the superior is sought; and if he should not give it, and the danger is imminent, he should break the vow without compunction. However, a danger could be imminent either from infirmity or from poverty, as when someone does not have enough to eat except what he has vowed to abstain from.

Quaestiuncula 3

To the third question it must be answered that it is clear from what has already been said that a vow cannot be made by anyone except about those things that are subject to his will; and therefore, that man who is constituted under the power of someone else, cannot make a vow about the matters in which he is subject, since they are not subject to his own will. And likewise, those who do not have the use of their free will, just as with those who are not of sound mind, cannot make a vow, as neither can children before the age of puberty.

1. By the very fact that man serves God in his flesh, he serves him in his spirit; for which reason the Apostle teaches them to continue to serve because of their conscience. And since this is of necessity, it cannot be impeded by what is not of necessity; just as neither can what falls under a command be removed by what falls under counsel.

2. By the fact that a man attains the age of puberty, he is not under the power of another as concerns what regards his own person, if he be of free condition; and therefore, just as such a person can contract marriage against his parents' will, so also can he make a religious

profession against their wishes; but as concerns domestic matters he cannot vow anything without the consent of his father.

3. Although a religious is not bound in obedience in all things that may be commanded of him, nevertheless he is bound in obedience all the time concerning those things that can be commanded of him, just as a slave is not exempt at any time from the service of his master; and therefore, they have no free time in which they may do whatever they like. And since every vow is to be completed by a certain time, therefore just as a slave cannot take any vow, so neither may a religious take a vow without the consent of his own superior.

4. In those matters in which a wife is bound to her husband, and vice versa, neither can make a vow without mutual consent, as is evident with the vow of continence. But since in the management of the household and in the management of daily life the wife is subject to the husband and not vice versa, the man can vow certain things without the consent of the wife, but not the reverse.

Article 2

Whether vows are fittingly divided into common and singular

Quaestiuncula 1

1. It seems that vows are unfittingly divided into common and singular. For division should be predicated according to the same account of dividing factors. But "vow" is not said in the same way of common and singular vows; for a vow is properly speaking singular, and not common, as is clear from what has been said. Therefore, this is an inadequate division.

2. Furthermore, singular is not divided against common, but more properly against universal. Therefore a vow should also be divided here into singular and universal.

3. Furthermore, every vow incurs a particular sin by its transgression. But a common vow does not incur any particular sin when it is broken, for thus a man would sin twice by any sin after baptism. Therefore, a vow is not anything common.

4. Furthermore, that man who does not have the use of his free will cannot take a vow. But baptism may be received by someone who

does not have the use of his free will. Therefore, in baptism no vow is made that should be called common.

Quaestiuncula 2

1. Ulterius. It seems that vows are not fittingly divided into private and solemn. For there is a certain kind of public vow which is neither solemn nor private. Therefore, the division is not sufficiently named.

2. Furthermore, things should be divided by what is essential to them. But 'private' and 'solemn' do not divide vows according to something essential to them; since a vow is essentially a certain obligation made to God; and as far as God is concerned, the obligation does not differ whether it be made in secret or before many. Therefore, the stated division is inadequate.

3. Furthermore, when something is divided by a common essential division, it is necessary that the species divided differ from each other. But private vows and solemn vows do not differ in species; since thus no private vow could be solemnized, since species cannot cross over into each other. Therefore, the division stated is inadequately given for a vow.

4. Furthermore, just as a vow has certain things that pertain to its solemnity, so also has marriage, and the other sacraments. But in marriage simple marriage is not distinguished from solemn marriage. Therefore, neither should this distinction be made in vows.

Quaestiuncula 3

1. Ulterius. It seems that a vow is not solemnized by the profession of an established rule, and by the reception of holy orders, as certain people say. For solemnity is set forth as a difference of vows commonly said. But some vows do not come under an established rule, nor are they joined to holy orders, like the vow of a pilgrimage. Therefore, those two things do not suffice for making the solemnity of a vow.

2. Furthermore, it is also said by some that a vow is solemnized by the reception of the religious habit. But sometimes the religious habit is received without profession or reception of orders. Therefore, etc.

3. Furthermore, before the constitution of approved rules, a vow could also be solemnized without the reception of holy orders. But men

cannot oblige themselves to God now less than before. Therefore, also now the solemnity of a vow can be without profession of an established rule.

4. Furthermore, profession of an established rule can be done in private. But here solemn vows are divided against private ones. Therefore, profession of an established rule is not sufficient for the solemnization of a vow.

But to the contrary, the effect of a solemn vow is properly to invalidate the marriage contract. But only the vow that is attached to holy orders and under an established rule invalidates the marriage contract. Therefore, only in these ways is a vow solemnized.

Quaestiuncula 1

To the first question I answer that the division by which vows are divided into singular and common, is an analogous division which is predicated by *prior* and *posterior* about the dividing factors, like being is predicated of substance and accidents. For since a vow is an obligation made of one's own volition, but necessity excludes the voluntary, that vow that contains nothing of necessity is called a vow *per prius*, as though possessing the complete notion of a vow; and this is the singular vow, because it concerns things to which we are not bound. Yet the vow that contains something of necessity has the account of vow incompletely, and therefore it is called a vow *per posterius*; and this is called a common vow, because it is about things to which all men are bound, whose necessity is conditioned, not absolute, as is evident from what has been said.

1. That notion proceeds from a division of the univocal; and this is not such a division.

2. A common vow is a certain singular act, and made by a singular person; whence it could not fittingly be called universal; but it is said by the common *ratio* of those things that it deals with, to which all men are bound.

3. The transgression of a common vow does not incur a special sin, but it adds a special deformity to a sin: for a baptized person sins more greatly than a non-baptized in the same kind of sin, as is evident in Hebrews 10: 29: *How much do you think he deserves worse punishments, who has trampled underfoot the Son of God, and considered the blood of the*

testament unclean? And therefore, it is not taken without reason, since it adds a certain obligation, as the written law adds a certain obligation above that of the natural law; and thus it does not constitute another sin, but it adds a new deformity.

4. That reasoning proceeds from vows about things that not all men are bound to. But by the fact that on behalf of the child the godfather takes a common vow, nothing is lost by the child, since he would be obliged to the same thing otherwise: nor is it a problem [*obstat*] that it is a major obligation, since for him it is outweighed by the magnitude of benefits that it brings with it. For a child is caused no injury by someone accepting a benefit for him from another, to whom the child is afterward bound in service or in thanks when he himself arrives at years of discretion.

Quaestiuncula 2

To the second question I answer that the division of vows into private and solemn is a division of the whole potentiality into its parts, of which (its) perfect virtue is in one of its parts; however, in other things, a certain participation of that, as the soul is divided into rational, sensible, and vegetative.

Yet the virtue of a vow is the obligation: which virtue, indeed, exists completely in the solemn vow, whose obligation can in no case be voided (*irritari*); but it exists incompletely in the private vow, whose obligation can be cancelled in certain cases, as will be said.

1. A vow can be said to be public in two ways. In one way, *per se*, if it involves something which should come into public, as for example when someone receives holy orders, through which he is constituted a minister of the Church for the public service of God. In another way, a vow can be public *per accidens*, as for example when it comes to the attention of many people. And since the judgment of a thing does not vary according to what is accidental to it, but according to what is *per se*, a vow that is public in the second way is considered the same as a private vow. But a vow that is public in the first way is distinguished from private vows; and this is a solemn vow.

2. The stated division is given through those things which are essential to a vow. For that which gives a vow the power of obligating

is essential to it. Wherefore, it is not true that they oblige equally in every way, neither before God, nor before men; but they do oblige equally in a certain way, as will be said.

3. The progress from imperfect to perfect is the natural order; for which reason a progress is also made from one part to another in the whole potentiality; as an embryo has a vegetative soul in a certain way before the sensible soul, and a sensible soul before a rational one; and likewise also it is not unfitting that the same vow should be first private, and public afterwards.

4. Marriage and the other sacraments have their full effect even when those things that pertain to the solemnity of the sacrament are omitted, because they have efficacy from divine power, not human institution. But because a vow obligates through the fact that it is from man, it does not have the perfect force of obligating unless the due solemnity is employed. Therefore, a vow is distinguished as solemn and not solemn; but this is not true of marriage or any other sacrament.

Quaestiuncula 3

To the third question I answer that a vow, as was said, is called solemn by the fact that it has the complete force of obligating. For those things are said to pertain to the solemnity of a thing which confer on it its complete existence. However, a vow, since it is essentially a promise, receives the full complement of its own power in the same way that a promise does; and the obligation of a promise is only complete at the moment when the one promising something, actually gives it, in some way placing it in the physical possession of the one to whom it was promised, so that he can have it. For example, if someone promised the fruit of a field, and by promising the field, he gave the fruit; and it is the same, if he promised some service, and gave himself as a slave. And therefore, a vow is only said to be solemnized when someone gives himself to God by making himself a slave in the divine service in His presence. And indeed, this is what is done by the reception of holy orders, and by the profession of an established rule made in the due manner: namely, given into the hand of the one who should receive this profession; and observing all the other circumstances that are determined by law. Otherwise it would not be a

solemn vow, no matter who should profess it, since by such a profession he would not place himself under the power of those who are the heads of the religious order.

1. Since the solemnity of the vow comes from the fact that the thing itself is given, by which the promise is fulfilled, when something temporally accomplishable is promised it cannot be a solemn vow, like the vow to make a pilgrimage or something like this. Nor is it a problem that solemnity is considered a difference of vows taken commonly: for also the rational soul, in which the *ratio* of life exists perfectly, is not in every living thing, although rational may be considered a difference of animals simply speaking.

2. A religious habit is two-fold: one kind which they give to unprofessed religious, and another which is given to professed religious. And if in certain religious orders the same habit is given to both nevertheless it is customary for the habit to be blessed in formal profession; and a habit blessed in this way is considered as if it were a different thing altogether. Therefore the first habit does not suffice for solemnizing the vow, even a vow already taken; but the reception of the second habit solemnizes the vow, since there is a certain profession anticipated; against which presumption no trial-period is required, if the due circumstances are observed (e.g., the habit is given by someone who may give it, and before a multitude of brethren). For if someone in his own house received such a habit, he would not because of that be presumed to have solemnized his vow; and therefore, the reception of the habit should not be considered another cause of solemnity, since it does not solemnize a vow unless insofar as his profession is presumed with certainty.

3. Before those recent rules existed there was some mode of living approved by the Church, by which some people obligated themselves to those things which are supererogatory; and in those days the obligation of living in another way for a certain time was made in the same way that now the obligation is made to a certain rule.

4. That vow is not called private because it comes under the notice of few people, but since it does not have what would be necessary to be established in public. But that person who makes his profession in secret, for example if in his own house he vowed to the one who could receive his profession, makes a vow that

should be established in public, since he must leave his secular life, and be converted in the cloister with the others of his order.

Article 3

Whether a vow obliges such that it would always be necessary to observe it

Quaestiuncula 1

1. It seems that a vow does not oblige in such a way that it should always be observed. For nothing can oblige one to the impossible. But it is sometimes impossible to fulfill a vow, as is clear in the case of the woman who vows her virginity and is deflowered. Therefore it is not of necessity to keep a vow.

2. Furthermore, an effect cannot be stronger than its cause. But the cause giving strength to a vow is deliberation, as is evident from the definition posited above in Question 1, Article 1. Therefore, since human deliberation does not have the necessary firmness, for the thoughts of men are timid and our providence uncertain, as is seen in Wisdom 9, it seems that a vow does not oblige its fulfillment as a matter of necessity.

3. Furthermore, an oath obliges more strictly than a vow: for divine truth, from which an oath gets its obligation, is more efficacious than human deliberation, from which a vow's obligation comes. But an oath does not oblige such that it must be observed of necessity; for sometimes an oath can be broken without sin, as when it would lead to a worse result. Therefore neither does a vow oblige in such a way that it is always necessary to be fulfilled.

4. Furthermore, when a vow is made under certain conditions, like Jacob's vow in Genesis 28:20: *if my God is with me . . . the Lord will be my God*. But such a vow does not oblige if the condition does not stand. Therefore, not every vow obliges of necessity.

5. Furthermore, someone who remains in the religious life beyond the trial-period determined, and also does not enter then, is said to have made an implicit vow. But this vow, it seems, is not necessary to fulfill, since the person has promised nothing: nor does he always seem to be held to those things which are contained in the vow of profession; since sometimes in the trial period the statutes of the rule do not seem to be observed, and he himself

does not intend to enter the monastery, unless it be in order to live as the others live. Therefore, it seems that not every vow obliges such that it must necessarily be kept.

6. Furthermore, no one is obliged to that which depends upon the will of another person, as when someone vows to enter a certain religious cloister; for it is in the power of others to accept him or not. Therefore, if those others do not wish it, it does not seem that he is obliged to fulfill his vow.

7. Furthermore, whoever is bound to something without a determined time in which to accomplish it, is bound to do it immediately. Therefore, if a vow possessed a power of obligating, whoever made the vow would be obliged to fulfill it right away. Which does not seem to be true.

But to the contrary is what is said in Deuteronomy 23:21: *When you have vowed a vow to the Lord your God, do not delay to render it*.

Moreover, Augustine says that to vow is voluntary, but to render is of necessity.

Quaestiuncula 2

1. Ulterius. It seems that by the obligation of a simple vow the matrimonial contract should be invalidated. For a stronger bond prejudices a weaker one. But the bond of a vow is stronger than the bond of marriage; since the latter is made by men, and the former by God. Therefore, the bond of a vow prejudices the bond of matrimony.

2. Furthermore, God's command is not less than the Church's command. But the command of the Church obliges someone to this, that if marriage is contracted against it, it is nullified, just as is evident with those who contract in some degree of consanguinity prohibited by the Church. Therefore, since to keep a vow is a divine precept, it seems that when someone contracts marriage against a divine vow, the marriage would be nullified by this fact.

3. Furthermore, in marriage a man may enjoy carnal intimacy without sin. But that man who makes a simple vow can never commingle carnally with his wife without sin. Therefore a simple vow invalidates matrimony. Here is the proof. Suppose that this man who contracts marriage after a simple vow of continence sins mortally; for according to Jerome, *for those vowing continence, not only marriage but the*

wish to marry, is blameable. But the marriage contract is not opposed to a vow of continence except in carnal intimacy. Therefore, when he first commingles carnally with his wife, he sins mortally, and by the same reasoning in all the other vices, for a sin committed first cannot excuse from subsequent sins.

4. Furthermore, a man and a woman should be equals in marriage, particularly with regard to carnal intimacy. But that man who makes a simple vow of continence can never request the marriage debt without sin; since it is expressly against the will for continence, to which he is bound by his vow. Therefore, nor can he render the debt without sin.

But to the contrary is what Pope Clement says, that a simple vow impedes marriage from being contracted, but it does not invalidate a marriage once contracted.

Quaestiuncula 3

1. Uterius. It seems that a solemn vow would also not annul a marriage contract. For as the Decretals state, in the sight of God a simple vow does not obligate less than a solemn vow. But marriage stands or is annulled by divine recognition. Therefore, since a simple vow does not annul a marriage, neither could a solemn vow annul it.

2. Furthermore, a solemn vow does not add such powerful strength above a simple vow as an oath does. But a simple vow, even with an oath added to it, does not nullify the marriage contract. Therefore, nor does a solemn vow.

3. Furthermore, a solemn vow does not possess anything that a simple vow could not have: for a simple vow might create scandal, which could exist in public, as also with a solemn vow. Likewise, the Church could and should legislate that a simple vow annuls a marriage contract in order that many sins might be avoided. Therefore, by the same reasoning that a simple vow does not annul marriage, neither should a solemn vow.

But to the contrary is that the man who makes a solemn vow contracts a spiritual marriage with God, which is much nobler than material marriage. But a material marriage contracted first invalidates a marriage contracted afterward. Therefore, so does a solemn vow.

Moreover, this can also be proved by many authorities who are set forth in the text.

Quaestiuncula 1

I answer the first question that a vow, as is clear from what has been said, is a certain contract of a promise between God and man. Whence, since a contract made between men in good faith obliges someone to necessary observance, more strongly does a vow in which a man promises something to God, in those matters to which the vow is extended. In those things, however, to which the vow is not extended, the obligation of the vow does not have any place: and therefore, whoever breaks a vow properly made sins mortally since he has broken the trust that he entered upon with God.

1. The same thing that, if it were present, would impede a vow from being made, also removes the obligation from a vow that has been made; wherefore when it concerns the impossible, there can be no vow, as was said; if after taking the vow something becomes impossible which had previously been possible, the obligation of the vow is removed as far as it is concerned; as if someone rich should vow to build a church, which afterward he should be unable to complete because of falling into poverty, he would not be obliged to fulfill this vow. But nonetheless, in this matter we must make a two-fold distinction. In one way, since either he has become unable to fulfill the vow at all, and then he is simply not bound to what he vowed; or else he has become unable to complete it in its entirety, but not unable to complete a part of it; and then he remains obliged to do what he can. In another way it must be distinguished whether he incurred this incapacity by his own fault; for then it would be necessary for him to make up for it by penance; or if not by his own fault, and then he is not bound to any reparation. Therefore, if a woman who vows virginity is not a virgin, although she cannot offer her virginity, yet she can offer continence; and she remains obliged to this, and beyond this, to grieving in penance, by which she atones to God for her lost virginity: because although indeed it would not be worth the same simply-speaking, it is nevertheless equivalent according to the consideration of God, who does not demand from man beyond what he can do.

2. Although deliberation may be a variable cause, nonetheless the rectitude of the natural law, which dictates that what is promised to God must be kept, is invariable; and this gives to the vow the necessary obligation.

3. Just as an oath which tends toward a worse result is not to be kept, so neither is a vow. For which reason Isidore says: *in a base vow change your resolution*; for a vow does not extend to illicit things, or even to less good things, as has been said. Nor does it matter whether it was illicit when the vow was taken, or whether it became so afterward.

4. What is vowed under a certain condition is not vowed simply; and therefore it does not oblige unless that condition stands.

5. An implicit vow obliges just as also a vow taken orally: wherefore if someone remained in a monastery after a trial period, he is obliged by an implicit vow; unless perhaps because of some reason it was extended a year for him, or they were accustomed to extend it for others. Because then he does not make an implicit vow beyond the current year; and such a person who made an implicit vow is bound to the three principal vows of religious life in any case; but as to the other observances, whose transgression seems to be allowed by the dissembling of prelates, since they see but do not correct, so that they don't seem to be obliged, and particularly if it be a simple person, who does not know how to discern such things adequately.

6. The obligation of a vow is caused by the proper will; wherefore if in vowing he has first thought about entering religious life, and afterward he has chosen such a religious order or such a place, he is obliged to religious life, simply. Wherefore if he is unable to be received into those things that he has chosen, he should seek another. If though, first and principally, he thought about such an order or such a place, then this condition is understood in his vow, if they want to receive him; otherwise it would be an imprudent vow; wherefore, since the condition isn't fulfilled, he is not obliged. If however, he is unsure of how he is related to the vow, then he should choose the safer way, lest he commit himself to his own peril.

7. If when someone has vowed that he would enter religious life, for example, he intended to oblige himself to it immediately, or to the judgment of another, he cannot longer defer even because of debts outstanding; but

the one who receives him is bound to settle them. However, if in vowing he was thinking about his debts, it can probably be presumed that he did not intend to oblige himself before he had disposed of his affairs. However, when he fears a perpetual impediment, he is not bound to defer further.

Quaestiuncula 2

To the second question it must be said that something ceases to be in the power of someone by the fact that it passes into the dominion of another; but the promise of a certain thing does not transfer it into the dominion of the one to whom it is promised; and therefore not because of the fact itself that someone promises a certain thing, does that thing cease to be in his own power. Since therefore in the simple vow there is nothing but a simple promise made to God for preserving continence of one's own body, after the simple vow a man still remains the master of his own body; and therefore he can give it to another, namely a wife, in which giving the sacrament of marriage consists, which is indissoluble. And because of this, a simple vow, although it might impede a marriage from being contracted, since he sins who contracts marriage after a simple vow of continence, nevertheless, since it is a valid contract, the marriage cannot be rendered invalid by this.

1. A vow is a stronger bond than marriage as concerns the one to whom it is made and that to which it binds, since by marriage a man is bound to his wife for the rendering of the debt, but by a vow he is bound to God in continence. However, as to the mode of binding, marriage is a stronger bond than a simple vow, since in marriage a man is actually handed over to the power of his wife, but not in a simple vow, as was said. For the claim of the one in possession is always stronger. But as far as this is concerned, a simple vow obligates in a similar way as a betrothal, wherefore a betrothal is invalidated by a simple vow.

2. The impediment of consanguinity does not have the effect of invalidating marriage from the fact that it is a command of God or of the Church, but from the fact that the body of one blood relative cannot pass into the power of another. However, this fact does not make a command prohibiting marriage after a simple vow, as is clear from what has been said; and

therefore, the argument does not follow, for it cites as the cause what is not a cause.

3. The person who contracts marriage by words of the present after taking a simple vow cannot know his wife carnally without mortal sin; for the possibility of fulfilling his vow of continence still remains to him before the consummation of the marriage, as is clear from what has been said above, Distinction 27, q. 2, art. 3, *questiuncula* 2. But after the marriage has already been consummated, it becomes illicit for him not to render the debt to his wife when she demands it, although by his own fault; and therefore the obligation of the vow does not extend to this, as is clear from what was said above; nevertheless, grieving in repentance should make up for the continence that was not preserved.

4. When someone has not been rendered unable to preserve his vow of continence, he is obliged to observe it even after the marriage contract; because of which he is bound to be totally continent at the death of his wife; and since he is not obliged by the marriage bond to request the debt, therefore he cannot request the debt without sin, although he could render the debt to a spouse who demands it without sin, afterward he is obliged to this by the preceding carnal intimacy. However, it must be understood, either the wife requests expressly or implicitly, as when the woman is modest (*verecunda*), and the man senses her wish (*voluntate*) for the rendering of the debt, then he can render the debt without sin; and particularly if he fears a danger to her chastity. Nor is it a problem that they are not equals in the matrimonial act: for anyone can renounce what is his own. Though certain people say that he can both request and render, lest a marriage be made exceedingly burdensome for the wife who is always having to demand the debt. But if it is looked at correctly, this is to demand implicitly.

Quaestiuncula 3

To the third it must be said that everyone says that just as a solemn vow impedes a marriage from being contracted, so also it renders a marriage contracted invalid. However, certain people assign scandal as the cause of this. But this is nothing; for also a simple vow sometimes carries scandal, whenever it is in some way public. And

furthermore the indissolubility of marriage concerns the truth of life, which is not abandoned because of scandal. And therefore others say that it is because of a statute of the Church. But this also is insufficient, for according to this the Church could legislate the opposite; which does not seem true.

And therefore it must be said with others that a solemn vow by its own nature contains what would render a marriage contract invalid, namely inasmuch as through it a man has lost power over his own body, by handing it over to God in perpetual continence, as is clear from what has been said; and therefore he cannot hand himself over into the power of a wife for contracting marriage; and since the marriage which follows such a vow is null, thus the aforementioned vow is said to render a marriage contract invalid.

1. With respect to God a simple vow is said to obligate one not less than a solemn vow in those matters which regard God, as separation from God is mortal sin; for he sins mortally who breaks a simple vow, just as he who breaks a solemn one; although it may be a more serious sin to break a solemn one, so that in this way the comparison is taken generically, not determined by the quantity of the culpability (*reatus*). But as concerns marriage, through which a human is obliged to a human, it is not fitting that there be equal obligation also generically; for a solemn vow obliges one to certain things, not a simple one.

2. An oath obliges more than a vow on the part of the one by whom the obligation is made; but a solemn vow obligates more as concerns the mode of obligating, inasmuch as it actually hands over what is promised, which is not done through an oath; and therefore the argument does not follow.

A solemn vow carries the actual handing over of one's own body, which a simple vow does not carry, as is clear from what has been said; and therefore this argument proceeds on insufficient grounds.

Article 4

Whether a dispensation could be made from a vow

Quaestiuncula 1

1. It seems that a dispensation could not be made for a vow. For a common vow possesses

less of the account of a vow. But in the case of a common vow, no one can give a dispensation. Therefore, neither in a singular vow.

2. Furthermore, to fulfill a vow is a matter of natural law; since whoever does not fulfill it, lies; which is against natural law. But no one can give a dispensation permitting lying, or anything else which is of natural law. Therefore, no one can give a dispensation in the case of a vow.

3. Furthermore, through a dispensation a greater good should not be neglected in favor of a lesser good. But *nothing outweighs the worth of continence of the soul*, as is said in Sirach 26:20; for the part of contemplatives, which is symbolized by Mary of Bethany, is the best, for *she has chosen the best part*, as it is said in Luke 10. Therefore, at least for the vow of continence, which belongs to the state of contemplation, a dispensation cannot be given.

But to the contrary, no vow is licit which verges on danger to the person. But it could be the case that continence preserved might verge on danger to a person. Therefore at least in that case, a vow of continence can be dispensed.

Moreover, just as monks are bound to continence, so also to poverty and obedience. But they can be dispensed from their vows of obedience and poverty, as is clear from the case of those who are taken up to the prelature. Therefore, it is also possible for the vow of continence.

Quaestiuncula 2

1. Ulterius. It seems that any prelate can give a dispensation from a vow. For every prelate is established for the sake of providing for the benefit of his subjects. Therefore, if the benefit of his subjects should require it, he can give a dispensation.

2. Furthermore, someone can give a dispensation from a vow by the fact that he has been constituted a steward (*dispensator*) of the mysteries of God. But this belongs to every prelate. Therefore, etc. . . .

But to the contrary since in the human body there are certain actions which are only suited to the principal members, and also certain actions to the head alone. But in the Church the Pope holds the office of head, and the greater prelates hold the office of principal

members, as bishops. Therefore, there are some dispensations which only the Pope can give.

Quaestiuncula 3

1. Ulterius. It seems that no vow can be commuted: Levit., ult. 9,³⁸³ *The animal which can be sacrificed to the lord, can be changed neither for a better nor for a worse*. Therefore, if it be a licit vow, it cannot be changed.

2. Furthermore, if it could be changed, it could especially be changed for the better. But this cannot be: for Bernard says of well-ordered monasteries: *no one will depart from my counsel in the desire of a stricter life without permission of the superior*. Therefore, etc.

But to the contrary is that it is always permitted to make progress. Therefore, a vow can also be changed into something better.

Quaestiuncula 4

1. Ulterius. It seems that someone can commute a vow by his own authority. For if someone after a vow of the Holy Land should vow to enter religious life, he is freed if he fulfills the second, as the Decretals say. But he can by his own authority vow religious life. Therefore also by his own authority he can commute his vow.

2. Furthermore, that man who makes a certain vow in secular life, does not seem to be bound to it after he has entered the cloister, as certain people say. But the cloister can be entered by one's own authority.

3. Furthermore, a temporal vow is superseded by a perpetual vow in its duration alone. But by his own authority someone can commute the temporal vow of a pilgrimage into a perpetual vow of religious life, as was said. Therefore by the same reasoning, by his own authority he can change a vow of lesser duration into a vow of greater duration, like a lesser pilgrimage into a greater one.

But to the contrary, a commuting is a certain dispensation. But no one can dispense himself from his own vow by his own authority. Therefore, neither can he commute it.

³⁸³ Actually Leviticus 27:10

Quaestiuncula 1

I answer to the first question that concerning this there are diverse opinions.

For certain people say that any vow can have a dispensation from the prelates of the Church at the pleasure of the prelate: for, as they say, in any vow is conditionally understood the will of the superior prelate, namely the Pope, to whose dispensation the acts of all his subjects belong. And therefore, when he willed it, that highest prelate could relax the obligation of a vow, so that one was not bound to fulfill the vow, since this condition is not existing. But this does not seem to be well said: for there are certain things in which man is so free of in himself, that he can do them even against the precept of the Pope; as to be continent, and the other divine counsels; whence absolutely and without the condition of the will of any prelate he can vow other things.

And therefore, others say that no vow receives a dispensation according as a dispensation is a relaxation of the law (*jus*), but rather according as it is a declaration of law: for the Pope can declare this law, that when recompense is made of a greater good, a lesser good to which someone obliged himself can be omitted. But this also does not seem true: for to declare a law (*jus*) is not to make a new law, but rather to manifest what was in the law. Wherefore according to this by the dispensation of a vow nothing was ever made not against the law that was formerly against the law, but only what seemed to be against the law, and was not.

And therefore it should be said in another way that a vow can be dispensed, even according as a dispensation is a relaxation of the law, for some legitimate reason. For since a vow cannot be about something illicit, but it is not permitted to take away from someone what is owed him, therefore someone's vow cannot be made to the prejudice of his own prelate, rather he should submit to his commands, whenever it was appropriate; wherefore if the prelate saw that by some reasonable cause it was expedient, either because of the one who vowed, or because of others, that he not keep the vow, he can release anyone who otherwise was obliged by law from the observation of the vow.

1. To those things which fall under a common vow, someone is not only obliged by the vow, but also by natural law, and by divine precept; and therefore by this reason it cannot have a dispensation like other vows.

2. To observe a vow while the obligation of the vow endures, is of natural law; but when the obligation of the vow ceases, its observance is not of natural law. But this obligation ceases either on its own, as when keeping it tends toward a worse outcome; and then by the declaration of a superior, if he has the faculty of asking, the observance of the vow should be forgone. Or else the obligation ceases by the authority of a superior, who judges something else more necessary, and gives a dispensation of the vow. Nor in this is a man guilty of lying who does not keep a vow in such a case: for a man should have worthy conditions added concerning the future, either explicitly or implicitly, as is evident from James 5.

3. Concerning the vow of continence there are two opinions.

For certain people say that no one can give a dispensation from it; but different reasons for this are given by different people. For some say that this is the case because a vow of continence cannot be abandoned without someone sinking into the opposite of the vow, which is never allowed. But a vow of poverty can be overlooked in some way which is not directly against the vow, as when someone has money not of his own, but in the name of the Church. But this is no reason: for thus a vow of abstaining from meat on a certain day, or the vow of a pilgrimage, would not receive a dispensation; which is absurd.

And so others assign another reason, saying that this is fitting, for a vow of continence cannot be replaced with something better, by the fact that *nothing outweighs the value of continence for the soul*: either because by continence a man wins triumph over an interior enemy, as certain people say: or because by the religious life a man is perfectly conformed to Christ. Wherefore, because the vow of continence is included in the vow of religious life, like the other vows essential to religious life, a dispensation cannot be given, as certain people say. But even this does not seem to be sufficiently said: for the common good is much better than a private good, and sometimes for its sake a man is even removed from the garden of holy contemplation, which is *the best part*, by the judgment of his lord,

Luke 10, so that he may be free for the common benefit of his neighbors.

And therefore others say more probably that if the common benefit of the whole Church or of one kingdom or province requires it, both a vow of continence and a vow of religious life can be dispensed, however much it has been solemnized: for by a vow a man cannot disoblige himself from that in which he is bound to another, as was said; wherefore, a necessity could threaten such that it could be justly prohibited to someone either to vow continence or religious life; and if the same necessity remained, he could also be dispensed from a vow he had already made.

4. But since the reasons given to the contrary do not proceed rightly, therefore it should be said to the fourth objection that the good of continence is much nobler than bodily health; and therefore the danger of bodily death is not a sufficient reason for giving a dispensation of a vow of continence; wherefore also he does not sin who finds himself in such a case that his continence endangers his person, if he has vowed continence, particularly when he could combat that danger by other remedies; just as he does not sin who because of some work of virtue exposes himself to the danger of death.

5. With those who are promoted from the state of religious life to the state of the prelature a dispensation is not given from the principal vows of religious life: since those things which they are said to possess, they possess not in their own name but in the name of the Church; wherefore nothing in their vow of poverty is prejudiced by this; likewise neither in the vow of obedience, since obedience regards the state of the prelature in another whom one is bound to obey. And therefore, if the man who ceases to be under a prelate is not bound to obey anyone, it is not because the obligation of the vow is lacking on his part, but because there is no longer any episcopacy for him to obey. Wherefore a monk who promises obedience to an abbot, if he himself is made abbot, is not bound to obey other abbots since he no longer has an abbot.

Quaestiuncula 2

To the second question it should be said that the fullness of power in granting dispensations resides in the possession of the

Supreme Pontiff; however others participate in this power to the degree that it is delegated to them, so that, since all cannot have recourse to one man, they might receive a dispensation through those lower than him; wherefore for those vows which receive a dispensation neither easily nor frequently, but rarely, like the vow of religious life and other perpetual vows like it, only the Pope can give a dispensation; but for other temporal vows, like a vows of pilgrimage or fasting or other things of this kind, also bishops can give dispensations, unless the Pope has reserved something of these to himself, like the dispensation of the vow of the Holy Land.

1. Not everything that is beneficial to the subject can be applied to him by any prelate, but the greater things are reserved to the greater ones; just as not every doctor can cure every sickness, but in the more dangerous illnesses, more experienced doctors are required.

2. Although all are dispensers of the mysteries of God, yet they are not all equally so; and therefore it is not fitting that all should be able to give dispensations in all things.

Quaestiuncula 3

To the third question it should be said that there is a distinction between the commutation of a vow and the dispensation: that when a vow is commuted, the one vowing is absolved from one thing and bound to another; but when a dispensation from a vow is given, he is simply absolved from the vow without being bound to something else; wherefore a commutation of a vow conveys less than a dispensation; and therefore when a vow can be dispensed for a reasonable cause, it can also be commuted, either because it is commuted into something better or because it is less dangerous.

1. The animal of sacrifice was designated by this very vow for the worship of God; and therefore it was somehow already sacred, and because of this it could not be reduced to common uses. And likewise, also now if someone vowed to enter religious life, he cannot send another in place of himself, unless by the dispensation of his superior. However it is otherwise in other vows, in which a specific person is not designated for the special worship of God.

2. Bernard speaks in counsel: since sometimes because of the lightness of their

souls certain people pass into another state under the appearance of a life of greater strictness; and therefore it is safer that it be done by counsel and permission of the superior prelate; particularly if he does not believe that his superior would unreasonably present an impediment.

Quaestiuncula 4

To the fourth question it should be said that in a commutation is a certain contract, which cannot be completed without the consent of both parties; whence when a man obliges himself to God by a vow, the immutation of the vow cannot be made, unless the consent of the one who wields God's power on earth should intervene—namely, the prelates. Unless perhaps one vow should be included in another. And since a vow of religious life includes all other vows both by reason of its perpetuity, and by reason of obedience by which a man hands over to God his own will, through which he can be master of himself and all things. Therefore that man who has made some temporal vow, can enter religious life without a dispensation required of some prelate despite a previous vow that might impede his entrance into religious life, like the vow of a pilgrimage or something like this. If though he vows two temporal things, both of which are possible at the same time, he should keep both, unless perhaps by the authority of his superior an earlier lesser vow were commuted into a subsequent greater one. If however it were entirely impossible to accomplish both vows, he should keep the greater one and make satisfaction for the lesser according to the judgment of his prelate.

1. The vow of the Holy Land obliges a man to the service of God temporally, and concerns a determined time; but the vow of religious life concerns all things, and according to every time; and therefore it is in a certain way more an enlargement of the vow rather than a commutation.

2. Since by the entrance of religious life a man dies to his prior life, he is not bound to discharge those unfulfilled vows that he vowed in secular life, by the fact that he enters religion. Both particularly since singularity among religious is dangerous, and the burden of religious life is more difficult to the degree that the same ease in observing the vow does

not remain that there was in secular life. However, certain people say that he should explain to his prelate, and the prelate could give a dispensation once he has considered the conditions of the person and of the vow. But according to others this is not required; since by the very force of the vow of religious life he was absolved from his prior vows, for reasons stated.

3. A perpetual vow regards all time: and therefore there does not remain some time after its fulfillment in which another temporal vow could be completed; as time remains for fulfilling a vow of greater duration after a vow of lesser duration; and because of this, it is not similar.

Article 5

Whether for virgins vowing continence there should be a special veil by comparison with others who have vowed continence and have been corrupted

1. It seems that there should not be a special veil for virgins who vow continence as compared with others who have vowed continence and have been corrupted. For both virginity and the vow of continence are common to men and women. But to men who vow continence in virginity nothing else is given than is given to others who have lost their virginity. Therefore neither should virgins receive a special veil by comparison with others.

2. Furthermore, signs in the New Law are not empty, but fruitful, since the sacraments of the New Law confer grace. But the virginal veil does not seem to bear fruit, since grace is not conferred in it; otherwise it would be a sacrament, and should be given to the corrupted young girls who also need the help of grace for preserving their continence. Therefore it seems that there should not be a special veil for virgins as opposed to others.

3. Furthermore, the consecration which is applied to men in the reception of holy orders is more than that which is applied to women in taking the veil. But the consecration of holy orders does not require virginity in the consecrated. Therefore neither should the veiling of a woman.

4. Further more no one should be punished again for a pain that he has already undergone. But sometimes a woman suffers for the fact that she has been corrupted, as is evident in

those who have been corrupted by any kind of violence. Therefore such as these should not be denied the virginal veil for a lesser veil.

5. Furthermore, if ever a virginal veil is denied to a woman who has been corrupted, scandal results for those in attendance, and danger of homicide, if she was secretly corrupted. Therefore it seems that at least in such a case a virginal veil should be given to others besides to virgins.

But to the contrary, in an office of the church it is not seemly that there be any falsity. But in the whole office in which virgins are veiled, mention is made of bodily integrity, as is evident to anyone who pays attention. Therefore, the virginal veil should not be given to those who have been corrupted.

Moreover, by taking the veil a woman is in a certain way espoused to Christ, who is worthier than any high priest (*pontifex*) of the Old Law. But in the Old Law the high priest was not allowed to marry anyone but a virgin. Therefore no one should be veiled unless she is a virgin.

I answer that those things which act physically in the Church are spiritual signs. But since a physical sign cannot sufficiently represent a spiritual signified thing, it is sometimes necessary that several corporeal signs be used for signifying the same spiritual thing. Therefore the spiritual marriage of Christ and the church has both fecundity, by which we are regenerated as sons of God, and incorruption, since Christ chose for himself the Church, not having spot or wrinkle, or anything like this, as is stated in Ephesians 5; wherefore it is said in 2 Corinthians 11, 2: *for I have espoused you to one husband that I may present a chaste virgin to Christ*. But a bodily fecundity does not allow the integrity of the flesh; and thus it is necessary that the spiritual union of Christ and the Church be represented by diverse signs as to its fecundity and as to its integrity. Therefore as spiritual marriage is represented by fleshly marriage as to its fecundity, so it is necessary for there to be something that represents the spiritual marriage as to its integrity; and this is done in the veiling of virgins, as is shown by all the things which are brought forth and done there; and because of this only a bishop, to whom the care of the Church is committed, espouses the virgins, by veiling them not for himself but for Christ, like a friend and attendant of the bridegroom.

And since the signification of integrity can be fully in virginal continence, but in the continence of widows it is partial, on this account another veil is given to widows, though not with that solemnity with which it is given to virgins.

1. The Church stands in the spiritual marriage as a bride, but Christ as the Bridegroom; yet by the vow of continence the soul is espoused to Christ; wherefore it is not fitting that this espousal be signified in a man, but only in a woman.

2. In the consecration of virgins, as in the consecration of kings, and in other benedictions of this kind, grace is given, unless there be an impediment on the part of the one receiving; but nevertheless things of this kind are not said to be sacraments, since they were not instituted for the cure of the disease of sin, like the other sacraments.

3. In the reception of Holy Orders someone is not consecrated as a bridegroom, but as the minister of the bridegroom; wherefore virginity is not required for the integrity of the signification of spiritual matrimony, as it is required in the veiling of the woman who is consecrated as the bride.

4. Those women who are corrupted through violence, if they do not consent in any way, do not lose the glory of virginity in the sight of God. But since it is extremely difficult that in such pleasure (*delectatione*) some impulse of enjoyment does not surge forth, therefore the Church which cannot judge interior matters, does not veil a woman among virgins when she has been externally corrupted. For which reason Pope Leo says: *Those servants of God who have lost the integrity of their chastity by barbaric oppression will be more greatly praiseworthy in their humility and modesty, if they do not dare to unite themselves with uncontaminated virgins*.

5. Those women who have been corrupted secretly, whether by men, or in another way, are in no way to be veiled; for the sacraments or sacramentals of the Church should not be changed for the sake of avoiding scandal. But as some people say, some caution can be employed for avoiding scandal, that namely those things may be done which are not of the substance of virginal veiling (like the lighting of candles, and other things like this), for instance that the word *virginity* may be changed into *chastity*.

QUESTION 2

Prologue

Next we inquire about scandal; and concerning this four things are to be asked: 1) what it is; 2) whether it is a sin; 3) to whom it pertains; 4) what things should be forgiven for the sake of scandal.

Article 1

Whether the definition of scandal is fittingly assigned

1. It seems that the definition of scandal is unfittingly assigned, which is taken from the interlineal gloss on Matthew 18: *woe to the world from scandals*, that is: *scandal is something not quite proper that is said or done which presents the occasion of ruin to others*. For scandal is divided into active and passive. But this definition cannot include passive scandal. Therefore, it is not convertible with the thing defined; and thus it is insufficient.

2. Furthermore, it says about Numbers 31: *Revenge first the children of Israel*, etc., that scandal is when a deceit is put forth to someone walking rightly, for his ruin. But not everything said or done not quite rightly is a deceit. Therefore, the definition of scandal is insufficiently assigned.

3. Furthermore, just as a sin of the mouth and of deed can present an occasion of ruin to another, so also can a sin of the heart, especially when, by its external signs, it comes to the notice of others. But in the definition given the sin of the mouth and the sin of deed are touched upon, but not the sin of the heart. Therefore, it is unfittingly assigned.

4. Furthermore, an occasion signifies its cause per accidens. But even good things are sometimes cause of bad things per accidens. Therefore, not only saying or doing something not quite right may present to another the occasion of ruin, but even if it is right it should be called *scandal*.

5. Furthermore, it is said of Christ in Isaiah 8:14: *He shall be for a stone or a stumbling block*. But in Christ there was not anything 'not quite right'. Therefore it is not of the definition of scandal that it is something not quite right.

I answer that scandal is a Greek word and in Latin it means "a dashing against;" which is properly said indeed in corporeal matters, but by extension in spiritual ones. Wherefore it is fitting that spiritual scandal, which we are discussing, is taken for a likeness to corporeal impact; which indeed does not happen unless something is thrown into the path of someone walking that may be the occasion of his falling, even if he doesn't actually fall. But nothing done by another is bound to make someone fall if he is walking in the way of God, unless it is something not quite right, either in word or in deed, that comes into his notice. And therefore, saying or doing something not quite right is what becomes impact spiritually, and the occasion of ruin is given to another, in which the notion of scandal consists.

1. Just as in a corporeal impact there are two things to consider--namely, the impact itself on the one falling or on the one who is disposed to the cause; and the thing with which the impact happens, which is called a stumbling-block; so it is also in spiritual matters. And both of these receive the name scandal, but not univocally, just as faith is also said of the very thing believed, and the act of believing. Therefore the spiritual impact by which someone is disposed to fall, is called passive scandal. But the spiritual stumbling-block from which the impact comes is called active scandal. And this is the way scandal is defined here, for by saying or doing something not quite right, someone is disposed to ruin.

2. Sometimes someone commits a certain sin, speaking per se, when he acts intentionally, and not when without his intention a sin happens, as is clear in accidental homicide; and therefore someone commits scandal properly speaking when he intends to bring about the ruin of his neighbor. But whoever is led into sinning, is deceived: for every wicked man is ignorant, as the Philosopher says in Book 3 of the Ethics. And therefore wherever there is scandal, speaking per se, saying or doing something not quite right is a certain deception, which is put before someone walking, for his ruin. Or it may be said that it is called deception inasmuch as it is the occasion or the cause of deception: for everyone sinning is deceived, as was said.

3. A spiritual stumbling block, which is called scandal, must be thrown into the path of the one walking; that happens until it comes to his notice. However, the sin of the heart cannot

come to the notice of another unless by some sign, which is reducible to a sin of mouth or of deed; and thus in the definition of scandal is included only *saying or doing something not quite right*, and no mention is made of the sin of the heart.

4. Occasion does not always mean cause, but whenever cause is insufficient in itself; and in this way the foregoing should be taken in the definition. For a sin cannot have any sufficient cause from outside in what is voluntary; but it can have some inducing cause: indeed whenever this cause is per se bound to incline to sin either by its own genus or by the intention of someone proposing it in order to induce someone to sin; and then it is said to give the occasion of ruin. But when someone is inclined to sin by something incidental, which in itself is not bound to incline to it, as also happens in corporeal things that someone stumbles on a flat road, and falls; then that person is said to have taken up an occasion of ruin, though no occasion was given to him from outside. But such a cause of ruin cannot be named scandal; for although the names of a cause are allotted by its essential effects, they are never customarily named from the things that result accidentally.

5. Christ is not said to be a stumbling block as though the essential cause of scandal, for he himself did not give anyone the occasion of scandal; but he is said to be a stumbling block of scandal such that the proposition conveys not the order of cause but of consequence; for from the things that Christ did, the scandalizing of the Jews resulted.

Article 2

Whether scandal is always a sin

Quaestiuncula 1

1. It seems that scandal is not always a sin. For nothing necessary is a sin. But *it is necessary that scandals come*, as it says in Matt. 18: 7. Therefore, scandal is not a sin.

2. Furthermore, every sin is from the incitement of the Devil, not from the affection of piety. But in Matt. 16 where it is said to Peter, *Get thee behind me, Satan; you are a scandal for me*, the Gloss says: *The error of the apostle comes rather from the emotion of piety*

than from the incitement of the Devil. Therefore, not every scandal is a sin.

3. Furthermore, Jerome says: *Being scandalized is not so distant in vice from scandalizing*. But passive scandal, it seems, can be without sin, just as also a corporeal impact sometimes happens without a fall. Therefore, also active scandal can be without sin.

But to the contrary, everything said or done not quite right is a sin. But scandal is that kind of thing. Therefore, etc.

Furthermore, it is said in the Gloss on Numbers 31: *it is a far more serious sin to give the cause of sin, than to sin*. But whoever scandalizes, gives the cause of sinning. Therefore he sins.

Quaestiuncula 2

1. Moreover. It seems that it is not a special sin. For according to the Philosopher in Book 5 of the Ethics, *every special act of injustice is sometimes found separate from all other acts of injustice*. But scandal is not found separate from other sins, for it is always something said or done not quite right. Therefore it is not a special sin.

2. Furthermore, saying or doing something not quite right that offers an occasion of ruin can happen according to any kind of sin whatsoever. But that is the definition of scandal. Therefore, scandal is no particular sin.

3. Furthermore, whoever sins in the presence of another, gives scandal. But to sin in the presence of another does not add any specific difference above sinning simply speaking, but rather it adds a certain circumstance, just like sinning in secret. Therefore, scandal is not a special sin.

4. Furthermore, the one acting is proportionate to the one acted upon. But passive scandal is not a special sin: for whenever someone falls into sin by the example of another, he is said to suffer scandal. Therefore neither is active scandal a special sin.

But to the contrary, sinning in itself has to do with God, and with one's neighbor. But scandal is sinning against one's neighbor. Therefore it is a special kind of sin.

Furthermore, something is called evil because it harms, according to Augustine. But scandal has a special *ratio* of harming. Therefore it is a special sin.

Quaestiuncula 3

1. Moreover. It seems that scandal is always a mortal sin. For the Gloss on Matthew 18, *woe to the world because of scandals!* says: *overflowing eternal damnation threatens because of scandal*. But eternal damnation is not due except because of mortal sin. Therefore scandal is always a mortal sin.

2. Furthermore, spiritual life is more noble than bodily life. But someone who takes away the bodily life of another, sins mortally. Therefore also someone who scandalizes, since he takes away the spiritual life, by leading another to his ruin.

But to the contrary, scandal is saying or doing something not quite right which presents an occasion of ruin to another. But even venial sin is sometimes this kind of thing. Therefore, sometimes scandal is a venial sin.

Quaestiuncula 1

I answer that scandal is twofold, namely active and passive, as is clear from what has been said. Passive scandal is always a sin; for that man suffers scandal who either is thrown off the way of God, or at least is hindered on the way, which cannot happen without mortal or venial sin. Also active scandal is always a sin, for active scandal is always something that in itself is bound to lead another to sin; and such a thing always contains some disordering either by the genus of the act, or at least from the circumstances of the person, place, or time; and thus it is always a sin. But sometimes active scandal can exist without anyone falling into sin--when, for example, someone of himself gives the occasion of ruin, but the other is not ruined. Also sometimes conversely there is passive scandal without the sin of the one scandalizing, as when someone takes to himself the occasion of ruin from something that is not done inordinately by another.

1. Necessity is twofold. One necessity is absolute: either something is necessary in itself, like it is necessary for God to exist; or by the force of some external cause, like something violent is called necessary, and in this way it is not necessary that scandals happen. The other is conditional necessity, which is not opposed to the voluntary; and in this way it is necessary for scandals to come by conditional necessity for three reasons. First, by divine

foreknowledge and predestination itself, as we say, "It is necessary for this to be, if God foresaw it." And such necessity is not opposed to the freedom of the will; wherefore Chrysostom says about that text, *Although it is said, necessary, it does not destroy the spontaneity of the power, nor the freedom of choosing. His prediction does not therefore introduce scandals, nor does this happen because he predicted it; but since it was to be, for this reason he predicted it*. Second, by the inclination of the *fomes*, as also we say that sinning venially is necessary, although it may be possible to avoid a certain particular venial sin. Third, by consequent usefulness, which God draws out of scandals, as all useful things are called necessary.

2. According to that Gloss it seems that Peter did not sin in wanting to prevent the passion of Christ: for it was possible for the passion of Christ to please rightly and to displease according to different aspects; and there scandal is taken broadly for whatever impediment is presented to someone on any path that he intends to follow.

3. Speaking *per se*, active scandal is a greater sin than passive, for in any genus, a cause is more powerful than its effect. Nevertheless, sometimes the passive thing can be greater than the active, when someone takes more occasion for ruin than is given to him; just as also sometimes there is passive sin without the sin of an agent. But what Jerome says is to be understood as to the genus of sin, and not as to the quantity of culpability. And yet the other proposition is false, that passive scandal is not a sin: for that spiritual impact itself is a certain sin, inasmuch as it is a certain hindering from the way of God; and although it may be called passive scandal, nevertheless it is not passive in every way, but somewhat active. For a sufficient cause for sinning cannot be given to another from outside, as though forcing him to sin; the one who is scandalized cooperates with the one acting, and thus he sins.

Quaestiuncula 2

A given act is determined to a species of morals in two ways. In one way, on the part of the object, like fornication from the fact that it is about pleasures of touch; and this determination is material, and regards the habit

eliciting the act. In another way, on the part of the end; and this is the formal specification, and regards the commanding habit. However, sometimes it happens that an act is determined to the same species on both counts, like when some act is commanded and elicited by the same habit, as when someone fornicates for the sake of pleasure. Sometimes though it is determined by either part but to diverse species, as when an act is elicited by one habit, and commanded by another, like when someone fornicates for the sake of money; for that is determined to a species of lust by its object, but to a species of avarice by its end. Nevertheless, there are not two sins there, but one two-sided sin, since it is one act. Sometimes it even happens that some act is not determined to a certain species on the part of the object, but on the part of the end, by the fact that it is commanded by a particular habit, but not elicited by one; like edifying one's neighbor, which act charity does not elicit, for it only elicits interior acts, and edification does not happen by those; but it commands it, and it is materially elicited by the other virtues, not determinately by any particular one, but by all, for charity can command all the others. And since active scandal is the sin opposed to the edification of one's neighbors, thus materially speaking, on the part of the matter and the habits eliciting, it is not a special sin; but only speaking formally, on the part of the end and habit commanding, which is the habit opposed to charity, that is, the vice of hatred. And therefore when someone says or does something not quite right intending to present an occasion of ruin to his neighbor, he commits a special sin of scandal. But if it happens outside his own intention, active scandal will not be a special sin; nevertheless, it will amount to certain circumstances of the sin, by the fact that, just as any act of virtue has an order to the end of charity, even if an act is not ordered to that end, it also has an aptitude to be commanded by charity; in the same way any sin, considered in itself, has an order to the contrary end, even if that end is not intended by the one acting.

1. The sin of active scandal is found sometimes separate from every other species of sin, because it consists in an external act; as when an external act is not a sin in itself, unless inasmuch as it has a certain likeness to a sin, it is bound to give the occasion of ruin if it is done publicly, like eating the food of idols: and

for this reason it does not also say in the definition of scandal, *saying or doing something evil*, but rather *not quite right*. And thus it is clear that the objection proceeds from false premises.

2. That argument arises from the side of the habits eliciting, not the habit commanding.

3. This circumstance "in the presence of another" does not add to a sin a new species by its own nature, but by the end to which it is ordered by such a circumstance. Wherefore also to sin in secret does not remove the sin from one species since by this it does not receive an order to another end.

4. The one who is scandalized both acts and is acted upon; but his action does not pertain to the genus of scandal, but to whatever other genus; only his suffering scandal pertains to the genus of scandal. And since no one sins in what he suffers, but only in what he does, for this reason passive scandal is not counted as a special sin, like active scandal, which belongs to the genus of scandal by the action itself.

Quaestiuncula 3

Scandal is twofold, as was said: active and passive. And either of these is sometimes a venial, sometimes a mortal sin. Indeed, passive scandal is a mortal sin when someone tumbles into mortal sin by the sin of another, whether the deed of the one acting is good, or indifferent, or an evil deed of mortal or venial sin. But it is a venial sin when, no matter how, someone is not ruined by the deed of another, but is disposed to ruin; as whoever is struck is disposed to fall, even if he does not fall. For which reason the interlineal Gloss on Romans 14 says, *scandal is the name for afflicting*. But active scandal can be taken two ways. In one way, formally: namely, when it is a special sin, by the fact that someone intends to scandalize another; and in this way if he intends to lead his neighbor into mortal sin, he sins mortally; but if he intends to lead him into something venial, he sins venially, as pertains to the *ratio* of scandal. For if he intended to lead someone into venial sin by an act of mortal sin, he would sin mortally; but this would be incidental to the scandal. In another way, materially: when it is a circumstance of the sin, since he did not intend to hurt his neighbor; and then the judgment is the same of the scandal and of the act that scandalizes another--it is sometimes venial,

sometimes a mortal sin. Unless perhaps it were venial or indifferent but having the likeness of a mortal sin, for then the active scandal would be a mortal sin since by some concurrent circumstances it could be probably guessed that the weak ones watching would sin mortally.

1. The Lord speaks of active scandal, which is a mortal sin.

2. The one who gives scandal does not always take away spiritual life, for sometimes his deed does not necessarily lead anyone into mortal sin, even if someone should tumble into mortal sin from it by his own fault. And furthermore whoever takes away bodily life gives sufficient cause of natural death; but someone who gives scandal does not give sufficient cause for spiritual death, as was said.

Article 3

Whether passive scandal is only of "little ones"

Quaestiuncula 1

1. It seems that passive scandal is not only of "little ones." For Christ was not little, but most perfect. But Christ suffered scandal by Peter, as he said, *you are a stumbling-block to me* (Matt. 16:23). Therefore, etc.

2. Furthermore, no one can love unless he loves someone. But no one can give scandal, unless he scandalizes someone. But the one who sins in the presence of perfect men, cannot scandalize anyone but those watching. Therefore, the perfect would be scandalized, and not only little ones.

3. Furthermore, even the perfect sometimes sin venially. But sometimes a venial sin is a scandal. Therefore also the perfect are scandalized.

But against this is that the Lord in Matthew 18, where he speaks of scandal, does not make mention of any scandal but the scandal of little ones. Therefore, they alone are scandalized.

Furthermore, the Apostle says of those scandalized, that *their conscience, since it is weak, is defiled* (I Cor. 8). But the perfect do not have a weak conscience. Therefore, etc.

Quaestiuncula 2

1. Moreover. It seems that active scandal also applies to the perfect. For Christ was the

most perfect. But he himself gave scandal, for *he was set forth for the ruin of many*, as is said in Luke 2, and *the Pharisees having heard his word were scandalized*, as it says in Matt. 15. Therefore active scandal applies to the perfect.

2. Furthermore, Peter was perfect after he was confirmed by the Holy Spirit. But he gave scandal, for by his own act he compelled the gentiles to become Jews. Therefore, etc.

But to the contrary, the same thing doesn't set an example of good and give scandal. But the perfect do the first, as is clear from Matthew 5:16: *so let your light shine before men that they may see your good works*. Therefore, they don't give scandal.

Questiuncula 3

1. Moreover. It seems that only the perfect can give scandal. For contrary things must correspond to contraries. But passive scandal is divided against active. Since, therefore, passive scandal only applies to "little ones," active scandal can apply only to the perfect.

2. Furthermore, only the man who provokes another to sin by his example scandalizes. But this only occurs with those whose life is set forth as an example to others--namely, prelates and religious. Therefore, active scandal only has to do with them.

But to the contrary, Peter before the Passion was not yet in the state of perfection; for they were not yet confirmed from heaven (that is, the apostles) by the Word of God and the Spirit of his mouth. But he, as he was, gave scandal, for it is said to him: *You are a stumbling-block for me* (Matt. 16: 23). Therefore active scandal does not only have to do with the perfect.

Questiuncula 1

I answer that someone suffers passive scandal in two ways. In one way, by his own choice, as when someone seeing another sin, chooses to follow him in sinning; and in this way passive scandal does not belong to the perfect, for they follow the example of Christ principally, and the precepts of God, and the good of reason. Wherefore, they follow no one's example contrary to these things. In another way, without choice, as when, by the deed of another, some emotion of concupiscence comes into being in someone, or

even of sadness, or anger, or something like that. And in this way passive scandal can affect the perfect whoever they may be according to their state of life. But since choice is the principal thing in a moral act, as the Philosopher says, it is commonly said that passive scandal doesn't happen to the perfect.

1. Christ said to Peter: *you are a stumbling-block to me*, not because he had been scandalized by his deed, but because Peter, as he was, gave scandal to him in some way.

2. Speaking grammatically, every active corresponds to a passive, for the grammarian does not consider the substance of the action, but its mode of signifying. However, every active verb signifies an action that crosses over into something else. But considering the substance of the action, sometimes the action goes out from the agent, and does not extend to a 'patient'--because it has the ability to receive the effect of the agent or not to receive it, or because of some impediment interfering. Therefore, speaking in reality, the active does not correspond to a passive in all actions that are terminated in something outside the agent, like it is with striking, killing, scandalizing, and suchlike things. But to love and to know are interior acts of the soul, which do not go out to an outside reality except as it exists somehow within the agent himself; and thus in such things, even speaking of realities, the active does always correspond to a passive.

3. Although a perfect man sometimes may commit some venial sin even by choice, or deliberately; nevertheless, he does not choose to follow someone into even venial sin, for that is an extremely light reason for sinning. But sometimes moved by another cause, he commits a venial sin.

Quaestiuncula 2

Active scandal is sometimes venial, sometimes a mortal sin, as is clear from what has been said. Therefore, according as it is a mortal sin, it does not apply to the perfect in any way, just as neither does sinning mortally. But according as it is a venial sin, it does sometimes also affect the perfect, just as venial sin does too, inasmuch as some weakness does remain in them.

1. Since some people took the occasion of ruin from the deeds or sayings of Christ, he is said to be for their ruin and scandal; not

because he gave any even slight occasion of ruin; wherefore we do not read that Christ scandalized others, but that some people were scandalized by his deeds and words.

2. According to Augustine, in the truth of the matter Peter was to be blamed for that deed, not because he acted wickedly, but unwisely; and thus according to that it is not unfitting to say that he sinned venially in scandalizing. But somehow Jerome excuses Peter even from venial sin, as was said above (Dist. 1, Question 1, article 1, qc. 3).

Questiuncula 3

Even the imperfect can give others an occasion of ruin by their words or deeds, either indirectly by setting an example, or directly inciting to evil by persuading words or disturbing deeds; and thus there is no doubt that anyone imperfect can scandalize.

1. In perfect men there is some disposition preventing passive scandal in themselves; but in imperfect men there is nothing to prevent active scandal. And therefore the argument does not follow.

2. Active scandal does not consist in the fact alone that someone provokes another to sin by his own example, but in the fact that he gives the occasion of ruin to another in any way. But it is evident that any imperfect person can give the occasion of ruin to another either by persuading words or by provoking him to impatience for unjust persecutions. And thus there is no doubt that an imperfect man can scandalize. But it is also false, what is said, that an imperfect man does not scandalize by the mode of example: for God has committed to each man the care of his neighbor, as is clear from Sirach 17:12; and thus anyone is bound to edify his neighbor by his example. Also it is known by experience, that many are enticed to sin by the example of those who are not in the state of perfection: for not only the examples of the great, but even those of one's equals and lessers, can move one.

Whether the truth should be set aside on account of scandal

Quaestiuncula 1

1. It seems that truth should be set aside on account of scandal. In the parable of the weeds, the Gloss of Augustine says: *when a*

multitude is at stake, or their leader, strictness must be lessened. But not except because of scandal. Therefore the truth of justice is to be set aside because of scandal.

2. Furthermore, the avoidance of any sin whatsoever pertains to the truth of life. But a man can commit a venial sin to avoid scandalizing his neighbor, for he should rather watch out for the eternal damnation of his neighbor, which he will suffer for the mortal sin in which he was scandalized, than his own temporal loss, which he will suffer for his venial sin. Therefore the truth of life is to be set aside because of scandal.

3. Furthermore, sometimes preaching is taken away because of general scandal. But preaching pertains to the truth of doctrine. Therefore, also the truth of doctrine should be set aside for the sake of scandal.

But to the contrary is what Gregory says, *if scandal is taken about the truth, it is more useful to allow scandal to arise than to abandon truth.* Therefore truth should not be set aside because of scandal.

Furthermore, man should not sin in order to avert the sin of his neighbor. But the man who forgoes truth, sins. Therefore, someone should not forgo truth because of the scandal of another.

Quaestiuncula 2

1. Moreover. It seems that the counsels should be set aside because of scandal. For the rule of Jerome is that *everything that can be held or not held, save the Threefold Truth, is to be set aside because of scandal.* But the counsels are among these. Therefore they are to be set aside because of scandal.

2. Furthermore, the vow of religious life is a certain counsel. But Man can forgo his entrance into religious life because of the scandal of his parents, lest due honor be taken away from them: for the precept is *honor your parents* (Exodus 20). Therefore, counsels should be set aside because of scandal.

3. Furthermore, the works of mercy are sometimes set aside because of scandal, lest they are believed to be done from an intention of vain praise. But the works of mercy are in counsel and in precept: nor are they to be set aside according as they are in the precept, for there they pertain to the truth of life. Therefore,

they are to be set aside because of scandal according as they are in counsel.

But to the contrary, scandal is doing or saying something not quite right. But a counsel does not have to do with not quite right things, but with greater goods. Therefore, the observation of the counsels is not to be set aside because of scandal.

Furthermore, Jerome says to Heliodorus: *let your little grandson hang on your neck, let your mother show her breast with hair disheveled and garments rent, let your father lie across the threshold: step over him and go ahead, rush forth with dry eyes to the banner of the cross. To be cruel is the only kind of piety there is in this matter.* But he is speaking about taking up religious life. Therefore, the counsels are not to be set aside even for the sake of scandal to one's relatives, and so much less for the scandal of others.

Quaestiuncula 3

1. Moreover. It seems that temporal things are to be set aside for the sake of scandal. For temporal things were owed to the Apostle, who was sowing spiritual things. But the Apostle did not make use of this power, lest he might give a cause of offense to the Gospel of Christ, as is clear from 1 Cor. 9. Therefore, also we should reject temporal things for the sake of avoiding scandal.

2. Furthermore, someone is bound to give his own property to someone in dire need in order to avert his temporal death. But we should do more to avert the spiritual death of our neighbor than his spiritual death. Therefore, should rather abandon temporal goods than abandon him to fall into spiritual death by scandal.

3. Furthermore, among all temporal goods food is the most necessary thing for the body. But food is to be set aside because of scandal, for it says in I Cor. 13:13³⁸⁴: *if food scandalizes my brother, I will never eat meat.* Therefore much more firmly are other temporal things to be set aside because of scandal.

4. Furthermore, the Apostle says in I Corinthians 6:7: *already there is a fault among you that you have lawsuits one with another. Why do you not rather accept injury?* But he does not say this except because of the scandal

³⁸⁴384 Actually I Cor 8:13.

that was resulting from it. Therefore because of scandal man should forgo temporal things, and should not claim them in a lawsuit.

5. The tithes attached to temporal things are counted among spiritual things. But the Church does not require tithes if it might avoid a scandal. Therefore, much more should other temporal things be set aside because of scandal.

6. In the order of charity we should set the spiritual good of our neighbor ahead of our own temporal good, just as we should prefer his soul to our own body. Therefore, we should forgo our temporal goods rather than let our neighbors suffer loss in spiritual things by scandal.

7. Furthermore, a man can forgo temporal things or not, except for the Threefold Truth. Therefore, according to Jerome, temporal things should be abandoned because of scandal.

But to the contrary, Blessed Thomas of Canterbury demanded back the Church's goods to the scandal of the king. Therefore it is also permitted to us to seek our temporal goods amid the scandal of others.

Furthermore, no one should reap advantage from his own sin. But this would happen if the belongings of another were to be abandoned to someone who possessed them and who has fallen into scandal. Therefore, temporal things are not to be abandoned to someone possessing them unjustly for the sake of averting his scandal.

Quaestiuncula 1

Active scandal is never without the sin of the one doing it, as is clear from what has been said. But for no reason should someone be given an inclination to sin; wherefore he should overlook all things rather than commit active scandal, nor ever for the sake of avoiding active scandal can truth be set aside: for whoever follows the truth does not actively scandalize since active scandal is doing or saying something not quite right. Wherefore when it is asked whether truth should be set aside for the sake of scandal, the question is not to be understood as concerning active scandal, but passive, because sometimes, without sin, someone does something from which the occasion of scandal is taken, though it is never without scandal for him who is scandalized, as is clear from what has been said. And so since it is asked what should be set aside because of

passive scandal, nothing else is to be sought than what man should set aside lest someone else should sin. But since, by the order of charity man is bound to love himself more than his neighbor in spiritual goods, in no way should someone sin so as to avert the sin of another. But anyone who abandons truth, sins. However the truth of which we are speaking consists in the fact that man conforms himself in his sayings and deeds to the rectitude of the divine rule or law, to which indeed man should be conformed both in those things that pertain to knowledge and what pertains to the truth of doctrine. And in those things that regard action, either someone should do them for their own sake, which pertains to the truth of life, or he should promulgate to others the things to be observed, which belongs to the truth of justice that consists in rectitude of judgment. But whoever does not set aside something when by doing so he can conform himself to divine law, is said to set aside the truth, for the truth can still remain with that thing removed. But someone who forgoes or does something is said to set aside the truth when, once it has been omitted or done, truth does not remain, which this cannot be without sin. And thus in no way is truth to be set aside because of passive scandal.

1. The act of justice is to render to each one what is his. But rendering to each one what is his is in two ways. In one way when what is given to him is directly useful to him, like money or something like that, which cannot be denied to someone without sin. For which reason no matter how much scandal should follow, the judge must act so that his right is rendered to him. In another way when the work of justice, which is rendered to the asking of another, does not yield directly to the good of the one asking, but rather to the good of the state, as is clear in the imposition of fines, by which peace in the state is preserved through the repression of malefactors. For which reason if the judge who bears the care of the state sees that greater detriment to the state will come forth from the infliction of a penalty, he can either forgo the penalty or mitigate it. Nor does he do injury to anyone by this; for he bears the person of the state and he also must do this because he is bound by his office to provide for the public welfare. But this happens especially when a prince or some multitude is in the case, or someone of whose punishment it is feared a schism will follow, and then Augustine says

that with a multitude of sinners, warning is better than threatening; but severity should be exercised in the sin of the few. But this is to be understood when a greater danger is not feared in the dissembling of the sin of the prince or even of the multitude than would occur from their punishment. For which reason, if by the impunity of the leader or of the multitude, faith and the truth of doctrine and good morals are corrupted, neither the leader nor the multitude should be spared; for it happens particularly when the ones sinning strive to defend their sin by their authority or power. Wherefore Isidore says, *those who neither are reformed from their vice of corruption, and even attempt to vindicate that very crime that they commit by a certain unreasoning authority, may receive neither the degree of honor nor the grace of communion.*

2. The man who commits some venial sin so that another does not sin mortally, is not bound to, nor does he do well by committing this. For in the first place we do not tend to avoid sin by our own loss, for this would be to stop sinning from fear of punishment; but we are inclined to avoid sin lest we should offend God, who is also offended by venial sin, although not as greatly as by mortal sin. But no one should offend God a little so that another will not offend him a lot; for man should love God infinitely more than his neighbor; and thus no one should do a venial sin to avoid scandal, provided that his own act done for this reason remains a venial sin. For there is an opposition in what is suggested, if it were said that someone ought to sin or does well by sinning. Nevertheless, it can make an act done for this reason not to be a venial sin, which otherwise would be venial, such as saying an idle word; for now it would not be idle, since it would not lack a reason of pious usefulness.

3. In doctrine there are two things to consider: namely, the act of the one teaching, and the thing that is taught. But the act of the one teaching pertains to the truth of life, just as also any other act of mercy; for doctrine is spiritual alms, as was said above (Dist. 15, qu. 2, art. 3, qc. 2, c). Wherefore, the judgment is the same about it as about the other acts of mercy, of which we will speak later, because sometimes because of scandal they can be deferred. But the thing itself that is taught, is what pertains to the truth of doctrine. Nor is the truth of doctrine passed over when some true thing goes unsaid, but when damage is produce

to the truth of that thing either by a contrary teaching, or by other people keeping silent; and then for the sake of no scandal should the truth of doctrine be abandoned.

Quaestiuncula 2

All works of perfection which are not commanded by a precept are called counsels; wherefore they can be passed over except for the Threefold Truth. But sometimes they fall under a precept, either because of a vow, or by some other circumstance. And then they cannot be set aside without damage to the truth of life. And so we are not speaking about these things now, but only when it remains in our power to do them or not. Therefore, speaking in this way, we must distinguish what is passive scandal; for sometimes it arises from the malice of people who hate the truth, who are troubled and trouble others because of the works of light, like sons of darkness. And this is the scandal of the Pharisees, as Bernard says; and in no way are the counsels to be set aside for the sake of this passive scandal, for then the wicken would be given a chance to impede the works of perfection whenever they wanted. For which reason in Matthew 15:14 the Lord told the Pharisees, who were being scandalized by his deeds and sayings, *leave them alone; they are blind and leaders of the blind.* But sometimes it arises out of ignorance or weakness, and this is called, according to Bernard, the scandal of the little ones who do not know the truth, and because of this they are disturbed by the works of truth; and the Lord cautions about this scandal in Matthew 17:26, where he says to Peter: *but that we may not scandalize them, go to the sea,* etc., and he taught them to take precautions in Matthew 18. For which reason, because of this kind of passive scandal counsels are to be suspended for a time or done in secret, but not to be set aside entirely; for a man should provide for himself more than his neighbor in spiritual matters; and ignorance if it lasts a long time, changes into malice through obstinacy. Still, the quantity of scandal should be attended to, and the quantity of good that occurs by keeping the counsel; and according to this at some times counsels are to be overlooked because of the scandal of little ones, at other times one should be heedless of scandal for the sake of the counsels.

1. The truth of life includes not only those things that are of necessity for salvation, but also those that are of the perfection of salvation; wherefore, although in some way the truth of life can be saved even with counsels omitted, nevertheless the perfection of the truth of life cannot; wherefore the word of Jerome is to be referred to indifference by its own genus rather than to counsels.

2. In someone who wishes to enter religious life, something must be distinguished. For either he fears an imminent threat his own salvation if he remains in the world, and then he should counteract the danger to his life by every means, regardless of scandal. But if, on the other hand, the danger was not threatening, and he is not obliged by a vow, he should in order to avoid the just scandal of his parents--whom he is bound to take care of--suspend his plan of perfection for a time, so that he might fulfill the precept of honoring his parents at its own time, and afterward fulfill the counsel at a more suitable time. But if the scandal of relatives or of others is unreasonable, then it constitutes the scandal of the Pharisees; and then he should not put off his good intention because of scandal. But if he were obligated by a vow, then the doing of the counsel is commanded; and therefore in no way should it be set aside because of scandal, for this would be to do injury to the truth of life.

3. The works of mercy, be they spiritual alms or corporal works of mercy, like the counsels too, should be suspended for a time because of the scandal of little ones; except in that case where they fall under a precept, for then they cannot be omitted save for the truth of life.

4. That definition is given about active scandal; but even leaving that aside, even for the sake of passive scandal now and then a good work is to be set aside, or even suspended.

5. Jerome is speaking of the unreasonable scandal of relatives.

Quaestiuncula 3

To cast off temporal things or to set them aside happens in two ways. In one way when someone gives what he has in his own possession; in another way when he does not seek the things that are owed to him; and of these two things the judgment is pretty much

the same. For one must know that sometimes someone who doesn't give his own belongings to another scandalizes actively, either because he is bound to give them, or because he refuses in a wicked manner; and in this situation no one is allowed to keep what he possesses amid active scandal. But sometimes passive scandal follows from the fact that someone does not give his temporal belongings; and in this situation a distinction must be made. For sometimes he cannot give without sin, for either he knows that the one to whom he gives would put the things to evil use; or because he cannot give temporal things to one person without prejudice to another, like if those who have care of the community gave by some means or another, the subtraction of which made the condition of that community worse. And in that case one should not give temporal belongings, in order to avoid scandal, for this would be to act against the truth of justice or of life. But sometimes one can give without sin; and then it is to be distinguished in passive scandal. For sometimes it proceeds from malice, and then a man is not bound to give his own belongings to someone maliciously asking; otherwise the chance to use his own things would not remain, and then the common good would perish. Nevertheless, he can give them as though by a counsel, not by a precept; unless perhaps it were believed that by that giving he made himself worse; for example, if he were incited by this to seek other things wickedly, and to harass others by these kinds of requests; for then he would sin by giving. But sometimes passive scandal proceeds from ignorance; and then he can give as if by the counsel, but he is not bound to as though by a precept; for he can drive away the one asking by instructing him; and sometimes this benefits him more, for example when such ignorance verges on injuring the truth of doctrine, than if temporal things were given to him. For by this the man would be maintained in his error, as is clear from those heretics who say that everyone should give his own goods to the poor who ask, even outside the case of extreme necessity. It should also be said likewise about pursuing one's own things, for no one should commit active scandal by demanding back his own temporal goods, nor by seeking things that are not owed him, nor by pursuing them inordinately in a lawsuit, or outside of court. But as to relinquishing a just claim for temporal goods, a distinction must be made. For

sometimes one cannot licitly relinquish a claim without injury to another, as when someone has care of another's goods, whether of the community, or of some private person; and then he would sin by dropping his suit, unless by the consent of whoever he is responsible to, or unless he feared a greater danger than the loss of that person's goods. But sometimes, he can forgo his suit without injury to another, and in that case if passive scandal were to proceed from malice, he is not bound to abandon his claim on his own things for the sake of such scandal; otherwise an opportunity would be given to banditry, and it would destroy the good of justice. But he can licitly forgo his suit to avoid such scandal, unless by giving it up the one keeping his things unjustly is believed to become worse, or to go uncorrected in any way for such a sin. Wherefore, Gregory says in Book 31 of *Morals*, chapter 8: *those who carry off only temporal goods, are to be tolerated, but but they are to be prevented while preserving charity, though not only from concern that they take away our things, but lest while plundering what is not theirs, they should lose their very selves*. But if passive scandal proceeds from weakness or ignorance, one should defer his claim on his own goods, or introduce it so that he may not be scandalized. Because if he is scandalized by this, he will be made malicious by his obstinacy; and therefore the judgment is the same of this kind of scandal as of that which arises from malice. Nevertheless, certain people say that it is permitted to the imperfect to claim their own things in spite of scandal, but not to the perfect. But this is nothing; for if they speak of the perfect as being those in the state of perfection, then the same judgment is made of them as of others, unless to the extent that they are obliged by a vow to have no personal property; wherefore a monk can claim in court temporal things in the name of his chapter by the same right as a secular in his own name. But if they are speaking of the perfect according to the state of charity, then that perfection of charity will lead them to keep the counsels, not because they are bound to do it; nor would they sin if they didn't do it; but in that some damage might be done to their perfection, and in this way should be understood that Gloss on I Cor. 6: *why do you not rather suffer yourselves to be defrauded? It is permitted to the perfect to claim their own things simply, that is, without a lawsuit, without quarreling, without a trial, but*

it does not befit them to argue their suit before a judge. For this cannot be understood of the perfect according to state, like religious, since such as these do not have private property; wherefore it means nothing to say that they could claim their own things simply. But those things that are held in common, either belong to the chapter or to the poor; wherefore they could claim them in the lawcourts for in that case they are responsible for someone else's belongings. Therefore what is said in the Gloss is to be understood according to the levels of charity; for although they may not sin by seeking their own things in the lawcourt, nevertheless, it detracts from their perfection; wherefore the Gloss does not say that it is not permitted to such as these, but that it does not befit them. Know, though, that it is permitted also to the perfect in that manner to claim their own things and to contend in court, even without detriment to their perfection, in five instances. The first is when a question arises about a spiritual matter; wherefore in Acts 15, when the question has arisen of the observation of legal matters, Paul deferred to the judgment of the Apostles (Galatians 2), because of certain false brother, etc. Second, when a question arises concerning something that can tend to the detriment of a spiritual good; whence in Acts 25, Paul called upon Caesar for his liberation, since by his death the fruit of his preaching would be impeded; but he, as he was, desired to be destroyed and be with Christ (Philippians 1). Third, when it is a contention concerning something that affects the temporal loss of another, most especially the poor (Sirach 34:24): *He that offereth sacrifice of the goods of the poor, is as one that sacrificeth the son in the presence of his father*. Fourth, when the contention concerns what affects the spiritual loss of someone who unjustly seizes spiritual goods, concerning which the authority of Gregory is cited above, speaking on Job 39:16: *she has labored in vain, no fear constraining her*. Fifth, when it tends to the corruption of many by the example of banditry, Ecclesiastes 8:11: *For because sentence is not speedily pronounced against the evil, the children of men commit evils without any fear*.

1. The Apostle could licitly have accepted his expenses from those to whom he was preaching the Gospel; but he omitted out of his perfection in charity, so as to avoid the scandal of those who were greedy, and so that he could convict them more freely and so that he might

take away from false apostles the chance to plunder.

2. That man who is in extreme necessity does not have it in his power to meet with bodily death or not; rather, he necessarily incurs it because of his lack of temporal goods; and thus the man who refused to give him his own things is directly the cause of his death. But the man who is scandalized is able to avoid his own scandal, and therefore it is not the same situation.

3. The eating of certain foods has in itself a certain likeness to evil, for example, the eating of food sacrificed to idols; and therefore whoever eats this in the presence of the weak, actively scandalizes them, which is more evil than bodily death; for it is preferable to die of hunger than to eat food offered to idols, precisely because of scandal; because the first thing is the evil of punishment, but the second is the evil of guilt. Nevertheless, someone should not allow himself to die of hunger sooner than eat of food sacrificed to idols amid scandal; for he would throw himself into their hands, and then the evil of guilt would be joined with the evil of punishment. But when eating some food does not have any species of evil, then the judgment is the same of abstaining from such eating and of releasing the temporal belongings of another; wherefore the Apostle says, the counsels pertain to perfection, not to the necessity of a precept.

4. The Apostle is speaking of suing amid active scandal. Because, however, the Lord says: *of him that taketh away thy goods, ask them not again* (Luke 6:30), the counsel is greater than the precept.

5. Because of general scandal a man should refrain from demanding back his own things, when he can licitly, unless by doing so a greater damage will be done to the truth than the public scandal would be, which sometimes arises from the malice of certain people inciting others; and in this way Blessed Thomas of Canterbury endured the public scandal so that he could confront the greater danger, which was the loss of Church liberty.

6. If a man loved his own temporal belongings more than the salvation of his neighbor, he would sin; but sometimes when we demand our own things, we are thinking more of the salvation of our neighbors than of our own salvation; wherefore Gregory says, in the text mentioned above: *we should fear more*

from those bandits themselves than be so eagerly demanding our temporal belongings.

7. Although saving the Threefold Trinity, in this particular case someone might sometimes not sue for his own things in order to avoid scandal, nevertheless he could be doing it not without damage to the public truth, if he did not allow to sue; for peace and justice would perish.

Exposition

For what is hidden cannot be proved. Here there is not sufficient reason why a marriage should not be impeded simply speaking; for a lack of proof does not excuse the conscience from sin; but rather this is why it is not impeded in the face of the Church.

I believe you know from Saint Paul, that the widows who fall away from their purpose, about whom you consulted us, unless they convert, in the future they are condemned. He is speaking of a purpose confirmed by a vow.

What, among all sins, is more grave than adultery? This is understood according to the gravity of the punishment which according to the Law is inflicted for adultery, namely, the stoning of both parties; no punishment is graver than this. This is said according to the place it holds in the penalties: for according to the Law, stoning is reserved only for blasphemers and adulterers, and disobedient children. But blasphemy here names those aberrant from God, and the disobedient are counted in the same genus, for it is like the crime of soothsaying to refuse to obey, as is clear from 1 Kings 15.

It is execrable when it happens with a prostitute, but more execrable still with a wife. Here the comparison is to be understood as dealing with the use against nature; but concerning the use according to nature, it is the reverse.

Let us believe that the covenants of legitimate nuptials will be renewed. This is to be understood when both parties persevere in this life. But it seems that also if one should die, and afterward should be miraculously resuscitated, the marriage would be renewed, by the fact that Hebrews 11:35 says, *the women received their dead raised to life again.*

Furthermore, a resuscitated man could seek out his former possessions. Therefore, also his wife. Furthermore, if it were necessary for

him to contract again with the same wife, he might be considered a bigamist because of the two-fold marriage that he contracted.

And it must be said, according to Augustine, a wedding is a mortal good; and thus the matrimonial bond is finished with this life; and this is what is said in Romans 7:2, about a woman: *if her husband is dead, she is released from the rule of her husband*. And thus if he should be resuscitated, he could not seek his own wife again; but he could contract with her again, unless she has married another; for then the marriage contract could not be dissolved.

To the first it must be said that this is understood of children, not of spouses.

To the second, that possessions are subject to the power of their owner simply; wherefore even a dying man can make a will; but a wife is not subject to the power of her husband like a slave girl; rather there is a certain partnership between man and wife, which is terminated by death of one of them. Wherefore a dying man cannot leave his wife to another in his will. And thus it is clear that there is not the same *ratio* of possessions and wives.

To the third it must be said that he would not be a bigamist by this, for neither spouse is dividing his flesh among many people.

If they lack the reproach of a bad will. That indeed is when, not by a light presumption, but by some certain judgment of the death of the man, the woman has contracted with another. But if afterward some doubt should arise concerning the life of the first husband, she should neither render nor request the debt. But if it should be a light suspicion, she can do both licitly; for she should ignore that reason rather than form her conscience according to it.

By the fact that he wants to return to his first wife but is not strong enough, the discipline of the Church is thought to bind this, he begins to be excused . . .

Here the Master speaks falsely, since an excommunicated man should rather die than be joined to someone who is not his wife; for this would be against the truth of life, which is not to be covered up because of scandal.

DISTINCTION 39

QUESTION 1

Prologue

After the Master has considered impediments to marriage that make a person ineligible for marriage simply speaking with respect to any other person, here he determines the impediment that makes someone ineligible for marriage with respect to certain persons, and not with respect to all. And this is divided into two parts: In the first he considers the impediment that makes a person ineligible in relation to some other person because of distance between them, namely, disparity of cult; in the second he considers the impediment that makes a person ineligible in relation to another person because of closeness between them, Distinction 40, where he says: *now it remains to speak about blood relations*. The first part is in two parts: in the first he considers the marriage that exists in disparity of cult, between a member of the faithful and an unbeliever; in the second, the marriage that is between two unbelievers, saying there: *but there are several who claim that between unbelievers there is no union*. The first part of this is divided into two parts: in the first he shows that disparity of cult preceding marriage impedes it from being contracted, and invalidates the contract; in the second he objects to the contrary, saying there: *but this seems to go against what the Apostle says about unequal spouses*. And this is divided into two parts: in the first he raises an objection from the words of the Apostle; in the second, he resolves it, saying there: *but it clearly shows that this is one thing, and that is another*. And concerning this he does three things: first he shows that the word of the Apostle, namely, that a believer has the power of remaining together or not remaining together with an unbeliever, is understood concerning the disparity of cult that follows matrimony; secondly he inquires whether a wife can be sent away on account of other sins, like unbelief, where he says: *but if you ask whether she could be sent away because of some other crime, besides unbelief or idolatry, refer to what Augustine says*; thirdly he inquires whether a member of the faithful who puts away his non-believing wife, may marry another, here

saying: *this is asked, if a member of the faithful, sends away an unbeliever, or an unbeliever leaves a member of the faithful, whether the believer is allowed to marry another*. And concerning this he does three things: first he cites the authority for the negative side; secondly, for the affirmative, where he says: *but Ambrose testifies to the contrary*; thirdly he resolves it, saying: *notice that these things seem to be contrary to what has been said*.

Here there are six things to be asked: 1) whether a member of the faithful may contract marriage with an unbeliever; 2) whether marriage exists between unbelievers; 3) if one of two unbelieving spouses should convert to the faith without the other, whether he may remain in the same marriage; 4) whether one may leave an unbelieving wife; 5) whether, having put her away, one may marry another; 6) whether because of other sins, like unbelief, a man may put away his wife.

Article 1

Whether a member of the faithful may contract marriage with an unbeliever.

1. It seems that a member of the faithful may contract marriage with an unbeliever. For Joseph contracted with an Egyptian woman, and Esther with Assuerus. But in both marriages there was disparity of cult: for one was a believer, the other an unbeliever. Therefore, disparity of cult preceding marriage does not impede it.

2. Furthermore, the same faith is taught by the Old Law and the New Law. But according to the Old Law, a marriage could exist between a believer and an unbeliever, as is clear from Deuteronomy 21:10: *if, having gone out to fight . . . you see a beautiful woman among the captives, and you fall in love with her . . . you may go into her and sleep with her, and she will be your wife*. Therefore, it is also allowed in the New Law.

3. Furthermore, a betrothal is ordered to a marriage. But in some cases between a believer and an unbeliever there can be a betrothal with the condition of future conversion. Therefore, under the same condition a marriage can be contracted between them.

4. Furthermore, every impediment of marriage is in some way contrary to marriage.

But unbelief is not contrary to marriage, for marriage is in the office of nature, whose dictates extend beyond faith. Therefore, a disparity of faith does not impede marriage.

5. Furthermore, sometimes disparity of faith also exists between two baptised people, as when one has lapsed into heresy after baptism; and if such a person contracts with some member of the faithful, nevertheless it is a valid marriage. Therefore, disparity of cult does not impede marriage.

But to the contrary is what is said in 2 Corinthians 6:14: *what concord has light with darkness?* But there is the greatest concord between husband and wife. Therefore, someone who is in the light of faith cannot contract marriage with someone who is in the darkness of unbelief.

Moreover, it is said in Malachi 2:2 (trans. note: Malachi 2:11), *Judah has contaminated the sanctification of the Lord, which he loved, and has had the daughter of an alien god.* But this would not be, if between them a valid marriage could be contracted. Therefore disparity of cult impedes marriage.

I answer that the more principal good of marriage is offspring to be educated to the worship of God. But since education is done by the father and mother together, either one intends to educate the children to the worship of God according to his own faith. And thus if they are of diverse faiths, the intention of one will be contrary to the intention of the other. And so between them there can be no fitting marriage. And because of this, disparity of cult preceding marriage impedes it from being contracted.

1. In the Old Law it was permitted to enter into marriage with certain unbelievers, and with others it was prohibited. In particular it was prohibited with the unbelievers living in the land of Canaan: both since the Lord commanded them to be killed for their obstinacy, and because the greatest danger remained that they would pervert their spouses or children to idolatry, for the children of Israel were more prone to their rites and customs because of their interaction with them. But it was permitted with other nations, especially when there could not be the fear of being drawn away into idolatry; and in this way Joseph and Moses and Esther contracted marriages with unbelievers. But in the New Law, which is diffused throughout the world, there is a similar reason for prohibiting

marriage with all unbelievers; and thus disparity of cult preceding marriage impedes it from being contracted, and invalidates the contract.

2. That law either speaks of other nations with whom they could licitly enter into marriages; or it speaks about when the captive woman was willing to be converted to the faith and worship of God.

3. The relation of the present to the present is the same as the relation of the future to the future; wherefore just as when marriage is contracted in the present, unity of cult is required in both of the contractants, so also in the betrothal, in which a pledge of future marriage is made, a condition applied to future unity suffices.

4. Now it is clear from what has been said that disparity of cult is contrary to marriage by reason of its more principal good, which is the good of offspring.

5. Marriage is a sacrament; and thus as much as pertains to the necessity of the sacrament, it requires parity in the sacrament of the faith, namely baptism, more than in interior faith; for which reason this impediment is not called 'disparity of faith' but disparity of cult, which regards external service, as was said in the corpus of Book 3, Dist. 9, Question 1, Article 1, *questiuncula* 1. And because of this, if some member of the faithful contracts marriage with a baptized heretic, it is a valid marriage, although he would sin in contracting it, if he knows his spouse to be a heretic; just as he would sin if he contracted with someone excommunicated; nevertheless this marriage would not be rendered invalid because of this; and by the same token, if some catechumen having right faith, but not yet baptized, should contract with some baptized member of the faithful, it would not be a valid marriage.

Article 2

Whether a marriage can exist between unbelievers.

1. It seems that between unbelievers there can be no marriage. For marriage is a sacrament of the Church. But baptism is the door to the sacraments. Therefore, unbelievers, who have not been baptized, cannot contract marriage, as neither can they receive the other sacraments.

2. Furthermore, two evils are more impeding to the good than one. But unbelief in only one party impedes the good of marriage. Therefore, the unbelief of both is even stronger; and thus there can be no marriage among unbelievers.

3. Furthermore, just as there is disparity of cult between a believer and an unbeliever, so there can be between two unbelievers; for example, when one is a gentile and the other a Jew. But disparity of cult impedes marriage, as was said. Therefore, at least between unbelievers who have disparate religions there cannot be valid marriage.

4. Furthermore, in marriage there is true chastity (*pudicitia*). But as Augustine says, and as is found in Distinction 28, Question 1, the chastity of an unbeliever with his wife is not true chastity. Therefore, it is not a true marriage.

5. Furthermore, valid marriage excuses carnal intimacy from sin. But marriage contracted between unbelievers cannot do this: for the whole life of an unbeliever is a sin, as the Gloss on Romans 14 states. Therefore, there is no valid marriage between unbelievers.

But to the contrary is what is said in 1 Corinthians 7: 12: *if some brother has an unbeliever for a wife, and she consents to live with him, he may not send her away*. But "wife" is not said, except because of marriage. Therefore, between unbelievers there is true marriage.

Moreover, what is first is not removed by what comes after. But marriage pertains to the office of nature, which precedes the state of grace, whose principle is faith. Therefore, unbelief does not prevent marriage from existing among unbelievers.

I answer that marriage was chiefly instituted for the good of offspring, not only their generation, since this can happen without marriage, but also their upbringing to the perfect state: since everything naturally intends its effect to arrive at its perfect state. But in children a two-fold perfection must be considered: first, the perfection of nature not only as to the body, but also the soul, through those things which are of natural law; second, the perfection of grace. And the first perfection is material, and imperfect as compared with the second.

And therefore, since things that are for the sake of an end are proportionate to that end, a marriage which tends to the first perfection is

imperfect and material as compared with the marriage that tends to the second perfection. And since the first perfection can be common to both members of the faithful and unbelievers, but the second only exists among the faithful, in this way there is a certain marriage among unbelievers, but not completed by the last perfection, as it is among the faithful.

1. Marriage was not only instituted as a sacrament, but also as a duty of nature; and thus, although marriage is not complete among unbelievers as a sacrament in the dispensation of the ministers of the Church, still it is sufficient among them insofar as it is a duty of nature. And nevertheless, this kind of marriage is also a sacrament in a certain way habitually, although not actually, in the fact that they do not in actuality contract in the faith of the Church.

2. Disparity of cult does not impede marriage by reason of unbelief, but by reason of disparity in belief. For disparity of cult is not only an impediment according to the second perfection of children, but also the first, as long as parents intend to draw their children to different things; which does not happen when both are unbelievers.

3. Between unbelievers there is marriage, as was said, as marriage exists in the office of nature. But those things that belong to the law of nature are determined by positive law; and thus if some infidels are prohibited by a certain positive law of their own from contracting marriage with infidels of another rite, disparity of cult impedes marriage between them. For they are not prohibited by divine law, for before God it does not matter how someone strays from the faith as much as that he is estranged from grace: likewise, neither by any statute of the Church, which does not have to judge those who are outside it.

4. Purity and other virtues of unbelievers are said to be not true, for they cannot attain the end of true virtue, which is true happiness; just as something is said to be not true wine which does not have the effect of wine.

5. An unbeliever who knows his wife does not sin, if because of the good of children, or of the fidelity by which he is bound to his wife, he renders her the debt, since this would be an act of justice and temperance, which preserves the due circumstances in sensual delights. Likewise, he does not sin in doing other acts of political virtue. Nor is the whole life of

unbelievers a sin because they sin by every act they commit, but because they cannot be freed from slavery to sin by anything that they do.

Article 3

Whether a husband converted to the faith can remain with an unbelieving wife who does not wish to convert

1. It seems that a husband who has converted to the faith cannot remain with an unbelieving wife who does not wish to convert, with whom he contracted during his unbelief. For where there is the same danger, the same precautions should be applied. But because of the danger of subversion of the faith, it is forbidden that a member of the faithful should contract with an unbeliever. Therefore, since there is the same danger if a member of the faithful remains with an unbeliever with whom he contracted before, and even more so, since neophytes are more easily subverted than those who are nourished in the faith; it seems that a member of the faithful cannot remain with an unbelieving wife after his conversion.

2. Furthermore in Case 28, Question 1, (trans. note: Council of Toletano IV) it is said, *an unbeliever cannot remain in a union with a woman who has already converted to the Christian faith*. Therefore, a member of the faithful must necessarily send away an unbelieving wife.

3. Furthermore, a marriage that is contracted between members of the faithful is more perfect than one that is contracted between unbelievers. But if the faithful contract marriage in a degree [of consanguinity] prohibited by the Church, their marriage is dissolved. Therefore, also among unbelievers; and so a believing man cannot remain with an unbelieving wife, at least when he has contracted with her in a prohibited degree of consanguinity.

4. Furthermore, sometimes a certain unbeliever has multiple wives according to the rite of his own law. Therefore, if he can remain with the woman with whom he contracted in his unbelief, it seems that after his conversion he could also retain several wives.

5. Furthermore, it can happen that having divorced one wife, a man takes another, and while he remains in that marriage, he is converted. Therefore, it seems that at least in this case he cannot remain with his new wife.

But to the contrary is that in I Corinthians 7 the Apostle counsels that they remain together.

Moreover, no impediment arising after marriage can destroy it. But the marriage was valid when both were unbelievers. Therefore, when one or the other is converted, the marriage is not invalidated by that fact; and so it seems that they can licitly remain together.

I answer that the faith of the one who is in the marriage does not dissolve, but rather perfects the marriage. Wherefore, since there is a valid marriage among unbelievers, as is clear from what has been said, by the fact that one converts to the faith, the marriage bond is not thereby dissolved; but sometimes, although the marriage bond endures, the marriage is dissolved as concerns living together and rendering the debt; for unbelief and adultery parallel each other, for either one is against the good of children. Whence, just as one has the power to put away an adulterous wife or to remain with her, so also one has the power of sending away an unbelieving wife or remaining with her. For an innocent man can freely remain with an adulterous wife in the hope of correction, but not if she was obstinate in the sin of adultery, lest he seem to approve her baseness, as was said above in Distinction 35, Question 1, Article 2, although also with the hope of correction he is free to put her away. In the same way, a believer who has converted can remain with an unbeliever in the hope of conversion, if he has not seen her obstinate in her unbelief, and he does well to remain. However, he is not bound to, and from this comes the counsel of the Apostle.

1. It is easier to prevent something from being done than to destroy what was done correctly; and therefore there are many things that impede marriage from being contracted, if they precede it, which nevertheless are not able to dissolve it, if they follow it, as is clear in the case of affinity; and the same thing is to be said of disparity of cult.

2. In the primitive church at the time of the apostles, both Jews and Gentiles were everywhere converted to the faith; and thus at that time a believing man could have probable hope of his wife's conversion, even if she did not promise to convert. Afterward, however, as time went on, the Jews became more obstinate, and gentiles still entered the faith, as in the time of the martyrs, and the time of Emperor Constantine, and those times around then. And

so at that time it was not safe for a believer to live together with an unbelieving Jewish wife; nor was there the same hope for her conversion as there was hope for the conversion of a gentile wife. And therefore, at that time a converted believer could live together with a gentile, but not with a Jewish wife, unless she promised to convert; and it is according to this that the decree speaks. But now both Jews and gentiles walk by the same step, for both are obstinate; and therefore unless an unbelieving wife wants to convert, it is not permitted to live together with her, whether she be gentile or Jewish.

3. Unbaptized non-believers are not bound by the statutes of the Church, but they are bound by the statutes of divine law; and so if certain unbelievers had contracted in degrees prohibited by divine law in Leviticus 18, and either one or both had converted to the faith, they could not remain in such a marriage. If, however, they had contracted in degrees prohibited by the statute of the Church, they could remain together, if both converted, or if one converted and there was hope of the other's conversion.

4. As was said above in Distinction 33, Question 1, article 1, to have many wives is against the law of nature, by which unbelievers are also bound. And therefore, the only valid marriage that an unbeliever has is with the woman with whom he first contracted. Wherefore, if he is converted with all of his wives, he can live together with the first, and he must abjure the others. But if the first refused to be converted, and some one of the others did convert, he has the same right to contract with her anew that he had of contracting with the other; and we will speak of this further on.

5. Divorcing one's wife is against the law of nature, as was said above in Distinction 33. And therefore it is not permitted to an unbeliever to divorce his wife. And so, if he is converted after he has divorced one wife and married another, the same judgment is made of him and of someone who had several wives. For he is bound to take back the first wife whom he divorced, if she wishes to convert, and to abjure the other.

Article 4

Whether a believer who has converted may send away an unbelieving wife who wishes to live together without offense to the Creator

1. It seems that a believer who has converted may not send away an unbelieving wife who wishes to live together without offense to the Creator. For the bond of a man to his wife is greater than that of a slave to his master. But a slave who has converted is not absolved of the bond of his servitude, as is clear from 1 Corinthians 7, and 1 Timothy 6. Therefore, neither can a believing man send away his unbelieving wife.

2. Furthermore, no one can prejudice the good of another without his consent. But an unbelieving wife had the right to the body of her unbelieving husband. Therefore, if by the fact that her husband converted to the faith, the wife could suffer detriment (*prejudicium*), such that she might freely be sent away, then a man could not convert to the faith without consent of his wife, as neither can he be ordained, or vow continence, without the consent of his wife.

3. Furthermore, if someone knowingly contracts with a slave-girl, whether he be a slave or a free man himself, he cannot put her away because of that condition itself. Therefore, since the man knew the woman to be an unbeliever when he contracted with her, it seems that by the same token he may not send her away because of her unbelief.

4. Furthermore, a father is bound in duty to attend to the salvation of his children. But if he left his unbelieving wife, their sons would remain with their mother, for "birth follows the womb." And thus they would be in danger of their salvation. Therefore, he cannot licitly send away an unbelieving wife.

5. Furthermore, an adulterous man cannot put away an adulterous woman, even after he has done penance for the adultery. Therefore, if the same judgment be made of the adulterer and the unbeliever, then neither may an unbeliever send away an unbeliever, even after he has converted to the faith.

But to the contrary is what the Apostle says in 1 Corinthians 7.

Moreover, spiritual adultery is graver than carnal adultery. But because of carnal adultery, a man can cease to live with his wife.

Therefore, even more so because of unbelief, which is spiritual adultery.

I answer that different things are fitting and expedient for a man according to one life than according to another. And so one who dies to the first life is not bound to those things that he was bound to in the first life; and so it happens that a man who vows certain things while living a secular life, is not bound to fulfill those things when he dies to the world by assuming religious life. But someone who receives baptism is regenerated in Christ and dies to the previous life, since the generation of one is the corruption of the other. And thus he is freed from the obligation by which he is bound to render the debt to his wife, and he is not bound to live with her if he does not wish, once he has converted, although in some cases he might freely do so, as was said; just as a religious might freely fulfill vows he made while in the world, if they are not against his religious life, although he is not bound to fulfill them, as was said in the preceding distinction.

1. To be a slave is not something incompatible with the fulness of the Christian religion, which professes the greatest humility. But the obligation of marriage detracts something from Christian perfection, the highest state of which life is possessed by those who are continent. And thus the two things are not similar. And furthermore one spouse is not obliged to the other like his possession, as a slave is to his master, but in the mode of a partner of sorts, which is not suitably between a believer and an unbeliever, as is clear from 1 Corinthians 7; and therefore what concerns a slave and a spouse are not the same.

2. The wife did not have the right to the body of her husband except for as long as he remained in that life in which he had contracted with her; for also when a husband dies, the wife is freed from the rule of her husband, as is clear from Romans 7. And therefore, if after a man changes life, dying to his previous life, he should go away from her, no detriment is done to her. But by entering religious life, he dies only a spiritual death, but not a bodily one. And so, if the marriage has been consummated, a man cannot enter religious life without the consent of his wife. But he can before the fleshly union, when there is only a spiritual union. But someone who receives baptism is buried in death with Christ, also bodily; and thus he is also absolved from rendering the debt after the consummated marriage. Or it can be

said that the wife who holds the convert in contempt suffers detriment by her own fault.

3. Disparity of cult makes a person incapable of marriage simply speaking; but the condition of servitude does not, except when it is unknown; and so the argument about an unbeliever and a slave-girl is not the same.

4. The children have either arrived at the age of maturity, and then are able to freely follow either their believing father or their unbelieving mother; or else they are considered to be in the age of minority, and then they should be given to the believing parent, notwithstanding that their mother's submission is necessary for their education.

5. An adulterer does not embark upon another life by penance, as an unbeliever does by baptism; and thus the argument is not similar.

Article 5

Whether a believer who leaves his unbelieving wife may marry another

1. It seems that a believer who leaves his unbelieving wife may not take another wife. For the indissolubility of marriage comes from its very nature, since the divorce of one's wife is against the law of nature, as was said above in Distinction 33, Question 1, Article 1. But between unbelievers there was a valid marriage. Therefore, in no way can that marriage be dissolved. But as long as the bond of marriage to one person remains, a person cannot contract with another.

2. Furthermore, crime happening during the marriage does not dissolve marriage. But if the wife wishes to live together without affront to the Creator, the bond of marriage is not dissolved; for the man cannot take another wife. Therefore, the sin of the wife who does not wish to live together without affront to the Creator does not dissolve marriage such that a man might take another wife.

3. Furthermore, man and wife are equals in the marriage bond. Therefore, since it is not permitted to an unbelieving wife to take another husband while her own husband is still alive, it seems that neither should it be permitted to a believer.

4. Furthermore, a vow of continence is more favorable than a contract of marriage. But as it seems, it is not permitted for the believing

husband of an unbelieving wife to take a vow of continence: for then the wife is defrauded of her marriage, if afterward she should be converted. Therefore, much less is it permitted for him to contract marriage with another.

5. Furthermore, a son who remains in unbelief once his father has converted, loses the right of paternal inheritance; and nevertheless, if afterward he converts, his inheritance is restored to him, even if another person has come into possession of it. Therefore, it seems that similarly, if the wife of a believer converts afterward, her own husband is to be restored to her, even if he has since contracted with another; which could not be, if the second marriage were valid. Therefore he cannot contract with another.

But to the contrary, marriage is not ratified without the sacrament of baptism. But what is not ratified can be dissolved. Therefore, marriage contracted in infidelity can be dissolved; thus once the marriage bond is dissolved, it is permitted for a man to take another wife.

Moreover, a man should not live together with an unbelieving wife who does not wish to live together without affront to the Creator. If therefore it were not permitted to him to take another wife, he would be forced to keep continence, which seems unfitting, for it would mean that his conversion worked to his own disadvantage.

I answer that when one spouse is converted to the faith, while the other remains in unbelief, a distinction must be made. For if the unbeliever wishes to live together without affront to the Creator, or without provoking the other to unbelief, the believer can freely leave; but he cannot marry another. But if the unbeliever, breaking forth in words of blasphemy and refusing to hear the name of Christ, does not wish to live together without affront to the Creator; then if she should endeavor to bring him back to unbelief, the believing husband can leave and be united with another in marriage.

1. The marriage of unbelievers is incomplete, as was said in Article 2 of this question. But the marriage of believers is complete, and as such it is firmer. But the stronger bond always dissolves the less strong, if it be at odds with it. And thus the marriage that is contracted afterward in the faith of Christ dissolves the marriage that had been contracted first in unbelief. For which reason,

marriage of unbelievers is not absolutely firm and ratified. But it is ratified afterward by faith in Christ.

2. The crime of a wife who refuses to live together without affront to the Creator absolves the man of the servitude by which he was bound to his wife which prevented his marrying another while she lived. But it still does not dissolve the marriage: for if the blasphemous one were converted before he had contracted another marriage, her husband would be restored to her: but it is dissolved by the subsequent marriage, which the believing man could not enter upon if he were not freed from servitude to his wife by her own fault.

3. After the believer contracted, the bond of marriage was cut loose from both sides: for marriage cannot limp on one foot with regard to the bond, but sometimes it does limp as regards the effect. Wherefore it is appointed that the unbelieving wife may not contract with another, more in penalty to her than from the strength of the preceding marriage. But if afterward she should convert, it can be granted to her as a dispensation that she marry another, if her husband has taken another wife.

4. If after the conversion of the man there should be some probable hope of the conversion of his wife, the man cannot take a vow of continence, nor may he enter upon another marriage: for it would be more difficult for the wife to be converted if she knew that she had lost her husband. But if there were no hope of her conversion, he could enter religious life or holy orders, after having asked his wife to convert; and then after the man has received holy orders, if the wife should convert, her husband would not be restored to her; but it should be imputed to her as a penalty for her late conversion that she has been deprived of her husband.

5. The bond of paternity is not dissolved by disparity of cult, as the bond of marriage is; and therefore it is not the same concerning one's inheritance and one's wife.

Article 6

Whether other vices dissolve marriage, besides unbelief

1. It seems that other vices dissolve marriage, just as unbelief does. For adultery seems to be more directly opposed to marriage

than unbelief. But unbelief in some cases dissolves the marriage, such that one is permitted to enter upon another marriage. Therefore, adultery also does the same thing.

2. Furthermore, just as unbelief is a spiritual fornication, so is any other kind of sin. Therefore, if unbelief, which is a spiritual fornication, dissolves marriage because of this, any other sin would dissolve marriage by the same reasoning.

3. Furthermore, it is said in Matthew 5:30, *if your right hand causes you to sin, cut it off and throw it from you*; and it says in the Gloss that in *hand* and in *right eye* can be taken brothers, wife, neighbors, and children. But by any sin they are made an impediment to us. Therefore, because of any sin marriage can be dissolved.

4. Furthermore, avarice is an idolatry, as it says in Ephesians 5. But because of idolatry a woman can be put away. Therefore, by the same reasoning on account of avarice, and in the same way because of other sins, which are greater than avarice.

5. Furthermore, the Master expressly says this in the text.

But to the contrary is what is said in Matthew 5:31: whoever puts away his wife, except because of fornication, commits adultery.

Moreover, according to this, separations would be happening every day, for a marriage is rare in which one of the spouses or the other has not fallen into sin.

I answer that bodily fornication and unbelief have special contrariety to the goods of marriage, as can be seen from what has been said, wherefore they especially have the force of separating marriages. But nevertheless it must be understood that a marriage is dissolved in one of two ways. In one way, on the part of the bond, and in this way it cannot be dissolved after the marriage has been ratified, neither by unbelief nor by adultery; but if it is not ratified, the bond is permanently dissolved by unbelief in either spouse, if the other, having converted to the faith, should enter upon another union. But the bond is not dissolved by adultery; otherwise an unbeliever could easily give a writ of divorce to an adulterous wife, and once she is put away he could marry another; which is false. In another way, marriage is dissolved as to its act; and in this way it can be dissolved just as well by unbelief as by fleshly fornication, as was said above in Distinction

35. But marriage cannot be dissolved on account of other sins, even as to its act, unless perhaps the man wishes to remove himself from the company of his wife for her reproof, by removing the comfort of his presence from her for a time.

1. Although adultery is more directly opposed to marriage than unbelief is, insofar as marriage is an office of nature, yet the reverse is true insofar as marriage is a sacrament of the Church, by which fact it has complete firmness, insofar as it signifies the indivisible union of Christ and the Church. And thus a marriage that is not ratified can be dissolved more easily by unbelief than by adultery, as to its bond.

2. The first union of the soul to God is by faith; and thus the soul is espoused, as it were, to God, as is clear from Hosea 2:20: *I will espouse you to me in faith*. For which reason, in Sacred Scripture idolatry and unbelief are particularly designated by "fornication;" but other sins are called spiritual fornications by more remote signification.

3. This is to be understood when a woman presents a great occasion of sin to her husband, so that he has a probable fear of danger to himself. For then a man can remove himself from interaction with her, as was said.

4. Avarice is called idolatry by a certain similarity of slavery, for both the greedy man and the idolater would rather serve a creature than the creator; but not by the likeness of unbelief; for the corruption of unbelief is in the intellect, but avarice happens in the affections.

5. The words of the master are to be taken as concerning betrothed couples, for a betrothal can be broken because of sins committed afterward. Or if we should speak of marriage, it is to be understood about a separation for a time from shared interaction, as was said, or when the wife does not wish to live together unless under a sinful condition, as when she says, "I will not be your wife unless you acquire wealth for me by stealing," etc. for then he should rather put her away than engage in theft.

Exposition

And foreign nations, that is, heretical. The sin of heresy always impedes marriage from being contracted, but it does not invalidate the contract, unless she were such a heretic that she

did not accept the sacrament of baptism, or were not baptized in the form of the Church.

If both believed, their union was strengthened by the recognition of God. But to the contrary. If a woman had fornicated before her conversion, her husband is bound to take her back, if he also wanted to convert, as it seems. And it must be said that if a woman who has converted seeks out her own husband, who has converted, the man cannot hold it against her that she had formerly committed fornication, if he himself gave her the occasion for fornicating; for example, if he refused to live together with her, and she wanted to live together without affront to the Creator; otherwise he could take exception; and nevertheless the marriage is ratified, so that it may no longer be dissolved on the part of the bond, such that the man would be allowed to take another wife, although it might be dissolved as to the act.

DISTINCTION 40

Prologue

After the Master has considered the impediment by which a person is made legally incapable of marriage with respect to some other person because of distance between them, here he begins to determine the impediments by which a person is rendered legally incapable of marriage with respect to another person because of close relationship between them; and this is divided into two parts: in the first part he determines the impediment of a physically close relationship; in the second part, the impediment of a spiritually close relationship, in Distinction 42, where he says: *now we bring in spiritual family ties.*

The first is in two parts: in the first he determines about consanguinity; in the second, about affinity, Distinction 41, where he says, *now affinity must be examined.* The first is in two parts: in the first he shows which degrees of consanguinity impede marriage; in the second he objects to the contrary, and resolves it, where he says, *but what Gregory [wrote] to Augustine, bishop of England is opposed to these things . . .*

He writes in reply. The first is in two parts; in the first he shows in what degrees consanguinity impedes marriage; in the second he shows the reason for this distinction, where he says, *indeed, the reason that Isidore counts six degrees, he himself discloses.* The first is in two parts: in the first he shows up to which degree consanguinity impedes marriage; and in the second he shows how these degrees are calculated, where he says, *but how the degrees of consanguinity may be calculated, Isidore shows in this way.*

Here there are four things to be asked: 1) what is consanguinity; 2) about distinguishing it; 3) whether according to some degrees, it impedes marriage by natural law; 4) whether the degrees that impede marriage could be determined by the statutes of the Church.

Article 1

Whether the definition of consanguinity that certain people put forth is adequate

1. It seems that the definition of consanguinity that certain people put forth is

inadequate, namely: *consanguinity is the bond contracted between those descended from a common root by carnal propagation.* For all men are descended by carnal propagation from the same root, namely from Adam. Therefore, if the definition above were right, all men would be consanguineous with each other, which is false.

2. Furthermore, a bond can only be of two things that go together, for a bond unites. But for those who are descended from one root, there is no greater matching with each other than with other people, since they are identical in species, and differ in number, just as any other people. Therefore, consanguinity is not a particular bond.

3. Furthermore, carnal propagation, according to the Philosopher, occurs from an excess of food. But such an excess has more to do with matters of eating, with which it agrees in substance, than with the one who eats. Therefore, since no bond of consanguinity arises between the one born of semen and the things he eats, neither does any bond of close relationship arise by carnal propagation in the one generating.

4. Furthermore, in Genesis 19:14 (trans. note: Gen 29:14), Laban said to Jacob, *You are my bone and my flesh*, by reason of the family relation between them. Therefore, a close relationship like this should be called carnality rather than consanguinity.

5. Furthermore, carnal propagation is common to men and animals. But among animals no bond of consanguinity is contracted in carnal propagation. Therefore, neither does it happen in men.

I answer that according to the Philosopher in Book 8 of the Ethics, all friendship consists in some kind of sharing, and since friendship is a certain tie or union, the sharing that is the cause of the friendship is called a bond. And for this reason, some people are named by whatever they share as though they were tied to each other, like those are called 'compatriots' who share with each other a political community, and 'comrades-in-arms' who share in military pursuits. And in the same way, those who share something in common at the level of nature are called 'consanguineous'. And so in the definition above the genus of consanguinity is given as *bond*; as its subject, *persons descending from one root*, who have this kind of bond, of which the principle is *carnal propagation*.

1. The active force is not found according to the same perfection in the instrument as it is in the principal agent. And since every moved thing that moves is an instrument, it is for this reason that the strength of the first mover in any genus runs out in the end, diffused through the many intermediaries, and ends in something that is only moved, not a mover. But the power of the one generating moves not only what has to do with the species, but also what has to do with the individual, for which reason a son resembles his father not only in the nature of the species, but even in accidental things. But nevertheless the character of the father is never so completely in the son as it was in the father, and in the grandson even less, and it is weakened from that point on. And so it is that that character sometimes runs out, so that it cannot proceed any further. And since consanguinity exists inasmuch as many share in such a character diffused from one throughout many by propagation, over time consanguinity cancels itself out, as Isidore says; and so it is not necessary to include the remote root in the definition of consanguinity, but the near one, whose strength still remains in those who are propagated by it.

2. Now it is clear from what has been said that the consanguineous do not only share in the nature of the species, but also in the proper virtue of the individual himself, passed on from one to many, by which it sometimes happens that a son not only resembles his father, but also his grandfather, or remote forebears, as is said in Book 4 of *On the Generation of Animals*.

3. Convergence is more attendant on form, according to which something is in act, than upon matter, according to which something is in potency; which is clear in the fact that charcoal has more in common with fire than with the tree from which the wood was cut. And likewise, food, which has already been transformed into the nourished species by the nutritive power, has more to do with the nourished thing itself than that thing from which nourishment was taken. However, the argument might proceed according to the opinion of those who said that the entire nature of a thing is its matter, and that all forms are accidents; which is false.

4. That which is more immediately converted into semen, is blood, as is proved in Book 1 of *On the Generation of Animals*. And because of this, the bond that is contracted by

carnal propagation is more fittingly called consanguinity than carnality. And when someone consanguineous is said to be the "flesh" of another, this is because blood, which is converted into semen in the man or into the menstrual flow, is potentially flesh or bone.

5. Certain people say that the bond of consanguinity is contracted between men by carnal propagation, and not among other animals, because whatever concerns the truth of human nature in all men, was in our first parents, which is not in other animals. But according to this, consanguinity would never be cancelled out.

But this position was disproved in the corpus of Book II, Distinction 30, Question 1, Article 2; wherefore it must be said that this is fitting, for animals are not joined together for the unity of friendship for the sake of the propagation of many from one close forebear, as is the case with men, as was said in the body of this article.

Article 2

Whether consanguinity is suitably distinguished by lines and degrees

1. It seems that consanguinity is unsuitably distinguished by lines and degrees. For the line of consanguinity is said to be *the ordered series, containing diverse degrees, of persons related by blood, having descended from the same root*. But consanguinity is nothing other than the series of such persons. Therefore, the line of consanguinity is the same as consanguinity. But nothing should be distinguished by itself. Therefore, consanguinity is not fittingly distinguished by lines.

2. Furthermore, that according to which some common thing is divided, cannot be included in the definition of the common thing. But descent is included in the definition given for consanguinity. Therefore, consanguinity cannot be divided by lines of ascending and descending and transversals.

3. Furthermore, the definition of a line is that which is between two points. But two points only make one degree. Therefore, one line has only one degree; and so the division of consanguinity by lines and by degrees seems the same.

4. Furthermore, degree is defined as *the relationship of distant persons by which it is known by how much distance the persons are separated from each other*. But since consanguinity is a certain close relationship, the distance of persons is more opposed to consanguinity than it is a part of it. Therefore, consanguinity cannot be distinguished by degrees.

5. Furthermore, if consanguinity is distinguished and known by degrees, it is necessary that those persons who are in the same degree, are equally consanguineous. But this is false; for a great-grand-uncle and his great-grand-nephew are in the same degree, but they are not equally consanguineous, as the decree states. Therefore, consanguinity is not rightly distinguished between degrees.

6. Furthermore, in ordered things, anything added to another makes another degree; just as a certain unit added makes another species of number. But a person added to a person does not always make another degree of consanguinity: for a father and a paternal uncle who is related to him, are in the same degree of consanguinity. Therefore, consanguinity is not correctly distinguished by degrees.

7. Furthermore, between two relatives, there is always the same relation of consanguinity: for one of two extremes is equally distant from the other and vice versa. But the degree of consanguinity is not always found to be the same on both sides, since sometimes one relative is in the third degree and the other is in the fourth. Therefore, the closeness of consanguinity cannot sufficiently be known by degrees.

I answer that consanguinity, as was said, is a certain close relationship, founded on a sharing at the natural level resulting from the act of generation, by which nature is propagated. Wherefore, according to the Philosopher in Book 8 of the Ethics, this sharing is three-fold. One is according to the relation of the principle to its effect (*principiatum*), and this is the consanguinity of the father to the son; wherefore he says that *parents love their children as being some part of their own selves*.

Another way is according to the relation of the effect to its principle, and this is the relation of son to father; wherefore he says that *children love their parents, because they exist from them*. Thirdly is according to the mutual

relation of those who share one principle, as brothers are said to be born from the same people, as he himself says in the same place.

And since a point moved makes a line, and by propagation in a certain way the father descends into the son, for this reason three lines of consanguinity are taken according to the three relationships mentioned, namely, the line of descent according to the first relationship, the line of ascent according to the second relationship, and the collateral line according to the third relationship. But since the movement of propagation does not come to rest in one terminus, but progresses further, for this reason we find that every father has his own father and a son, his own son, and so on in succession; and according to these different steps, different degrees are found in one line.

And since the degree of anything is some part of that thing, the degree of close relationship cannot be where there is no close relationship; and thus, either identity or extreme distance remove the degree of consanguinity, for nothing is closely related to itself, as neither is it like itself. And because of this no person makes any degree by himself, but only when compared to another person.

But nevertheless, there are different formulae of calculating degrees in different lines. For a degree of consanguinity in the line of ascent is contracted by the fact that one person whose consanguinity is being considered, is descended from someone else: and thus, according to canonical and legal calculation, the person who comes first in the process of propagation whether by ascending or descending, is removed from the other, let's say from Peter, in the first degree, like a father and a son. But the ones who come second, are removed in the second degree, like a grandfather and grandson, and so on in succession. But the consanguinity of those who are in the collateral line is contracted not from the fact that one of them is propagated by the other, but because both are propagated by one person; and thus the degree in this line of consanguinity is calculated by comparison to the one principle from which both are propagated. But according to this there is a different canonical calculation from the legal calculation: for the legal calculation counts descent from a common root on both sides; but the canonical calculation only counts it on the side where the greater number of degrees is found; where, according to the legal

computation a brother and a sister, or two brothers, are related to each other in the second degree, for they both are removed from the common root by one degree; and likewise, the sons of two brothers are removed from each other in the fourth degree. But according to the canonical calculation, two brothers are related to each other in the first degree, for neither of them are removed from the common root except by one degree; but the son of one of the brothers is removed from the other brother in the second degree, for that is how distant he is from the common root. And thus according to the canonical calculation, by the same degree that someone is removed from someone higher, he is removed from anyone descended from him, and never less: for *whatever is the cause of a thing being the way it is, is yet more so*; wherefore if other descendents from the common ancestor are connected with someone by reason of a common ancestor they cannot be as close relatives to the him, as the ancestor himself is. But sometimes someone is more removed from someone descended from his common ancestor than he is from the ancestor, for the other may be more removed from the common ancestor than he is; and consanguinity has to be computed according to the more remote distance.

1. That objection proceeds on false grounds. For consanguinity is not a series, but a certain relation of some persons to each other; their series makes the line of consanguinity.

2. Descent, taken generally, is considered according to any line of consanguinity: for carnal propagation, by which the bond of consanguinity is contracted, is a certain descent; but only one kind of descent, i.e., from a person whose consanguinity is in question, makes the line of descendents.

3. A line can be taken in two ways. Sometimes, properly, for that dimension which is the first species of continuous quantity; and in this way, a line contains only two points in act, which terminate it, but it has infinite points in potency, of which, if any are marked, the line is divided in act, and two lines are made. At other times, though, line is taken to mean those things that are disposed linearly; and according to this meaning line and figure are assigned in numbers, just as a unit is included in any number after "one", and thus any unit added makes a degree in this kind of line; and it is the same way with the line of consanguinity;

and for this reason one line contains several degrees.

4. Just as similitude cannot be where there is no diversity, so also close relationship cannot be where there is no distance; and therefore every kind of distance is not opposed to consanguinity, but only that distance that excludes the closeness of consanguinity.

5. Just as whiteness can be called "greater" in two ways, in one way from the intensity of its quality, and in another way from the quantity of its surface: so also consanguinity is called "greater" or "lesser" in two ways. In one way, intensively, from the nature of consanguinity itself; in another way, almost dimensionally; and in this way the quantity of consanguinity is measured from the persons between whom the propagation of consanguinity proceeds; and in this second way the degrees in consanguinity are distinguished; and thus it happens that of two people who are in the same degree of consanguinity with respect to a third person, one is more consanguineous to him than the other by considering the first quantity of consanguinity: just as father and son are related to someone in the first degree of consanguinity, for on neither part does some other person come in the middle; but nevertheless, intensively speaking, someone's father is connected to him more than his brother, for a brother is not connected to someone except inasmuch as they have the same father. And therefore, the closer someone is to the common principle, from which consanguinity descends, the more consanguineous he is, although he may not be in a closer degree, and according to this a great-uncle is closer to someone than his great-nephew, although they are in the same degree.

6. Although a father and a paternal uncle are in the same degree with respect to the root of consanguinity, for both are removed one degree from the grandfather; but with respect to the person whose consanguinity is in question, they are not in the same degree; for the father is in the first degree, but the paternal uncle cannot be closer than the second degree, in which the grandfather is.

7. Two persons are always removed in an equal number of degrees from each other; however, they are sometimes not removed in an equal number of degrees from the common forebear, as is clear from what has been said.

Article 3

Whether consanguinity impedes marriage by natural law

1. It seems that consanguinity does not impede marriage by natural law. For no woman can be closer to a man than Eve was to Adam, about whom Genesis 2:23 says, *here now is bone of my bones, and flesh of my flesh*. But Eve was joined in marriage to Adam. Therefore, no consanguinity impedes marriage, as far as the law of nature goes.

2. Furthermore, natural law is the same among all men. But in barbarous nations no persons joined by blood ties are excluded from marriage. Therefore, consanguinity, does not impede marriage, as far as the law of nature goes.

3. Furthermore, natural law is what the nature of all animals teaches us, as is said in the beginning of the Digests. But brute animals also copulate with their mothers. Therefore it is not of the law of nature that some person be barred from marriage because of consanguinity.

4. Furthermore, nothing impedes marriage that is not contrary to some good of marriage. But consanguinity is not contrary to any good of marriage. Therefore, it does not impede it.

5. Furthermore, those things that are more closely related and similar have a better and stronger union. But marriage is a certain kind of union. Therefore, since consanguinity is a certain kind of closeness, it does not impede marriage, but rather helps it.

But to the contrary, that which impedes the good of offspring also impedes marriage, according to the law of nature. But consanguinity impedes the good of offspring; for as is reasoned in the text from the words of Gregory, *we have learned by experience that from such a conjugal union progeny cannot grow up*. Therefore, consanguinity impedes marriage according to the law of nature.

Moreover, what human nature had in its first condition, is of natural law. But from its first condition nature held that father and mother were excluded from marriage; which is clear by what is said in Genesis 2:24, *because of this a man leaves his father and mother*; which cannot be understood with respect to living together, and thus it is necessary to understand it with respect to the union of marriage. Therefore consanguinity impedes marriage according to the law of nature.

I answer that, as was said above in the corpus of Distinction 33, Question 1, article 1, what is said to be against the law of nature in marriage is what renders marriage inadequate to the end for which it was ordained. But the end of marriage, first and *per se*, is the good of offspring; which indeed is impeded by a certain consanguinity, namely between father and daughter or between son and mother. Not indeed that this end would be totally destroyed, for a daughter can conceive children by the seed of her father, and likewise with her father she may nurture and instruct them, and this is what the good of offspring consists in. But rather it would not be done in an appropriate manner. For it is disordered that a daughter should be joined to her father in marriage as a partner for the sake of generating and educating children, when it is necessary for her to be subject to her father in all things as to the one from whom she proceeds; and therefore it is of natural law that the father and mother are barred from marriage, and even more the mother than the father; for more of the reverence that is owed to parents is diminished if the son takes his mother to wife than if the father takes his daughter, for a wife should be in a certain way subject to her husband. But the secondary essential end of marriage is as much the repression of concupiscence; which is lost if any consanguineous woman can be taken in marriage; for a great opportunity is presented to concupiscence unless carnal intimacy is forbidden between those persons who have to keep company in the same house.

And therefore divine law does not only exclude father and mother from marriage, but also other related persons with whom it is necessary to live at the same time, and who have to guard each other's purity. And divine law ascribes this reason, saying in Leviticus 18: *nor shall you reveal the nakedness of such or of such, for it is your nakedness*. But *per accidens* the end of marriage is the confederation of men, and the multiplication of friendship, when a man takes his wife's relatives as his own; and thus it would be detrimental to this multiplication of friendship if someone could take as his wife a woman joined to him by blood; for by this no new friendship would be built up by the marriage; and thus according to human laws and statutes of the Church many degrees of consanguinity are barred from marriage. So therefore, it is clear from what has been said that consanguinity impedes marriage

for certain persons by natural law; for others it is by divine law; and for others it is by the law instituted by men.

1. Although Eve proceeded from Adam, she was nevertheless not the daughter of Adam; for she did not proceed from him by the mode in which a man is able to generate someone like himself in species, but by a divine operation; for so one who was an equal could be made from the rib of Adam, in this way Eve was made. And thus there is not merely a natural congruence between Eve and Adam like a daughter to a father, nor is Adam the natural principle of Eve, like a father to a daughter.

2. It does not come from natural law that certain barbarians commingle carnally with their blood relations, but from the ardor of concupiscence, which eclipses the law of nature in them.

3. The union of a husband and wife is said to be of natural law because nature teaches all animals this; but it teaches this union to different animals in different ways, according to their different conditions. However, carnal commingling diminishes the reverence that is owed to parents. For just as nature endows parents with concern for providing for their children, so it endows children with reverence for their parents. But it endows no genus with concern for their children or reverence for parents at all times, except for man; but with other animals, less or more, according to how necessary the children are to their parents or the parents to their children; wherefore also among certain animals the sons abhor knowing their mothers carnally, as long as recognition of their mothers remain in them, there is also a certain reverence for them, as the Philosopher notes of the camel and the horse in Book 9 of the History of Animals. And since all the decent habits of animals are naturally brought together in men, and more perfectly in them than in others, for this reason man naturally abhors knowing carnally not only the mother, but also the daughter, which is still less contrary to nature, as was said; and again, among other animals consanguinity is not contracted by propagation of the flesh, as among men, as was said; and therefore it is not a similar understanding.

4. From what has been said, it is now clear how consanguinity of the spouses is contrary to the good of marriage; wherefore the argument proceeds on false grounds.

5. It is not unfitting for one of two unions to be impeded by the other; for just as where there is identity there is not 'likeness,' so also the bond of consanguinity can impede the union of marriage.

Article 4

Whether the degrees of consanguinity that impede marriage could be fixed by the Church up to the fourth degree

1. It seems that the degrees of consanguinity that impede marriage could be fixed by the Church up to the fourth degree. For in Matthew 19:6 it says, *what God has joined, let man not separate*. But those who are joined within the fourth degree of consanguinity, God has joined; for their union is not prohibited by divine law. Therefore, they should not be separated by human statute.

2. Furthermore, marriage is a sacrament, just as baptism is. But it cannot happen by Church statute that the one who approaches baptism would not receive the baptismal character, if the person is capable of it. Therefore, neither can the statute of the Church make it so that marriage would not exist between those who are not prohibited by divine law from being joined matrimonially.

3. Furthermore, positive law cannot remove or increase those things that are natural. But consanguinity is a natural bond, which in itself does not necessarily impede marriage. Therefore, the Church cannot make it by a certain statute that some people can be joined or not joined matrimonially, just as it cannot make them consanguineous or not consanguineous.

4. Furthermore, the statute of positive law must have some reasonable cause; for it is according to its reasonable cause that it proceeds from natural law. But the causes that are assigned for the number of degrees seem to be entirely unreasonable, for they have no relation to what is caused. For example, that consanguinity is prohibited up to the fourth degree because of the four elements, up to the sixth degree because of the six ages of man, up to the seventh degree because of the seven days in which all time is measured. Therefore, it seems that such a prohibition as this has no strength.

5. Furthermore, where there is the same cause, there must be the same effect. But the

cause for which consanguinity impedes marriage is the good of offspring, the repression of concupiscence, and the multiplication of friendship, as is clear from what has been said, which at all times are equally necessary. Therefore at all times marriage should have been impeded by equal degrees of consanguinity, which is not the case; for currently consanguinity impedes marriage up to the fourth degree, while formerly, up to the seventh.

6. Furthermore, one and the same union cannot be in the genus of sacrament and in the genus of illicit sexual intercourse (*stuprum*). But this would happen if the Church had the power of establishing a different number of degrees that would impede marriage. For if some couple were related in the fifth degree, when it was prohibited, such a union would be illicit sexual intercourse. But afterward when the Church revoked the prohibition, the same union would be a marriage; and by the converse, it could happen if some degrees were allowed by the Church, and afterward were forbidden. Therefore it seems that the power of the Church does not extend to this.

7. Furthermore, human law should imitate divine law. But according to divine law, which is contained in the Old Law, the prohibition of degrees does not run equally above and below; for in the Old Law someone was prohibited from taking the sister of his father to wife, but not the daughter of his brother. Therefore, neither should any prohibition remain just now regarding uncles and aunts and nieces and nephews.

But to the contrary is what the Lord said to his disciples in Luke 10:16: *who hears you, hears me*. Therefore, the precept of the Church has the same strength (*firmitatem*) as the precept of God. But the Church has sometimes prohibited and sometimes allowed certain degrees that the Old Law did not prohibit. Therefore these degrees impede marriage.

Moreover, just as at one time the marriages of the Gentiles were dispensed by civil laws, so now they are by the statutes of the Church. But formerly the civil law determined the degrees of consanguinity that impede marriage and which ones don't. Therefore, now also this can be done by the statutes of the Church.

I answer that according to different times, consanguinity has impeded marriage at different degrees. For in the beginning of the

human race only the father and mother were barred from marriage to their children, for at that time there was a scarcity of men, and it was necessary to expend the greatest care for the propagation of the human race; wherefore no one was to be excluded except those persons who were inadmissible to marriage according to the chief end of marriage, which is the good of offspring, as was said. But after the human race had increased, many persons were ruled out by the law of Moses, which already began to restrain concupiscence; for which reason, as Rabbi Moses says, all those persons were barred from marriage who were accustomed to live together in one family; for if among them carnal intimacy could legally take place, it would have presented a great incentive to sensual desire. But the Old Law permitted other degrees of consanguinity; indeed, in a certain way, it even commanded them; as, for example, each man took his wife from among his blood relations, so that there would be no confusion about the succession; for in those days the divine worship was propagated by the succession of the race. But afterward, in the New Law, which is a law of spirit and love, many degrees of consanguinity were prohibited; for now by spiritual grace, not by carnal origin, is worship handed on and increased; for which reason it was necessary that men withdraw more from carnal things to be free for the spiritual things, and so that love would be diffused more widely; and thus, formerly, it was impeded up to more remote degrees of consanguinity, so that for many, a natural friendship would endure because of consanguinity and affinity; and reasonably up to the seventh degree, both because at that time the memory of the common root did not remain so easily beyond the seventh degree; and because it corresponded to the seven-fold grace of the Holy Spirit. But afterward, in recent times, the prohibition of the Church was restricted to the first four degrees; for it was useless and dangerous to prohibit the degrees of consanguinity beyond that. Useless indeed, for to more remote blood relatives there is hardly any bond of greater friendship than to strangers, with charity growing cold in many hearts. But it was dangerous, because while concupiscence and negligence were prevailing all the same, men did not keep track of the great number of their blood relations. And in this way a snare was hurled into the path of many by the prohibition of the more remote

degrees of consanguinity resulting in damnation. And the prohibition mentioned, reaching to the fourth degree, is appropriately strict enough; both because people are accustomed to living together up to the fourth generation, and so the memory of consanguinity cannot be effaced, for which reason the Lord threatens that the sins of the parents will be visited upon the sons up to the third and fourth generation; and because in any generation the mixture of blood, which causes consanguinity when it is the same, is newly combined with the blood of others; and when it is mixed with others, it is removed that much from the first ones. And since there are four elements, of which any one is more easily mixable to the degree that it is finer, so that in the first commingling, the identity of the blood is diluted as concerns the first element, which is the most subtle; in the second commingling, as to the second element; in the third, as to the third element; in the fourth as to the fourth element; and thus carnal union can decently happen again after the fourth generation.

1. Just as God does not join those who are joined against the divine precept, so he does not join those who are joined against the precept of the Church, which has the same power of obliging as divine precept.

2. Marriage is not only a sacrament, but also an office; and thus it is more subject to the ordering of the ministers of the Church than baptism, which is only a sacrament; for spiritual contracts and duties are determined by the laws of the Church just as human contracts and duties are determined by human laws.

3. Although the bond of consanguinity is natural, nevertheless it is not natural that consanguinity impede carnal intimacy, unless according to a certain degree, as was said; and thus the Church does not make its own decree that certain people are or are not consanguineous, for in every age they remain equally consanguineous; but it decrees that carnal intimacy is licit or illicit in different degrees of consanguinity according to different times.

4. Arguments such as those ascribed are given more in the mode of fittingness and proportion (*adaptationis et congruentiae*) than in the mode of cause and necessity.

5. Now, from what has been said, it is clear that there is not the same reason for prohibiting degrees of consanguinity at different times; for which reason what is

conceded as practical at a certain time, may be more wholesome to prohibit at another.

6. A statute does not have to do with what is past, but with the future; for which reason, if at one time the fifth degree was prohibited, which is now allowed, those who are now joined in the fifth degree need not be separated; for no subsequent impediment to marriage can invalidate it; and in the same way, the union that was a marriage before would not become incestuous by the statute of the Church; and likewise, if a certain degree were permitted which is now prohibited, that union would not become matrimonial by the statute of the Church by reason of the first contract, for they could separate if they wished; but nevertheless they could contract again, and that would be another union.

7. In prohibiting degrees of consanguinity, the Church particularly observes the reason of love; and since there is not less reason of love for a grandson than for a paternal uncle, but rather a greater one--as a father is said to be closer to his son than the son to his father in Book 8 of the Ethics--because of this it prohibits the degrees of consanguinity equally among uncles and grandsons. But in prohibiting persons the Old Law attempted to restrict concupiscence especially as regards cohabitation, by prohibiting those persons to whom the access was more easily open because of living together. But it is more customary for a grand-daughter to live together with an uncle than for an aunt to live with a grandson; for a daughter is almost the same with her father, since she is something of his; but a sister is not in this way the same as her brother, since she is not something of his, but rather born from the same; and thus there was not the same reason for prohibiting niece and an aunt.

Exposition

Since it does not calculate the trunk among the degrees. He calls the root of consanguinity the *trunk*, which is the father of sons. But the principle of a certain genus can be taken in two ways. In one way, the principle is what is in that genus, as if we say the first part of a line is the principle. In another way, the principle is what does not receive the predication of the genus, as the principle of a line is said to be a point; and in this way the

principle and root of consanguinity can be said in two ways.

In one way the first person himself by whom consanguinity is said, which person is not consanguineous, but the principle of consanguinity; and according to this, a son who is removed from the person of his father, makes the first degree of distance, and the son of the son makes the second, and so on in succession. In another way, the first consanguinity is what is the cause of every other consanguinity; and thus the very consanguinity that is between father and son, is established as the root, and according to that the father and son are counted as one principle, from whom the son of the son is removed by the first consanguinity; and thus this distance makes the first degree and so on in succession; and according to this the calculation of degrees is made differently in the text. But the first way of calculating is more in common use.

Just as in six ages the generation of the world and of the state of man is marked; so the closeness of the race is terminated at so many degrees. In the world, the ages are not assigned as to substance, for this will endure in perpetuity; but as to state, for thus the world will pass away, and thus it grows old and declines; and according to this the ages of the world are distinguished metaphorically by their likeness to the age of one man. For the ages in man are differentiated according to different notable changes in his states. For this reason, the first age is called infancy, up until the seventh year; the second, childhood, is up to the fourteenth year; the third, adolescence, to the twentieth year; which three ages are sometimes counted as one; the fourth is youth up to fifty years; but the fifth age is old age [*senectus*], to seventy years; the sixth is *senium*, until the end. And likewise, in the world, the first age is said to be from Adam until Noah, in which was the institution of the human race and the fall; the second from Noah to Abraham, in which was the destruction of the human race by the flood and its renewal; the third from Abraham to David, in which the institution of circumcision happened; the fourth from David until the exile in Babylon, in which the law flourished under the kings and prophets; the fifth from the exile in Babylon until Christ, in which the captivity and liberation of the people occurred; the sixth from Christ until the end, in which there is the redemption of the human race. But

nevertheless, it is not necessary that the ages of the human race be completed by an equal number of years, since neither are the ages of one man; for the last age of man sometimes has as much as all the previous.

DISTINCTION 41

Prologue

After the Master has considered the impediment of consanguinity, here he considers the impediment to marriage that arises from affinity; and this is divided into two parts: in the first he shows how affinity impedes marriage; in the second he gives the names of affinity, where he says: *that is also to be noted in Alexander, etc.* The first is in three: in the first he shows how affinity impedes marriage, just as consanguinity does; in the second he shows how a marriage may be dissolved because of consanguinity and affinity, where he says: *and it should be known that the Church separates those joined within the designated degrees of consanguinity*; in the third, he considers incest, in which the bond of consanguinity and affinity is violated by carnal intimacy, by differentiating from other vices of the same genus, where he says: *here it must be said that fornication is one thing, sexual defilement (stuprum) is another, etc.* The first is in two parts: in the first he shows that affinity from a marriage already contracted impedes marriage; in the second he inquires whether affinity remains once the marriage that caused it is over, where he says: *that is not to be overlooked what Gregory wrote to a revered bishop.*

The first is in two parts: in the first he shows up to which degree affinity impedes marriage, just as consanguinity does; in the second, he objects to the contrary, and resolves it, where he says: *but others seem to grant in the fifth generation a conjugal union may be contracted between those related by marriage.*

Here five things are to be asked: 1) concerning the cause of affinity; 2) whether it impedes marriage, as consanguinity does; 3) concerning the illegitimate children who are the result of this impediment to marriage; 4) concerning incest, which someone incurs by the violation of consanguinity and affinity 5) concerning the separation of a marriage that happens because of consanguinity and affinity.

Article 1

Whether affinity is caused by the marriage of two consanguineous people

Quaestiuncula 1

1. It seems that affinity is not caused in someone by the marriage of a blood relation. For *whatever is the cause of a thing being such, is yet more so.* But a woman taken in marriage is not related to her husband's family members, except by reason of her husband. Therefore since she does not have affinity to her husband, neither will she have an affinity with his relatives.

2. Furthermore, of those who are separated from each other, if something is joined to one of them, it is not necessary on account of this that it be joined to the other. But the blood relations are already separated from each other. Therefore, it is not necessary that if a certain woman is joined to a certain man, because of this she is related to all his relations by affinity.

3. Furthermore, relations arise from certain unions. But no uniting occurs among family members, by the fact that a man takes a wife. Therefore, a relation of affinity does not grow up between them.

But to the contrary, a man and wife are made one flesh. If therefore a man is related according to the flesh to all those consanguineous to him, a woman will also be related in the same way to the same people.

Moreover, this is clear from the authorities cited in the text.

Quaestiuncula 2

1. Again. It seems that after the death of the husband, affinity does not remain between his wife and his relatives. For when the cause ceases, the effect ceases. But the cause of affinity was marriage, which ceased in the death of the man: for then the woman is freed from the rule of her husband, as is said in Romans 7. Therefore, the affinity mentioned does not remain either.

2. Furthermore, consanguinity causes affinity. But consanguinity to the man's relatives ceases by the death of the man. Therefore, the affinity of his wife with them does as well.

But to the contrary, affinity is caused by consanguinity. But consanguinity is a perpetual

bond as long as the persons live between whom there is consanguinity. Therefore, it is the same with affinity; and thus affinity is not dissolved when the marriage is dissolved by the death of the third person.

Quaestiuncula 3

1. Again. It seems that illicit sleeping together does not cause affinity. For affinity is a certain decent (*honest*) thing. But decent things are not caused by indecent things. Therefore, affinity cannot be caused by indecent sleeping together.

2. Furthermore, where there is consanguinity, there cannot be affinity: for affinity is a *closeness of persons arising from carnal intimacy, lacking any kinship*. But sometimes it would happen to those who are consanguineous that they would have an affinity with each other, if illicit sleeping together caused affinity; as when a man carnally knows a woman who is consanguineous with him in an incestuous way. Therefore, affinity is not caused by illicit sleeping together.

3. Furthermore, illicit sleeping together can be according to nature or against nature. But affinity is not caused by illicit sleeping together against nature, as the laws determine. Therefore, neither is it caused by only illicit sleeping together according to nature.

But to the contrary is that someone cleaving to a prostitute is made one flesh with her, as is evident from 1 Corinthians 6. But because of this, marriage caused affinity. Therefore by the same reasoning, illicit sleeping together does.

Moreover, fleshly intercourse is the cause of affinity, as is clear from the definition of affinity, which runs: *affinity is the relationship of persons that arises from fleshly intercourse, lacking any kinship*. But fleshly intercourse also happens in illicit sleeping together. Therefore, illicit sleeping together causes affinity.

Quaestiuncula 4

1. Again. It seems that no affinity can be caused by a betrothal. For affinity is a perpetual bond. But betrothals are sometimes broken. Therefore they cannot be the cause of affinity.

2. Furthermore, if someone violated some woman and penetrated her, but did not succeed in bringing the act to consummation, affinity is not contracted by this. But that kind of act is closer to carnal intimacy than someone who contracts a betrothal. Therefore, affinity is not caused by a betrothal.

3. Furthermore, in a betrothal, all that is done is a certain pledge of future nuptials. But sometimes a pledge is made of future nuptials, and no affinity is contracted by this; for example, if it were done before seven years of age, or if someone having a perpetual impediment depriving him of the power of sexual intercourse were pledged to marry a certain woman; or if such a betrothal were done between persons for whom marriage was rendered illicit because of a vow, or something else of that kind. Therefore a betrothal cannot be the cause of affinity.

But to the contrary is that Pope Alexander III prohibited a certain woman from being united with a certain man in marriage, for she had been promised to his brother. But this would not be unless affinity were contracted by betrothals. Therefore, etc.

Quaestiuncula 5

1. Again. It seems that also affinity is the cause of affinity. For Pope Julius says in Cap. Contradicimus, 35, Question 3: *no man may take to wife the abandoned relative of his own wife*; and in the following chapter it says that two women related to each other are prohibited from marrying the same man, one after the other. But this would only be by reason of the affinity that is contracted by the union to someone with an affinity. Therefore, affinity is a cause of affinity.

2. Furthermore, carnal commingling unites just as propagation of the flesh does: for the degrees of affinity and consanguinity are counted equally. But consanguinity is the cause of affinity. Therefore, also affinity is.

3. Furthermore, two things that are equal to a third are equal to each other. But the wife of a certain man becomes related in the same way to all his family members. Therefore, all her husband's relatives become one with all those who are related to the wife by affinity; and thus affinity is the cause of affinity.

But to the contrary, if affinity is caused by affinity, someone who knew two women would

be unable to marry either of them, for according to this one woman would have an affinity with the other. But this is false. Therefore, affinity does not cause affinity.

Moreover, if affinity arose from affinity, someone contracting with the wife of a deceased man would have an affinity to all those consanguineous with the previous husband, to whom the woman had an affinity. But this cannot be, for he would have too many affinities through the dead man. Therefore...

Moreover, consanguinity is a stronger bond than affinity. But those consanguineous to a wife do not have an affinity to those consanguineous with the husband. Therefore, much less would those who have an affinity with the wife acquire an affinity with his relatives; and thus the same as the first.

Quaestiuncula 1

I answer to the first question, that a certain natural friendship is founded on a sharing at the level of nature, as was said above. But there are two ways of sharing something in common at the natural level, according to the Philosopher in Book 8 of the Ethics.

In one way, by the propagation of the flesh; in another way, by the union that is ordered to the propagation of the flesh; for which reason he himself says in the same place that the friendship of a husband and wife is natural. Wherefore, just as a person connected to another through propagation of the flesh forms a certain bond of natural friendship, so also if they are joined by carnal intimacy. But the difference is this, that a person connected to another through propagation of the flesh, like the son to the father, becomes a sharer of the same root and blood; wherefore the son is tied with the same kind of bond to his father's relatives as the father was tied, namely, in consanguinity, although according to another degree, because of his greater distance from the root. But persons united by carnal intimacy do not become sharers of the same root, but joined almost extrinsically; and thus by this another kind of bond is made, which is called affinity; and this is what is stated in this verse: *the bride changes the genus, but the daughter changes the degree*: for in fact the person connected by generation falls into the same genus, but in a different degree. But by carnal intimacy, someone falls into another genus.

1. Although the cause is more powerful than the effect, it is nevertheless not always necessary that the same name befits cause and effect: for sometimes what is in the effect is found in the cause not in the same way, but in another way: and thus the same name does not fit cause and effect, neither by the same *ratio*, as is evident in all causes acting equivocally; and in this way the union of a husband and wife is stronger than the union of a wife to the blood-relatives of her husband; but nonetheless, it should not be called affinity, but marriage, which is a certain unity, just as a man is the same thing as himself, not consanguineous with himself.

2. Those who are consanguineous are separated in a certain way, and in a certain way connected; and by reason of this connection it happens that a person who is joined to one, in some way is joined to all; but because of the separation and distance it happens that the person who is joined to one in one way, is joined to the others in another way, either according to another genus, or according to another degree.

3. Sometimes a relation arises from the motion of either of two extremes, like paternity and filiation; and such a relation is real in both parties. But sometimes it arises from the motion of only one of them; and this can happen in two ways. In one way when the relation arises from the movement of one without the movement of the other either preceding or concomitantly, as is seen in the creature and Creator, and in sensible things and the senses, and in knowing and the knowable thing; and then the relation is real in one party, and in the other, it is only rational. In another way, when it arises from the movement of one without any movement of the other at that time, but not without a movement beforehand; just as an equality can happen between two men by the growth of one, without the other growing or diminishing; but still the first arrives at this quantity which he has by a certain movement or change; and thus in both extremes the relation is real. And it is similar with consanguinity and affinity: for the relation of brotherhood, which arises when a certain child is born, to someone who is already older, is indeed caused without any movement of the one already existing, but by the motion (namely of his being generated) of the one coming forth: for here it happens that by the movement of another, a relation such as this arises in the first

person. Likewise, by the fact that someone is descended by his own generation from the same root as another man, an affinity with the man's wife comes into being in him without any new change of his own.

Quaestiuncula 2

To the second question it must be said that any relation ceases to be in one of two ways.

In one way, from the corruption of the subject; in another way, by taking away the cause; just as likeness ceases to be when one of two like things dies, or when the qualities that were the cause of the likeness are taken away. But there are certain relations which have for their cause an action or a passion, or a motion, as is said in Book 5 of the *Metaphysics*: of which certain things are caused by motion, as long as something is actually moving, like the very relation which is between mover and moved; but certain things inasmuch as they have an aptitude to motion, like the motion and the moveable thing, and the master and slave; but certain things, from the fact that something was moved before, in the way a father and son are related to each other, not from a being-generated now, but from having been generated. But an aptitude to movement, and even being in motion itself, pass away; but to-have-been-moved is perpetual; for what has been done can never cease to have been done; and thus paternity and filiation are never destroyed by the destruction of the cause, but only by the corruption of the subject at either of the two extremes. And likewise, it must be said about affinity, which is caused by the fact that certain people have been joined, not that they are joined; wherefore it is not dissolved in those persons remaining, between whom the affinity was contracted, even if the person by reason of whom it was contracted should die.

1. The union of matrimony causes affinity not only according to what is actually joined, but also according to what was conjoined before.

2. Consanguinity is not the proximate cause of affinity, but the union to someone consanguineous—*not* only the union that is now, but the one that was; and because of this the argument does not follow.

Quaestiuncula 3

To the third it should be said that according to the Philosopher in Book 8 of the *Ethics*, the union of a husband and wife is called natural principally because of the bringing forth of children, and secondarily because of the sharing of works. And of these two, the first pertains to marriage by reason of carnal intimacy; but the second inasmuch as it is a certain partnership in common life. But the first of these is found in any carnal intimacy where there is commingling of seeds, for from any union like this children can be produced, although the second kind of union may be lacking; and thus, since marriage causes affinity because of a certain carnal commingling, also fornication causes affinity, in so far as it possesses something of the natural union.

1. In fornication there is something natural, which is common to fornication and matrimony, and it causes affinity from that aspect: but there is something else disordered here by which it is divided from marriage; and from that aspect affinity is not caused; wherefore affinity always remains decent, although its cause may be in some way indecent.

2. It is not unfitting that opposite relations belong to the same person by reason of different things; and thus there can be affinity and consanguinity between some two persons not only by illicit sleeping together, but also by licit sleeping together; as when my relative on my father's side takes to wife my relative on my mother's side; wherefore what is said in the definition of affinity that was set forth, *lacking any line of descent*, is to be understood in this way. But neither does it follow that someone who knows his own relative forms an affinity with himself; for affinity, like consanguinity, requires diversity, just as likeness does.

3. Intercourse against nature does not include the commingling of seed which could be a cause of generation; and thus, from such sleeping together no affinity is caused.

Quaestiuncula 4

To the fourth question it should be said that just as a betrothal does not contain the full notion of marriage, but it is a certain preparation for marriage, so affinity is not

caused by betrothal as it is caused by marriage, but rather something like affinity, which is called the *justice of public propriety* which impedes marriage, just as affinity and consanguinity do, and according to the same degrees; and it is defined in this way: *the justice of public propriety is a close relationship arising between betrothed people, deriving strength from the institution of the Church because of its propriety*. From this the reason for its name and its cause are clear; for, namely, such a close relationship was instituted by the Church for the sake of propriety.

1. Betrothal, not by reason of itself, but by reason of that to which it is ordered, causes this kind of affinity, which is called the justice of public decency; and thus as marriage is a perpetual bond, so also is the mode of affinity mentioned.

2. A man and a woman are made one flesh in carnal intimacy by the commingling of seed; wherefore, however much someone breaches and breaks the "gates of chastity" (the hymen), unless a commingling of seed results, affinity is not contracted from this. But marriage causes affinity not only by reason of carnal intimacy, but also by reason of the conjugal partnership, according to which marriage is also natural; for which reason affinity is also contracted by the contract of marriage itself, contracted in terms of the present, before carnal intimacy; and likewise, also by betrothal, in which a certain pact of conjugal partnership is made, something like affinity is contracted, namely the justice of public propriety.

3. Any impediments that prevent betrothals from being betrothals, prevent affinity from happening from the pledge of marriage. For which reason, if a betrothal were contracted, while having a defect of age, or having a solemn vow of continence, or any impediment of this kind, no affinity results from this. Since the betrothal is nullified, neither is there any mode of affinity. But if someone younger, having a perpetual impediment, either impotent, or cursed, should contract a betrothal with an adult after the age of seven but before the years of puberty, the justice of public propriety is contracted by this contract; for up to that point there was nothing actually impeding, since at that age an impotent child and a non-impotent one are equally incapable with regard to the act.

There are two modes in which something comes forth from something else. According to one, it comes forth in likeness of species, as a human is generated by a human; according to the other, it comes forth unlike in species, and this coming forth is always in an inferior species, as is evident in all equivocal agents. But no matter how often the first mode of procession is repeated, the same species always remains, for example when a human is generated by another human through an act of the generative power, this man will also generate a human, and so on in succession. But just as it makes another species in the first instance, the second mode will make a new species as often as it is repeated; for example, what comes from moving a point is not a point but a line, for the movement of a point makes a line; but from a line moved linearly, a line does not come forth, but a plane; and from a plane, a three-dimensional body; and beyond that there can be no further progress by a mode of proceeding like this. But we find two modes in the procession of relationships, by which a bond like this is caused. The one, by propagation of the flesh, and this always makes the same species of relationship; the other by marital union, and this makes another species in the beginning; as it is evident from the fact that a married woman does not become consanguineous with her husband's relatives, but establishes an affinity.

Wherefore, even if this mode of proceeding is repeated, it will not be affinity, but another genus of relationship; for which reason the person who is joined maritally to someone with an affinity, does not have an affinity himself, but it is another kind of affinity, which is called the second kind. And vice versa, if someone is joined by marriage to someone with an affinity of the second kind, he will not have an affinity of the second kind, but of a third; as is shown in the verse cited above: *the bride changes genus, the daughter changes degree*.

And these two kinds were formerly prohibited because of the justice of public propriety more than because of affinity, for they fall short of true affinity, just like that relationship which is contracted by betrothal; but now that prohibition has ceased, and only

the first genus of affinity, in which there is true affinity, remains under prohibition.

1. The male relative of a certain man's wife has an affinity of the first kind with that man, and the relative's wife has an affinity of the second kind; wherefore, once the relative dies, who had an affinity, the man could not take her as his wife because of the second kind of affinity. Also, in the same way, if someone marries a widow, the relatives of the first husband, who have an affinity of the first kind with the wife, acquire an affinity of the second kind with the second husband, and the wife of that blood relative, who has an affinity of the second kind with the wife of this man, has an affinity of the third kind with the second husband. And since the third kind was prohibited for the sake of a certain propriety, more than because of affinity, for this reason the canon says, *the justice of public propriety objects to two wives of consanguineous men marrying one husband, one after the other*. But now that prohibition has ceased.

2. Although carnal union does join, it does not join in the same kind of union.

3. The wife of a man acquires the same relationship to his blood relatives as to degree, but not in the same genus of relationship.

But since the arguments that are brought forth in opposition seem to show that no bond is caused by affinity, the other arguments must be answered, lest the old prohibition in the Church should seem unreasonable.

4. To the fourth then, it must be said that a woman does not acquire an affinity of the first kind with the man to whom she is carnally united, as is clear from what has been said. Wherefore commonly two women who were known carnally by the same man have an affinity of the second kind with each other; wherefore, to the man taking one of them as his wife the other has an affinity of the third kind; and thus not even the old laws prohibited them from being linked successively with by the same man.

5. Just as a man does not have an affinity of the first kind with his own wife, neither does he acquire an affinity of the second kind to the second husband of the same wife; and thus the argument does not proceed.

6. One person cannot be connected to me by the mediation of another, unless both of them are connected with each other; wherefore, no person can be related to me through a woman who has an affinity to me, unless he or

she is connected to that woman. But this cannot be except by propagation of the flesh from her; or because of marital union to her; and either way, according to the old laws, a certain relationship was established to me through the aforesaid woman; for even her son by another man has an affinity to me of the same kind, but in another degree, as is evident from the rules already given. And again, her second husband has an affinity to me of the second kind, but the other blood relatives of that woman are not connected to him; but she herself either is united with them as to a father and mother, inasmuch as she proceeds from them, or from the same principle, as to brothers; wherefore, the brother or father of someone with an affinity to me does not have an affinity to me of any kind.

Article 2

Whether affinity impedes marriage

Quaestiuncula 1

1. It seems that affinity does not impede marriage. For nothing impedes marriage unless it is contrary to it. But affinity is not contrary to marriage, for it is its effect. Therefore, it does not impede marriage.

2. By marriage a wife is made something of her husband's. But the blood relatives of a deceased man succeed him in his belongings. Therefore, they can succeed him with his wife, to whom an affinity still remains, as was shown. Therefore, affinity does not impede marriage.

But to the contrary is what is said in Leviticus 18:8: *thou shall not reveal the nakedness of your father's wife*. But that woman only has an affinity with you. Therefore, affinity impedes marriage.

Quaestiuncula 2

1. Again. It seems that affinity also has degrees of its own. For every close relationship has certain degrees of its own. But affinity is a certain close relationship. Therefore, it has degrees in itself apart from the degrees of consanguinity that cause it.

2. Furthermore, in the text it says that the progeny of the second union cannot receive the inheritance of the first husband. But this would

not be unless the son of one person with an affinity also had an affinity himself. Therefore, affinity has degrees of its own, like consanguinity.

But to the contrary, affinity is caused by consanguinity. Therefore, also all degrees of affinity are caused by degrees of consanguinity; and thus it does not have any degrees per se.

Quaestiuncula 3

1. Again. It seems that the degrees of affinity do not extend like the degrees of consanguinity. For the bond of affinity is less strong than that of consanguinity, since affinity is caused by consanguinity in diversity of species, as by an equivocal cause. But the stronger the bond, the longer consanguinity lasts. Therefore, the bond of affinity does not last up to as many degrees as consanguinity.

2. Furthermore, human law must imitate divine law. But according to divine law, some degrees of consanguinity were prohibited, in which degrees affinity did not impede marriage; just as is evident regarding the wife of one's brother, whom someone could marry if he were dead, but not his own sister. Therefore, also now there should not be an equal prohibition concerning affinity as concerning consanguinity.

But to the contrary, it is from the very fact that someone is joined to my blood relative, that she has an affinity to me. Therefore, in whatever degree a man is consanguineous with me, to that degree will his wife have an affinity with me; and thus the degrees of affinity must be calculated in the same number as the degrees of consanguinity.

Quaestiuncula 1

I answer to the first question that affinity preceding marriage impedes it from being contracted, and nullifies the contract by the same reason that consanguinity does; for just as there is a certain necessity in blood relatives living together, so also with those who have an affinity; and just as there is a certain bond of friendship among blood relatives, so also among those with an affinity. But if the affinity should arise after the marriage, it does not nullify it, as was said above.

1. Affinity is not opposed to the marriage by which it is caused, but it is opposed to the

marriage that would be contracted with someone with whom one has an affinity, inasmuch as it impedes the multiplication of friendship, and the repression of concupiscence, which are sought through marriage.

2. The things possessed by a man are not made into something one with him, as his wife becomes one flesh with him; wherefore just as consanguinity impedes a union with the man, so also with the wife of the man.

Quaestiuncula 2

To the second question it should be said that a thing is not divided by an essential division, unless by reason of what belongs to it according to its own genus, as animal is divided by rational and irrational, but not by white or black. But the propagation of the flesh is related to consanguinity essentially, for the bond of consanguinity is contracted by it immediately; but to affinity it is not connected except by means of consanguinity, which is its cause. Wherefore, since the degrees of relationship are distinguished by the propagation of the flesh, the distinction of degrees has to do with consanguinity essentially and immediately, but with affinity only by means of consanguinity; and thus for finding the degrees of affinity there is the general rule that in whatever degree of consanguinity a man is related to me, his wife is related to me in that degree of affinity.

1. Degrees in closeness of relationship cannot be taken except according to ascent and descent of propagation, for which affinity is not calculated, unless by means of consanguinity; and thus affinity does not have degrees of its own, but taken on a par with the degrees of consanguinity.

2. The son of someone who has an affinity with me by another marriage, in former times was said to have an affinity, not speaking *per se*, but *per accidens*. For which reason he was prohibited from marriage more because of the justice of public honesty than because of an affinity, and because of this also that prohibition has been revoked.

Quaestiuncula 3

By the fact that the degree of affinity is taken according to the degree of consanguinity,

it is necessary that there be as many degrees of affinity as the degrees of consanguinity. But nevertheless, since affinity is less of a bond than consanguinity, both in former times and now a dispensation was given more easily in the remote degrees of affinity than in the remote degrees of consanguinity.

1. That inferiority of the bond of affinity with respect to consanguinity makes a difference in the kind of relationship, not in its degree; and so that argument is not to the point.

2. A brother could not take the wife of his own deceased brother, unless in the case that he had died without offspring, so that he might revive the seed of his brother: because then it was required, when religious worship was multiplied by the propagation of the flesh; which now does not take place; and thus it is clear that he was not taking her as his wife as though conducting his own person, but as it were, supplying the lack of his brother.

Article 3

Whether sons who are born outside of a valid marriage are illegitimate

Quaestiuncula 1

1. It seems that sons who are born outside of a valid marriage are not illegitimate. For a legitimate son is said to be born according to the law of nature. But any son is born at least according to the law of nature, for it is the strongest. Therefore, any son is legitimate.

2. Furthermore, it is commonly said that a legitimate son is someone who is born of a legitimate marriage, or one that is considered legitimate before the Church. But it sometimes happens that a certain marriage is considered legitimate in the eyes of the Church which has an impediment from being a valid marriage; and nevertheless it is known by those contracting before the Church, and if they marry secretly, and they don't know the impediment, it seems legitimate before the Church, by the fact that they are not prohibited by the Church. Therefore, the sons born outside valid marriage are not illegitimate.

But to the contrary, something is said to be illegitimate which is against the law. But those who are born outside of marriage are against the law. Therefore they are illegitimate.

Quaestiuncula 2

1. Again. It seems that the illegitimate sons should not suffer any disadvantage by it. For a son should not be punished for the sin of his father, as is clear from the sentence of the Lord in Ezekiel 18. But that someone is born from illicit intercourse is not his own sin, but the sin of his father. Therefore, he should not incur any damage from this.

2. Furthermore, human justice has its exemplar in divine justice. But God deals out natural goods equally to legitimate and illegitimate sons. Therefore also according to human law, illegitimate sons should be made equal with legitimate ones.

But to the contrary is what is said in Genesis 25, that Abraham gave all his goods to Isaac and to the sons of his concubines, gifts were given; and nevertheless, those were not born by illicit intercourse. Therefore, much more should those who are born by illicit intercourse suffer this disadvantage, that they don't succeed in their paternal goods.

Quaestiuncula 3

1. Again. It seems that an illegitimate son cannot be legitimized. For the legitimate son is as far removed from the illegitimate, as the converse, the illegitimate removed from the legitimate. But a legitimate son is never made illegitimate. Therefore, neither is an illegitimate one made legitimate.

2. Furthermore, illegitimate intercourse causes an illegitimate son. But illegitimate intercourse never becomes legitimate. Therefore, neither can an illegitimate son be made legitimate.

But to the contrary, what is decreed by the law can be revoked by the law. But the illegitimacy of sons is appointed by positive law. Therefore an illegitimate son can be legitimized by whoever has the authority of law.

Quaestiuncula 1

I answer to the first question that the status of sons is four-fold. For certain ones are natural and legitimate, like those who are born from legitimate marriage. Certain are natural and illegitimate, as sons who are born from simple fornication. Certain are legitimate and not

natural, like adoptive sons. And some are neither legitimate nor natural, like bastards (*spurii*), born from adultery or rape: for such are born both against positive law and expressly against the law of nature. And in this way it must be granted that certain sons are illegitimate.

1. Although those who are born from illicit intercourse are born according to the nature that is common to men and other animals, yet they are born against the law of nature that is proper to men: for fornication and adultery and things of this kind are against the law of nature; and thus according to no law are such as these legitimate.

2. Ignorance excuses illicit intercourse from sin, unless it is feigned; wherefore, those who come together in good faith before the Church, although there may be an impediment, provided that they do not know of it, they do not sin, nor are their sons illegitimate. But if they know, although the Church, which does not know the impediment, supports them, they are not excused from sin, nor are their sons from illegitimacy. But if they do not know, and they contract secretly, they are not excused, for such ignorance seems pretended.

Quaestiuncula 2

To the second question it should be said that someone is said to incur damages in two ways. In one way, by the fact that something is taken away from him that was owed to him; and thus an illegitimate son incurs no damage. In another way, certitude that something is not owed him, that otherwise would have been due him, and in this way, an illegitimate son incurs two kinds of damage.

One, because he is not admitted to legitimate acts, like offices and dignities, which require a certain respectability in those who exercise them. They incur another damage when they do not succeed to the paternal inheritance. But nevertheless natural sons can succeed in the sixth part alone, but bastards in no part, although by natural law their parents are bound to provide for them in necessity; wherefore it belongs to the concern of the bishop to force each of the parents to provide for them.

1. To incur damages in this second way is not a punishment: and thus we do not say that it is a punishment for someone who does not

succeed to the throne of a certain kingdom because he is not the son of the king; and likewise, it is not a punishment that those things that are for legitimate sons are not owed to someone who is not legitimate.

2. Illegitimate intercourse is not against the law as an act of the generative power, but as it proceeds from a depraved will; and thus the illegitimate son does not incur damage in those things that are acquired by natural origin, but in those things that are done or possessed by the will.

Quaestiuncula 3

To the third it should be said that an illegitimate son can be legitimized, not that he can be made born from legitimate intercourse, for that intercourse has already passed by, and from the fact that it was once illegitimate, it can never be made legitimate. But rather he is said to be legitimized inasmuch as the damages that the illegitimate son incurs are taken away by the authority of law. And there are six ways of legitimizing: two according to the canons, one when someone takes as his wife a woman of whom he has borne illegitimate sons, if it was not adultery; and the other, by special indulgence and dispensation of his lordship the Pope. But four other means are according to the laws. The first is if the father presents a natural son to the court of the Emperor; for by this very fact he is legitimized on account of the honor (*honestatis*) of the court. Secondly, if the father names him a legitimate heir in his will and the son brings forth the will afterward. The third is if there is no legitimate son, and the son presents himself to the prince. The fourth is if the father, acting through a public document, or with the signature of three witness, names him legitimate, and doesn't add to that "natural".

1. Favor can be granted to someone without injustice; but someone cannot be more condemned except because of some fault; and thus the illegitimate can be made legitimate rather than vice versa: for even if sometimes a legitimate son is deprived of his inheritance because of fault, he is still not called an illegitimate son, for he had a legitimate generation.

2. An illegitimate act has a defect inseparable from itself, by which it is opposed to the law; and thus it cannot be made

legitimate. Nor is it the same with an illegitimate son, who does not have this kind of defect.

Article 4

Whether incest differs in species from other species of lust (luxuria).

Quaestiuncula 1

1. It seems that incest does not differ in species from other species of lust which the Master touches upon in the text. For matter does not diversify species. But those things that the Master enumerates in the text do not differ except on account of matter. Therefore, they are not different species of sin.

2. Furthermore, Colossians 3 says about this: *fornication, uncleanness, etc.* The interlinear gloss says that fornication is all lying together contrary to the law of wedlock. But incest is one of these. Therefore, it is fornication: and so it is not divided in species from fornication.

But to the contrary virtues and vices are distinguished in species determined by their object. But those things that are here set forth are diversified by object. Therefore they differ in species.

Quaestiuncula 2

1. Again. It seems that he divides the species of lust unfittingly. For the Apostle in Ephesians 5:3, seems to set forth only two species, where it says: *Let not fornication and all uncleanness . . . be named among you.*

2. Furthermore, in Colossians 3, he sets forth four species, namely, fornication, uncleanness, concupiscence, and sexual desire (*libido*).

3. Furthermore, in Galatians 5, another four species are set forth; namely fornication, uncleanness, impurity (*impudicitia*), lust (*luxuria*). Therefore, since [the Master] omits these species, it seems he divides insufficiently.

4. Furthermore, the greatest sin in the genus of lust (*luxuria*) is the sin against nature. But he makes no mention of that. Therefore, it seems insufficient.

5. Furthermore, a widow is more removed from a prostitute than a virgin from a widow. But an act of lust that is committed with a virgin is distinguished from that which is committed

with a widow. Therefore, also that which is committed with a widow should be distinguished from that which is committed with a prostitute.

6. Furthermore, Isidore says that seduction (*stuprum*) is the illicit deflowering of a virgin, when of course the conjugal agreement has not preceded. But this is also the case in rape. Therefore, rape should not be distinguished against seduction.

7. Furthermore among the species of lust, sacrilege is also named, which is committed when someone violates a woman consecrated to God, or with whom one has a spiritual relationship. Therefore, since he omits this, it seems insufficient.

Quaestiuncula 3

1. Again. It seems that this vice is badly ordered. For virginal chastity (*castitas*) is more noble than conjugal chastity. But adultery is against conjugal chastity, but seduction is against virginal chastity. Therefore seduction is a graver sin; and thus it should be placed ahead of adultery.

2. Furthermore, no dispensation can be made so that someone may licitly lie together with a woman with whom he is committing adultery; but it can happen through a certain dispensation that someone licitly lies together with someone with whom he commits incest; as, for example, by a dispensation, he can take as his wife a blood relative in the fourth degree, with whom it would formerly have been incest. Therefore, adultery is a graver sin than incest, and thus it should not be overlooked.

3. Furthermore, for a girl who is carried off by force, there can be marriage, when violence is not done to her, but to her parents. But for that girl who is violated by incest, there cannot be marriage. Therefore, adultery is a graver sin than incest; and thus it should not be overlooked.

Quaestiuncula 1

I answer to the first question, that as was said above, in Distinction 16, Question 3, Article 2, quaestiuncula 3, *a sin changes to another genus by a circumstance, when it adds the deformity of another genus of sin.* And according to this, these modes of lust that are here enumerated, differ in species; for

fornication does not carry in itself any other deformity but what pertains to the genus of lust, for it is a man who is free sleeping with a woman who is free; and fornication is named from *fornix*, for beside fornices, that is, triumphal arches, and in other places where men come together, prostitutes used to congregate, and there they were defiled. But seduction, which is the illicit deflowering of a virgin, adds another deformity, namely, the injuring of the woman violated, who is not so apt to be married as before; and this injury even has a special prohibition of law of its own.

Likewise, adultery also, which is to violate the marital bed of another, adds a special deformity of another kind, which is the illicit use of what is someone else's, which pertains to the genus of injustice. Likewise, also incest, which is the abuse of consanguinity or affinity, has its name from *incendium*, fire, either from the privation of chastity, as though by rhetorical substitution, for it violates chastity in those who are joined by the greatest of bonds, and adds this special deformity, namely, the violation of the natural bond. Likewise, also rape, which is committed when a girl is violently abducted from the home of her father, that so that the ruined maiden may be had in marriage. Whether the force is directed against the girl or her parents, it is clear that it adds another kind of deformity, namely violence, which the law prohibits in any thing whatsoever. And so it is clear what are the different species of sins; for which reason also the circumstances by which they are diversified are not to be omitted in confession.

1. Material diversity in one's purpose results in formal diversity of the object; thus diversity in species follows.

2. That species of lust that does not add some special deformity of another kind, retains the common name to itself, nor is it divided against the other species, unless according to what is taken with precision of those things that are added by other species.

Quaestiuncula 2

To the second question it should be said that the species of lust are distinguished first by intercourse according to nature and against nature.

But since lust against nature is unnameable, let it be left behind. But if the sin

is intercourse according to nature, then either it does not add a certain deformity above the genus of lust, and so it is *fornication*; or it does add: and this in two ways; for either regarding the mode of acting, and then it is *rape*, which conveys violence; or by the condition of the one with whom lust is committed, and this condition either is hers absolutely, like virginity, and then it is *seduction*; or it is her ordering to something else; and this, either to the one lying with her, as the condition of consanguinity or affinity is, and thus it is *incest*; or to some other, like marriage; and then it is *adultery*.

1. Uncleanliness is set forth for every species of lust that adds a specific deformity above the genus of lust; and so it includes the other four species.

2. Those four differences are distinguished in this way: for either it is according to nature, and so *fornication* is included as to the exterior act, and *concupiscence* as to the interior act; or it is against nature; and so *uncleanliness* is according to the exterior act, *sexual desire* according to the interior act, which conveys the intensity of concupiscence.

3. Among these four, fornication pertains to a man who is free sleeping with a woman who is free; impurity includes adultery and incest, just as uncleanliness contains the species against nature; but lust refers to interior acts.

4. The Master here considers those species according to which they have an order to affinity and consanguinity; and since affinity does not follow from intercourse against nature, for this reason the unnatural species are omitted; and since such lust is not human, but bestial, as is said in Book 7 of the Ethics.

5. By the fact that a virgin is deflowered, she incurs a certain damage beyond the damage to her chastity, for she is rendered less suitable for a subsequent marriage; but this is not the case with a widow, nor with a prostitute; and thus the argument is not the same.

6. Rape adds a special deformity above seduction, namely violence, and being carried off from the father's home; and thus a species distinct from seduction is set down.

7. That sacrilege is reducible to the species that was mentioned here; for the violation of someone who has taken a vow of continence is reducible to seduction, or rather to adultery, since the woman is espoused to God; but the act that is committed with a woman who is

joined to one by spiritual family relationship, is reducible to incest.

Quaestiuncula 3

To the third question it must be said that intercourse is more of a sin to the degree that it is removed from matrimonial lying together. But among the species here enumerated, a certain one is removed from marriage both regarding the essence of marriage, and regarding its cause; which is consent: and that one is rape; and thus it is the greatest sin among those which are here enumerated. But others are removed from marriage only as regards its essence; but this is two-fold; for the woman with whom one sleeps is either not joined to one in marriage, or she is not joined and cannot be joined; and the latter is more removed. However, if it is in the first way, either some impediment to subsequent marriage is established by this lying together, or not; and the first of these is more removed.

However, if it is someone who cannot be joined in marriage: either he or she cannot from some existing condition, or he cannot simply speaking, *in perpetuum*; and the latter is more removed.

And from this it is clear that simple fornication is the least sin among them; for no new impediment to subsequent marriage is created in the one who is slept with; and after this, it is seduction, by which an impediment arises in the woman, so that she may not easily get married afterward; and after this it is adultery, which is lying with a woman who cannot be taken as a wife, for her husband is alive; and after this it is incest, which is committed with a woman who simply speaking cannot be one's wife; and after this it is rape, which is opposed to marriage not only in its essence, but also in its cause. And this is the ordering of those according to their own kind of considerations. Still the order here can be varied according to diverse circumstances. Nevertheless, of all of these, the gravest sin is the sin against nature.

1. Adultery is not only a sin because it is against chastity, but since it is against divine law, because that woman is some man's wife.

2. Although someone cannot be given a dispensation to marry a woman with whom he has committed adultery while her husband is living: yet in a certain contingent case, he could

take her as his wife without a dispensation—namely, after the death of her husband: for the first adultery does not invalidate the marriage contracted except in a certain case, as was said earlier, in Distinction 35, in the exposition of the text.

3. Although afterward she may be taken in marriage, if the girl and her parents consent, yet as to what pertains to the present, it is most greatly removed from marriage, as is clear from what has been said.

Article 5

Whether a conjugal union that is contracted between those consanguineous or with an affinity may always be nullified through a separation

Quaestiuncula 1

1. It seems that a conjugal union that is contracted between those who have an affinity or are consanguineous may not always be nullified through a separation. For those whom God has joined, man should not separate. Therefore since God is understood to do what the Church does, which sometimes joins such people in ignorance; it seems that if they should come into notice afterward, they may not be separated.

2. Furthermore, the bond of marriage is more favored than ownership. But a man acquires ownership of things that he did not own, by court order after having them for a long time. Therefore, by enduring a long time, a marriage may be ratified, even if before it was not authorized.

3. Furthermore, the same judgment is made of like things. But if the marriage were to be invalidated because of consanguinity, then in that case when two brothers have two sisters as their wives, if one is separated because of consanguinity, the other ought also to be separated for the same reason; which does not seem to happen. Therefore, marriage is not to be separated because of consanguinity or affinity.

But to the contrary, consanguinity or affinity impede the marriage from being contracted, and invalidate the contract. Therefore, if consanguinity or affinity is proved, they must be separated, if they had contracted *de facto*.

Quaestiuncula 2

1. Again. It seems that for the separation of a marriage that was contracted between people with an affinity or blood relationship, it must not proceed by the way of accusation. For inscription, by which someone obliges himself to damages if he should fail to prove his case, precedes accusation. But these things are not required when it is a question of the separation of a marriage. Therefore, accusation does not have a place here.

2. Furthermore, in a case of marriage, only close relatives are heard, as was said. But in accusations, also strangers are heard. Therefore, in a case of separation of a marriage, it is not a matter for the way of accusation.

3. Furthermore, if a marriage must be accused, then particularly this should be done when it is less difficult to divide. But this is when only a betrothal has been contracted: but then a marriage is not accused. Therefore, accusation should never be done concerning the rest.

4. Furthermore, in accusation, the way is not closed to someone by the fact that he did not make his accusation immediately. But this does happen in marriage: for if first he was silent when the marriage was contracted, he cannot afterward accuse the marriage without being almost suspect himself. Therefore, etc.

But to the contrary, everything illicit may be accused. But a marriage of people related by affinity or consanguinity is illicit. Therefore, an accusation can be made concerning it.

Quaestiuncula 3

1. Again. It seems that in such a case, things should not proceed by witnesses as in other cases. For in other cases are brought in whoever is the greater in every exception. But here, no strangers are admitted, even if they are greater in every exception. Therefore, etc.

2. Furthermore, witnesses suspected of private hate or love are barred from testifying. But close relatives can most greatly be suspected of love for one party, and hatred for the other. Therefore, their testimony should not be heard.

3. Furthermore, marriage is more favored by the law than other cases, in which it is a matter of purely corporeal things. But in those things the same person cannot be plaintiff and

witness. Therefore, also not in marriage, and so it seems that in this matter it is not fitting to proceed by means of witnesses.

But to the contrary, witnesses are introduced in cases, so that concerning those things about which there is doubt, a trustworthy judgment may be made. But a trustworthy judgment must also be made in this kind of case, as in other cases, for it should not hand down a verdict on what has not been established. Therefore, things do proceed by means of witnesses, here as in other cases.

Quaestiuncula 1

I answer to the first question that since all lying together outside of legitimate marriage is a mortal sin, the Church endeavors to impede it in every way, which includes separating those between whom there cannot be a valid marriage, and particularly those who are consanguineous or who have an affinity, who cannot contract carnally without incest.

1. Although the Church is buttressed by divine authority and gift, nevertheless insofar as it is a congregation of human beings, something of human defect enters into its acts, because it is not divine; and thus that union that happens in the eyes of the Church, when it is unaware of an impediment, does not have inseparability from divine authority, but it is introduced against divine authority by human error, which excuses it from sin, since it is an error of fact, as long as it lasts; and because of this, when the error comes into the notice of the Church, it must divide the union described.

2. Those things that cannot be without sin, can be ratified by no court order. For, as Innocent says, *length of time does not diminish sin, but increases it*. Nor does the favor that marriage enjoys do anything that cannot be done between persons ineligible for marriage.

3. A matter between two people in litigation does not prejudice the acts for another person; wherefore although one brother may be barred from marriage with one of two sisters by reason of consanguinity, the Church does not because of this divide another marriage which has not been called into question. But in the forum of conscience it is not always necessary that the other brother be obliged to separate from his wife, for often such accusations proceed from bad will, and are testified by false witnesses.

Wherefore it is not necessary that he inform his own conscience by the decision concerning the other marriage. But it seems the distinction lies in this. For either he has certain knowledge of the impediment to his marriage, or this is his opinion, or neither. If the first, he should neither demand nor render the debt. If the second, he should render it but not demand it. If the third, he can both render it and demand it.

Quaestiuncula 2

To the second question it must be said that the accusation is instituted for this matter lest someone be sustained as innocent who has guilt. But just as it happens by ignorance that some man is considered innocent in whom there is guilt, so also out of ignorance of some circumstance it happens that a certain deed is believed licit which is illicit; and thus, as a man is accused sometimes, so also a deed itself can be accused; and thus marriage is excused when because of ignorance of an impediment, what is illegitimate is deemed legitimate.

1. Obligation to the penalty of damages takes place when a person is accused of a crime, for then it is a question of his punishment. But when a deed is accused, then it is not a matter of punishing someone, but of impeding what is illicit. And thus in marriage, the accuser does not oblige himself to a certain penalty; but such an accusation can be made both in words or in writing, so that it expresses both the person accusing the marriage, and the impediment for which it is accused.

2. Strangers cannot know consanguinity except through those who are consanguineous, and regarding them, it is more probable that they know. Wherefore when they themselves do not speak, suspicion falls on the stranger that he may be acting from a bad will, unless he wished to be accepted through those who are blood relatives; wherefore, he is barred from the accusation, when there are consanguineous people who keep silent, and by whom it cannot be verified. But the consanguineous, no matter how closely related they are, are not barred from the accusation, when a marriage is accused because of a certain perpetual impediment, which impedes contracting, and invalidates the contract. But when it is accused of not having been contracted, then even parents suspected are to be barred, unless on

the side of the one who is inferior in status and wealth, concerning which it can be probably reckoned that they eagerly desire the marriage to stand.

3. Since the marriage is not yet contracted, but only the betrothal, it cannot be accused; for what does not exist cannot be accused: but the impediment can be made public, so that the marriage is not contracted.

4. That person who at first kept quiet, is sometimes heard afterward, if he wishes to call the marriage into question, and sometimes he is barred; which is clear from the decretal that says so: *if after the marriage is contracted, someone appears as accuser, since he did not come forth in public when banns were published in the churches according to custom, whether the voice of his accusation should be admitted can rightly be inquired into*. Upon which we respond that if at the time set aside for denunciation, the one who attacks those already united, was outside the diocese, or his denunciation could otherwise not come under notice, as, for example, if greatly oppressed in the heat of sickness, though of sound mind, suffering exile, or he was so young in years that his age was insufficient for understanding such things, or for another legitimate reason, he was hindered; then his accusation should be heard; otherwise he is beyond a doubt to be barred as suspect, unless he confirmed by oath what he had objected, and the fact that it did not proceed from malice.

Quaestiuncula 3

In this case it is necessary that by witnesses the truth should be made clear, just as in other cases. Nevertheless, as the jurists say, in this case many special conditions are found, namely that the same person can be plaintiff and witness; and that it is not sworn concerning calumny, since this is almost a spiritual cause; and that those consanguineous are admitted to testify; and that judicial order is not observed at all, for such a denunciation having been made, someone obstinate can be excommunicated by a lawsuit uncontested; and here the testimony is worth hearing, and after publication of the witnesses, the witnesses can be introduced. And all of this is so that the sin may be impeded, which can exist in such a union.

1. And by this is evident the answer to the objections.

Exposition

That which Gregory wrote to the venerable bishop is also not to be overlooked. Everything is abrogated by new laws; but even the degrees of consanguinity and affinity are restricted up to the fourth degree. And it must be known that the Church separates those joined within the aforesaid degrees of consanguinity. Be it known that since the church does not intend to deprive anyone of his right, if, deceived by false witnesses, she should separate a marriage when one of the persons has been ruined by force, restitution should justly be made to that person, even if the other has taken a vow of religious life, so that in any case it would not be permitted to her to request the debt, but only to render it. But when the woman presses for the renewal of the marriage, a distinction must be made. For if she presses a petitory suit that a certain man who has contracted with her, be given to her, before restitution happens it will be inquired whether there is any defense or exception on the part of the intended husband. But if she should press a possessory suit, first the man is to be restored to her as the aforementioned exception is treated; and the reasoning is the same if the man presses suit. But five cases are commonly excepted from either. The first is when the man in the case takes exception by bringing up the public fornication of his wife. Secondly, when he reveals the degree of consanguinity prohibited by divine law; nevertheless, if it is published, it is necessary that restitution be made by legal judgment; but that person is not bound to render the debt, if he is conscious of the consanguinity mentioned. Thirdly, if an objection is made to the exception of the matter judged, to which there is no appeal. Fourth, when there is so much cruelty in the man, that sufficient caution cannot be employed, for example, when the man takes revenge upon his wife with mortal hatred. The fifth is when the one who presses suit has despoiled another without cause.

DISTINCTION 42

Prologue

After the Master has examined the impediment of close fleshly relationship, here he examines the impediment of close spiritual relationship; and it is divided in two parts: in the first he shows how a spiritual family relationship impedes marriage; in the second he inquires whether the second wedding is licit, where he says: *it must be known also, that not only the first, but the second wedding is licit, but also third and fourth are not to be condemned.* The first is in two parts: in the first he distinguishes the close spiritual relationship from fleshly ones, which were treated above; in the second, he pursues close spiritual relationship, where he says: *spiritual sons are those whom we raise from the sacred font.* And this part is divided in two: in the first he shows where close spiritual relationship is contracted; in the second, he shows how it may impede marriage, where he says: *because however godfather or godmother are unable to be joined to each other...it is taught by the council of Mainz.*

And this is in two parts: in the first he shows how the spiritual close relationship that some person contracts directly, impedes marriage, which is likened to consanguinity: in the second how that relationship which indirectly reflects on the husband from the wife, or vice versa, in the mode of a certain affinity, where he says: *it is also wont to be asked if someone is able to marry the godmother of his wife, after her demise.* The first is in two parts: in the first he shows when spiritual family relationship impedes marriage between the spiritual godfather and the natural mother, or vice versa; in the second he shows when it impedes marriage between spiritual and natural children, where he says: *however, that spiritual or adoptive children cannot be united with natural ones, Pope Nicholas attests.*

The first is in two parts: in the first part he shows when spiritual family relationship preceding marriage impedes it from being contracted, and invalidates the contract between godfather and godmother; but not if it follows the marriage; in the second, he objects to the contrary, and resolves it, where he says: *but what our God-given Pope says seems to address these things. However, that spiritual or*

adoptive children cannot be united with natural ones, Pope Nicholas attests.

Here he shows when marriage is impeded between the spiritual and natural offspring of one man; and concerning this he does two things: first he tests the proposition; secondly, he inquires whether this proof extends to natural brothers of spiritual offspring, because namely they may be united with the natural children of a spiritual father, where he says: *but certain people want to understand this only about those children to whom are made godfathers. It is also wont to be asked if anyone is able to marry the godmother of his wife, after her demise.*

About this, he does two things. First he shows that spiritual family relationship passes from a man to his wife. Secondly, he inquires whether they may spiritually be made parents of any offspring, where he says: *it is wont to be asked, if a wife together with her husband should sponsor the child in baptism.*

Here there is a threefold question. First, concerning spiritual familial relationship. Second, concerning legal familial relationship. Thirdly, concerning second marriages.

About the first three things are to be asked: 1) whether spiritual familial relationship impedes marriage; 2) by what cause it may be contracted; 3) among whom it is contracted.

Article 1

Whether spiritual familial relationship impedes marriage.

1. It seems that spiritual familial relationship does not impede marriage. For nothing impedes marriage that is not opposed to some good of marriage. But a spiritual familial relationship is not opposed to any good of marriage. Therefore it does not impede marriage.

2. Furthermore, a perpetual impediment to marriage cannot stand together with marriage. But spiritual family relationship stands together with marriage sometimes, as is stated in the text, as when someone baptises his own child in the case of necessity: for then he is joined to his own wife with a spiritual family relationship, nor is the marriage then separated. Therefore, spiritual family relationship does not impede marriage.

3. Furthermore, a union of spirit does not pass over into the flesh. But marriage is a fleshly conjoining. Therefore since spiritual familial relationship is a union of spirit, it cannot cross over to impede marriage.

4. Furthermore, contraries do not have the same effects. But a spiritual family relationship seems to be contrary to disparity of cult; since spiritual familial relationship is a close relationship deriving from the bestowal of a sacrament, or the intention to the same; but disparity of cult consists in lacking the sacraments, as was said earlier, in Distinction 39, Question 1, Article 1. Since therefore disparity of cult impedes marriage, it seems that spiritual familial relationship does not have this effect.

But to the contrary, the holier a certain bond is, the more it is guarded. But the spiritual bond is holier than the bodily one. Therefore, since the bond of bodily close relationship impedes marriage, it seems that also a spiritual familial relationship does the same thing.

Moreover, the conjoining of souls in marriage is more important [*principalior*] than the conjoining of bodies, for it precedes it. Therefore, much more strongly can a spiritual familial relationship impede marriage than a carnal one.

I answer that just as by the propagation of the flesh a man receives the being of nature, so also by the sacrament he receives the being of spiritual grace. Wherefore, just as the bond that is contracted by the propagation of the flesh is natural to man, inasmuch as he is a thing of a certain nature; so also the bond that is contracted by the reception of a sacrament, is in some way natural to someone, inasmuch as he is a member of the Church; and thus, just as carnal family relationship impedes marriage, so also does a spiritual one by the statute of the Church. Nevertheless, a distinction should be made about spiritual familial relationship. For either it precedes marriage, or it follows it. If it preceded, it impedes it from being contracted, and invalidates the contract; if it follows, then it does not nullify the bond of marriage. But as to the act of marriage, a distinction must be made. For either a spiritual familial relationship is introduced in a case of necessity, as when a father baptises his child in danger of death; and then it does not impede the marital act on either side; or else, it is introduced outside of the case of necessity, yet out of ignorance; and then if that person by whose act it is introduced

exercises diligence, the argument is the same as with the first; or else, by industry, outside the case of necessity; and then that person by whom it was introduced loses his right to seek the debt; but nevertheless, he should render it, for by his fault there should not be anything troublesome brought upon the other spouse.

1. Although spiritual familial relationship does not impede any of the principal ends of marriage, nevertheless it impedes one of the secondary goods, which is the multiplication of friendship: for spiritual familial relationship is a sufficient reason for friendship in itself; wherefore it is fitting that familiarity and friendship with others be sought through marriage.

2. Marriage is a perpetual bond; and thus no subsequent impediment can nullify it; and thus sometimes it happens that marriage and an impediment to marriage stand together; but not if the impediment precedes it.

3. In marriage there is not only a bodily conjoining, but also a spiritual one; and thus the close relationship of the spirit poses an impediment to it without the spiritual close relationship having to cross over into a fleshly one.

4. It is not unfitting that two contraries be opposed to the same thing, as the great and the small are to the equal; and thus disparity of cult and spiritual family relationship are both opposed to marriage: for in one there is a greater distance and in the other a greater closeness than what marriage requires; and thus it is impeded on both sides.

Article 2

Whether by baptism alone a close spiritual relationship is contracted

1. It seems that by baptism alone a close spiritual relationship is contracted. For just as a bodily family connection is related to bodily generation, so spiritual family relationship is related to spiritual generation. But only baptism is called spiritual generation. Therefore, a spiritual family relationship is contracted by baptism alone, just as a fleshly family relation by carnal generation alone.

2. Furthermore, just as in confirmation a character is imprinted, so also in holy orders. But a spiritual family relationship does not follow from the reception of holy orders.

Therefore, neither does one follow from confirmation, and so only from baptism.

3. Furthermore, the sacraments are more noble than sacramentals. But from certain sacraments a spiritual family relationship does not follow, as is clear in extreme unction. Therefore, much less from catechism, as certain people say.

4. Furthermore, among the sacramentals of baptism, many other are numbered besides catechism, as is clear above in Distinction 6. Therefore by catechism a spiritual family relationship is not contracted more than from the others.

5. Furthermore, prayer is not less efficacious for leading someone to the good than instruction or catechising. But a spiritual family relationship is not contracted by prayer. Therefore, neither is it by catechism.

6. Furthermore, instruction which is given to the baptised by preaching is not worth less than what is given to the not-yet baptised. But by preaching no spiritual family relationship is contracted. Therefore, neither by catechism.

But to the contrary, 1 Corinthians 4:15: *in Christ Jesus I have fathered you in the Gospel*. But spiritual generation causes a spiritual family relationship. Therefore, by preaching the Gospel and by instruction a spiritual family relationship happens, and not only by baptism.

Furthermore, just as by baptism original sin is taken away, so also by actual penance. Therefore just as baptism causes spiritual family relationship, so also does penance.

Furthermore, father is the name of a family relationship. But by penance and teaching and pastoral care and many other things like this someone is called the spiritual father of another. Therefore, by many other things besides baptism and confirmation a spiritual family relationship is contracted.

I answer that concerning this there is a threefold opinion.

For certain people say that just as grace of the Holy Spirit is given in seven forms, so also spiritual regeneration happens by seven acts, beginning from the first feeding of salt of the sacrament up to the confirmation done by the bishop, and by anyone of these seven a spiritual family relationship is contracted. But that does not seem reasonable: for fleshly family relationship is not contracted except by the completion of the the act of generation; wherefore also affinity is not contracted unless the union of seeds has happened, by which

fleshly generation can result. But spiritual generation is not complete unless by a certain sacrament. And thus it is unfitting that spiritual family relationship is contracted, except by a certain sacrament.

And thus others say that by only three sacraments is spiritual family relationship contracted; namely by catechism, baptism, and confirmation.

But those people seem to be unaware of their own voice: for catechism is not a sacrament, but a sacramental. And thus others say that only by two sacraments, namely by baptism and confirmation; and this opinion is more common. Nevertheless, certain of these people say concerning catechism, that it is a weak impediment that impedes the contracting of marriage, but does not invalidate the marriage contracted.

1. The fleshly birth is two-fold. First in the uterus, in which what has come to be thus far is so fragile that it could not be exposed without danger; and the generation by baptism resembles this beginning, in which someone is regenerated, yet as though still being fostered in the womb of the Church. The second is the birth from the womb, when now what had come to be in the womb, is so strengthened that it can without danger be exposed to the outside, which is bound to corrupt it; and confirmation is compared to this, by which a strengthened man is exposed in public to confess the name of Christ. And thus fittingly by both of these sacraments a spiritual family relationship is contracted.

2. By the sacrament of holy orders no regeneration happens, but a certain advancement of power; and therefore a woman does not receive holy orders; and thus no impediment can be erected to marriage by this, and thus such a family relationship is not considered.

3. A certain profession of future baptism is made in catechism, as in a betrothal a certain pledge of future wedding is made; wherefore, just as in betrothal a certain kind of close relationship is contracted, so also in catechism, at least impeding the contracting as certain people say; but not in the other sacraments.

4. Such a profession of faith is not made in other sacraments than baptism, as it is in catechism; and thus the reason is not the same.

5,6. And the same thing should be said to the fifth, about prayer, and the sixth, about preaching.

7. The Apostle instructed those people in the faith by the mode of catechism, and so in a certain way such instruction had an order to spiritual family relationship.

8. By the sacrament of penance is not contracted, properly speaking, a spiritual family relationship; wherefore the son of a priest can contract with someone whom the priest has heard in confession: otherwise the son of a priest would not find in the whole parish a woman with whom he might contract. Nor does it hinder that by penance actual sin is taken away: for this is not in the mode of generation, but more in the mode of healing. But nevertheless, by penance a certain bond is contracted between the priest and the woman confessing, like a spiritual family relationship, so that by knowing her carnally he would sin as if she were his own spiritual daughter, and this because the greatest familiarity is between a priest and the one who confesses to him and for this that prohibition was introduced, so that the occasion of sin might be removed.

9. The spiritual father is called by his likeness to a fleshly father. But a bodily father, as the Philosopher states in Book 8 of the Ethics, gives three things: being, nourishment, and instruction; and thus someone is called spiritual father to someone else by reason of one of these three things. Nevertheless, the fact that someone is a spiritual father, does not necessarily mean he has a spiritual family relationship, unless he shares with a father what pertains to generation, by which there is being. And thus also the eight objections that preceded can be resolved.

Article 3

Whether spiritual familial relationship is contracted between the one receiving the sacrament of baptism, and the one lifting him from the holy font

Quaestiuncula 1

1. It seems that spiritual familial relationship is not contracted between the one receiving the sacrament of baptism, and the one raising him from the holy font. For in fleshly generation a close relationship is contracted only on the part of the one by whose seed offspring is generated, but not on the part of the one who receives the child when he is born. Therefore, neither is a spiritual family

relationship contracted between the one who receives the child from the holy font, and the one who is received.

2. Furthermore, that person who lifts the child from the holy font is called *anadocus* by Dionysius, and it falls to his duty to instruct the child. But instruction is not a sufficient cause of spiritual family relationship, as was said. Therefore, no family relationship is contracted between him and the one who is lifted from the holy font.

3. Furthermore, it can happen that someone raises someone else from the holy font before that person is baptised. But by this, no spiritual family relationship is contracted: for the person who is not baptised is not capable of any spirituality. Therefore, to lift someone from the holy font does not suffice to contract a spiritual family relationship.

But to the contrary, is the definition of spiritual family relationship introduced above, and the authorities who are set forth in the text.

Quaestiuncula 2

1. Again. It seems that spiritual family relationship does not pass from a man to his wife. For spiritual and bodily unions are disparate things, and of different genera. Therefore, by means of the fleshly union, which is between the man and his wife, a spiritual family relationship is not transferred.

2. Furthermore, a spiritual father and mother share more in spiritual generation, which is the cause of spiritual family relationship, than the man who is a spiritual father shares with his wife. But a spiritual father and mother contract no spiritual family relationship from this. Therefore, neither does a wife contract any spiritual family relationship by the fact that her husband is a spiritual father to someone.

3. Furthermore, it can happen that a man is baptised and his wife is not, as when one is converted from unbelief without the conversion of the other spouse. But spiritual family relationship cannot extend to the non-baptised. Therefore, it does not always pass from a man to his wife.

4. Furthermore, a man and his wife can lift someone from the holy font together. Therefore, if a spiritual family relationship passes from a man to his wife, it follows that

both spouses would be twice father and mother to the same person, which is unfitting.

But to the contrary, spiritual goods can be more multiplied than bodily goods. But the bodily consanguinity of a man passes to his wife by affinity. Therefore, much more does spiritual family relationship.

Quaestiuncula 3

1. Again. It seems that it does not pass to the carnal children of a spiritual father. For degrees are not assigned to spiritual family relationships, but there would be degrees, if it passed from a father to his son; for a person generated changes degrees, as was said above in Distinction 40, Article 2, Corpus. Therefore it does not pass to the carnal children of a spiritual father.

2. Furthermore, a man is related to a son in the same degree, as also a brother is to a brother. If therefore spiritual family relationship passes from a father to a son, by the same reasoning it would pass from brother to brother, which is false.

But to the contrary is the fact that it is proved in the text by equal authority.

Quaestiuncula 1

I answer to the first question that as in carnal generation someone is born of a father and a mother, so also in spiritual generation someone is reborn a son of God as his father, and of the Church as his mother. But just as the one who confers the sacrament bears the persona of God, whose instrument and minister he is, so the one who receives the baptised from the holy font, or who holds the one to be confirmed, bears the persona of the Church; wherefore a spiritual family relationship is contracted to both.

1. Not only the father by whose seed offspring is generated has a carnal family relationship to the one born, but also the mother, who bestows the matter and in whose womb he is generated; and so also the *anadocus* who offers and receives the baptised in the place of the whole Church, and who holds the one to be confirmed contracts a spiritual family relationship.

2. Not by reason of the instruction due, but by reason of the spiritual generation with which

it works, he contracts a spiritual family relationship.

3. A non-baptised person cannot raise anyone from the holy font, since he is not a member of the Church, whose type the one being baptised bears; although he may baptise, for he is a creature of God, whose type the baptiser bears. Nor, however, can he contract any spiritual family relationship; for he lacks experience in the spiritual life, into which a man is born first by baptism.

Quaestiuncula 2

To the second question it should be said that someone can become *compater* to another in two ways. In one way, by the act of the other person baptising, or receiving one's child in baptism; and in this way the spiritual family relationship does not pass from the husband to his wife, unless perhaps that child is the son of his wife; for then the wife directly contracts a spiritual family relationship, as well as her husband. In another way, by the proper act, as when he lifts the son of another from the holy font; and in this way the spiritual family relationship passes to the wife whom he has already known carnally; but not if the marriage has not yet been consummated, for then they have not yet been made one flesh; and this is by the mode of a certain affinity; wherefore, also by equal reasoning it seems to pass from the woman who has already been known carnally, although she is not a wife; for which reason the verse says: *whoever lifted the baby to me from the font, or the one whom my wife raised from the font, this is my commater, she cannot become my wife. If anyone raised up from the font the child of my wife, not by me, I am not forbidden to have her after the death of my own wife.*

1. By the fact that spiritual union and bodily union are of different genera, it can be concluded that one is not the other; but not that one cannot be the cause of the other; for of those things that are in different genera, sometimes one is the cause of the other either *per se* or *per accidens*.

2. A spiritual father and spiritual mother of the same person are not joined in spiritual generation, except *per accidens*; for one would suffice for this *per se*; wherefore it is not necessary that by this any spiritual family relationship should come about between them,

so that there could not be a marriage between them; wherefore the verse says: *one of the compaters will always be spiritual, the other carnal*: nor does such a rule fail. But by marriage, a husband and wife are made one flesh, speaking *per se*; and therefore, it is not the same.

3. To the third I say that if the wife is not baptised, a spiritual family relationship does not extend to her because she does not have the capacity, not because a spiritual family relationship could not be transferred by marriage from the husband to the wife.

4. By the fact that no spiritual family relationship is contracted between a spiritual father and mother, nothing prohibits that a husband and wife should lift someone from the holy font together; nor is it unfitting that the wife is made twice the spiritual mother of someone by different causes; just as it can also be that she has an affinity and is consanguineous to the same person by close fleshly relationship.

Quaestiuncula 3

A son is something of his father, and not vice versa, as is said in Book 8 of the Ethics; and thus a spiritual family relationship passes from the father to the son, but not vice versa, and so it is clear that there are three spiritual family relations.

One which is called spiritual paternity, which is between a spiritual father and his spiritual child. Another, which is called compaternity, which is between the spiritual father and the carnal father of the same person. But the third is called spiritual fraternity, which is between the spiritual child and the carnal children of the same father. And any one of these impedes the contracting of marriage, and invalidates the contract.

1. The person added by propagation of the flesh makes a degree with respect to that person who is related to him in the same genus, but not with respect to the one who is related in another genus; as a son is related in the same degree to the wife of his father as he is to his father, although in another genus of relating. But a spiritual family relationship is another genus than a fleshly one; and thus a spiritual child is not related in the same degree to a natural child of his spiritual father, by means of which spiritual family relationship passes; and

so it is not necessary that spiritual family relationships have degrees.

2. A brother is not something of his brother's, as a child is something of his father's; but a wife is something of her husband's, with whom she was made one flesh; And thus it does not pass from brother to brother, whether he was begotten before or after the spiritual brotherhood.

QUESTION 2

Prologue

Now we must examine legal family relationship, which is by adoption. And concerning this three things are to be asked: 1) about adoption; 2) whether by adoption any bond impeding marriage is contracted; 3) between which persons it may be contracted.

Article 1

Whether adoption is fittingly defined

1. It seems that adoption is defined unfittingly: *adoption is the legal assumption of a stranger as a son or grandson, and so forth.* For a son should be subject to his father. But sometimes the one who is adopted does not pass into the power of his adoptive father. Therefore, someone is not always assumed as a son by adoption.

2. Furthermore, parents ought to lay up treasure for their children; as said in II Corinthians 12. But it is not necessary that an adoptive father always save up for his adopted child; for sometimes the adopted one does not succeed in the goods of the one adopting. Therefore, adoption is not the assumption of someone as a child.

3. Furthermore, adoption by which someone is assumed as a son, is likened to natural generation, by which a son is naturally produced. Therefore anyone who is suited for the natural generation of a son, is suited for the adoption of a son. But this is false; for a person who is not *sui juris*, and someone who is less than twenty-five years old, and a woman, cannot adopt, though they can generate children naturally. And therefore adoption is not properly called assumption of someone as a son.

4. Furthermore, assumption of a stranger as a son seems to be necessary for supplying a lack of natural sons. But that person who cannot beget, for example, a eunuch or impotent man, suffers the most from the lack of natural children. Therefore, it would be most befitting to him to assume someone as his son. But it is not befitting to him to adopt. Therefore, adoption is not the assumption of someone as son.

5. Furthermore, in spiritual family relationship, where someone is assumed as a son without propagation of the flesh, it does not matter if someone who has reached the age of majority is made father of a minor, or vice versa; for a young man can baptise an old man, and vice versa. If therefore by adoption someone is assumed as a son without propagation of the flesh, likewise it would not matter if an older man adopted a younger, or a younger adopts an older; which is not true; and thus the same as before.

6. Furthermore, the one adopted does not differ according to the same degree from the one adopting. Therefore, whoever is adopted, is adopted as a son; and thus it is unfittingly said that someone is adopted as a grandson.

7. Furthermore, adoption proceeds from love; wherefore also God is said to have adopted us as his sons by charity. But greater charity should be had for the one nearest than for strangers. Therefore, adoption should not be of strangers, but more of close relatives.

I answer that art imitates nature, and supplies nature's lack of in those things in which nature fails; wherefore just as someone produces a child by natural generation, so also by positive law, which is the art of the equal and good, can someone assume to himself a son in likeness of a natural son, and to supply the aforementioned lack of sons, because of which adoption was particularly introduced. And since assumption conveys a terminus from which, because of the fact that the one assuming is not the one assumed, as was said in Book 3, Distinction 5, Question 1, Article 1, *questiuncula* 3, *Corpus*, it is necessary that the one who is assumed as a son be a stranger.

Therefore, just as natural generation has a terminus to which, namely the form which is the end of generation, and a terminus from which, namely the contrary form; so legal generation has a terminus to which, a son or a grandson; and terminus from which, a stranger.

And so it is clear that the designation given comprehends the genus of adoption, for *legitimate assumption* is said; and terminus from which, which is said *stranger*; and terminus to which, which is called *as a son or grandson*.

1. The sonship of adoption is a certain imitation of natural sonship; and thus the species of adoption is two-fold. One which perfectly imitates natural sonship, and this is called *adrogation*, by which the adopted one is

reduced to the power of the one adopting, and thus the adopted one succeeds his adoptive father intestate, nor can the father deprive him of a quarter part of his inheritance without guilt. But to be adopted in this way cannot be unless the one adopted is *sui juris*, who indeed after he is adopted, does not have power, or if he has, he is emancipated; and this adoption is not done except by the authority of the prince. The other adoption, which imitates natural sonship imperfectly, is called simple adoption, by which the one adopted does not pass into the power of the one adopting; wherefore it is a certain disposition to perfect adoption, rather than a perfect adoption: and according to this, someone can also be adopted who is not *sui juris*; and without the authority of the prince, by the authority of the magistrate; and this kind of adopted child does not succeed in the goods of his adoptive parent, nor is the one adopting bound to leave him any of his goods in his will, unless he wishes.

2. And by this, the answer to the second objection is apparent.

3. Natural generation is ordered to the species resulting; and thus it befits everything to be able to generate naturally in which the nature of the species is not impeded: but adoption is ordered to the succession to an inheritance; and thus only those are suited to it who have the power of disposing of their inheritance; wherefore, someone who is not *sui juris*, or who is less than twenty-five, or who is a woman, cannot adopt anyone, unless by special concession of the prince.

4. For someone who has a perpetual impediment to generating, his succession cannot pass into posterity; for which reason by this very fact already it is owed to those who must succeed him by right of being near relations; and for this reason he is not suited to adopt, just as neither is he to procreate. And moreover, the sorrow is greater over sons [who have been lost than over those] who were never had;³⁸⁵ and thus those having an impediment to generation do not need consolation for their lack of children, like those who have had, but have lost them; or even those who could have had them but do not because of some accidental impediment.

³⁸⁵ Words within brackets taken from the Piana edition which adds *amissis quam de filiis* to this sentence.

5. Spiritual family relationship is contracted by the sacrament in which the faithful are reborn in Christ, in which male does not differ from female, slave from free man, young man from old; and thus it does not matter who is made the spiritual father of the other; but adoption happens by succession of heredity, and a certain subjection of the adopted to the one adopting. But it is not fitting that an older man is subjected to a young one in the care of familial things; and thus a minor cannot adopt his senior; but it is necessary according to the laws that the adopted be young enough that he could be the natural son of the one adopting.

6. Just as it happens that children are lost, so also are grandchildren; and thus since adoption is brought about for consolation of the loss of children, just as someone can be introduced into the place of a son by adoption, so also in the place of a grandson, and so in succession.

7. A near relative must succeed by the law of propinquity; and thus it does not befit him to be displaced in the succession by adoption; and if someone closely related who is not a candidate for the hereditary succession should be adopted, he is not adopted as a near relative, but as someone outside the right of succession in the goods of the one adopting.

Article 2

Whether by adoption any bond impeding marriage is contracted

1. It seems that by adoption no bond impeding marriage is contracted. For spiritual care is more noble than bodily care. But by the fact that someone is subject to the spiritual care of another, no bond of close relation is contracted; otherwise, all those who live in a parish would be closely related to the priest, and could not contract with his son. Therefore, neither can adoption do this, which draws the adopted into the care of the one adopting.

2. Furthermore, by the fact that someone becomes benefactor to another, no bond of close relationship is contracted. But adoption is nothing other than the tie of a certain benefactor. Therefore, by adoption, no bond of close relationship is made.

3. Furthermore, a natural father principally provides for his son in three ways, as the

Philosopher says; for from him he has namely being, nourishment, and teaching; but the hereditary succession is later than these. But by the fact that someone provides for someone else in nourishment and teaching, no bond of close relation is contracted; otherwise, wet nurses and schoolmasters and teachers would be close relatives, which is false. Therefore, neither by adoption by which someone succeeds in the inheritance of another, is any close relation contracted.

4. Furthermore, the sacraments of the Church are not subject to human laws. But marriage is a sacrament of the Church. Therefore, since adoption is devised by human law, it seems that marriage cannot be impeded by any bond contracted by adoption.

But to the contrary, family relationship impedes marriage. But a certain family relationship, namely, a legal one, is caused by adoption, as is evident from its definition; for a legal family relationship is a certain closeness arising from adoption. Therefore, adoption causes a bond by which marriage is impeded.

Moreover, this same thing is held by the authorities cited in the text.

I answer that divine law excludes especially those persons from marriage who must live together, lest, as Rabbi Moses says, if carnal intimacy were permitted to them, an easy place would be open to concupiscence, to the repression of which marriage was ordained; and since an adopted son frequents the house of his adoptive father as a natural son would, thus by human laws it is prohibited for marriage to be contracted between such as these; and such a prohibition is approved by the Church; and for this reason it is held that legal family relationship impedes marriage.

1,2,3. And by this the answer to the first three is evident; for by all those things such a cohabitation is not brought in which could present an incitement to concupiscence; and thus by these things no close relationship is caused that impedes marriage.

4. The prohibition of human law would not suffice for an impediment to marriage, unless the authorities of the Church should intervene, which also forbids the same thing.

Article 3

Whether such a family relationship is not contracted except between the adoptive father and the adopted son

1. It seems that such a family relationship is not contracted except between the adoptive father and the adopted son. For mostly it would seem that it should be contracted between the adoptive father and the natural mother of the adopted, just as happens in spiritual family relationship. But between people such as these there is a legal family relationship. Therefore, neither between persons beyond the adoptive person and the adopted.

2. Furthermore, a family relationship impeding marriage is a perpetual impediment. But between the adopted son and the natural daughter of the one adopting there is not a perpetual impediment; for once the adoption is dissolved by the death of the one adopting, or the emancipation of the one adopted, he can contract with her. Therefore, with her he did not have any family relationship that would impede marriage.

3. Furthermore, spiritual family relationship passes to no person who could not give the sacrament or receive it; wherefore, it does not pass to a non-baptised. But a woman cannot adopt, as is clear from what has been said. Therefore, a legal family relationship does not pass from a husband to his wife.

4. Furthermore, spiritual family relationship is stronger than a legal one. But a spiritual family relationship does not pass to a grandson. Therefore, neither does a legal one.

But to the contrary, a legal family relationship has more to do with the union or propagation of the flesh than the spiritual one does. But the spiritual family relationship passes to the other person in the way explained, as was said. Therefore, so does a legal one.

I answer that legal family relationship is threefold. The first is that of descendants, which is contracted between an adoptive father and his adopted son, and the son of the adoptive son, and the grandson, and so on in succession. The second, which is between the adopted child and the natural child. The third by the mode of a certain affinity, which is between the adoptive father and the wife of the adopted son, or conversely between the adopted son and the wife of his adoptive father. Therefore, the first familial relationship and the

third impede marriage perpetually; but the second, not unless he remains for a long time in the power of his adoptive father; wherefore, when the father is dead, or the son is emancipated, marriage can be contracted between them.

1. By spiritual generation, a son is not drawn outside the power of his father, as is done by adoption; and so the spiritual child remains the child of both at the same time, but the adoptive child does not; and thus no close relationship is contracted between the adoptive father and the natural mother and father, as was the case in spiritual familial relationship.

2. Legal family relationship impedes marriage because of cohabitation; and thus when the necessity of living together is dissolved, it is not unfitting if the bond spoken of does not remain, as when he was beyond the power of the same father. But an adoptive father and his wife always retain a certain authority over the adopted son and his wife; and because of this, the bond remains between them.

3. A woman can also adopt by concession of the prince; for which reason the legal family relationship can also pass into her. And furthermore, the reason that spiritual family relationship does not pass to the non-baptised is not because they cannot hold to the sacrament, but because they do not have the capacity for any spirituality.

4. By a spiritual family relationship, a son is not established in the power and care of his spiritual father, as in legal family relationships. For it is necessary that whatever is in the power of the son should pass into the power of the adoptive father; wherefore, by the adoptive father are adopted the sons and the grandsons, who are in the power of the one adopted.

QUESTION 3

Prologue

Now it is to be examined concerning second weddings; and concerning this there are two things to be asked: 1) whether they are licit; 2) whether they are sacramental.

Article 1

Whether second marriages are licit

1. It seems that second weddings are not licit. For the judgment of a thing should be according to the truth. For Chrysostom says that to take a second husband is, according to the truth, fornication: which is not licit. Therefore, neither is the second marriage.

2. Furthermore, everything that is not good is not licit. But Ambrose says that a twofold marriage is not good. Therefore, it is not licit.

3. Furthermore, no one should be barred from taking part in what is decent and licit. But priests are barred from taking part in second weddings, as is evident from the text. Therefore, they are not licit.

4. Furthermore, no one incurs a penalty, except for guilt. But for a second wedding, a person incurs the penalty of irregularity. Therefore, they are not licit.

But to the contrary is that Abraham is read to have contracted a second marriage in Genesis 25.

Moreover, in 1 Timothy 5:14, the Apostle says: *but I wish the younger ones, namely, widows, to wed, to procreate children.* Therefore, second marriages are licit.

I answer that the matrimonial bond only lasts up until death, as is clear from Romans 7; and thus when one spouse dies, the matrimonial bond ceases. Wherefore, because of a preceding marriage someone is not impeded from a second, once the spouse is dead, and so not only a second, but a third, and so forth, are licit marriages.

1. Chrysostom is speaking about the cause that sometimes is wont to incite someone to a second marriage, namely concupiscence, which also incites to fornication.

2. The second marriage is not said to be good, not because it is illicit, but because it

lacks that honor of signification that is in the first marriage, that it might be one woman of one man, as it is in Christ and the Church.

3. Men dedicated to divine things are not only barred from illicit things, but even from things which have some aspect of baseness; and thus also they are barred from second marriages, which lack the dignity that there was in the first one.

4. Irregularity, as was said above in Distinction 29, Question 3, article 1, is not always introduced because of fault, but because of a defect of sacrament; and thus the argument is not to the point.

Article 2

Whether the second marriage is a sacrament.

1. It seems that the second marriage is not a sacrament. For whoever repeats a sacrament, does harm to it. But injury is done to no sacrament. Therefore, if a second marriage were a sacrament, in no way could it be repeated.

2. Furthermore, in every sacrament some blessing is applied. Yet in a second marriage it is not applied, as is said in the text. Therefore, no sacrament happens there.

3. Furthermore, signification is of the essence of the sacrament. But in the second marriage, the signification of marriage is not preserved; for there is not one woman for one man, like Christ and the Church. Therefore, there is no sacrament.

4. Furthermore, one sacrament does not impede the reception of another. But a second marriage impedes the reception of holy orders. Therefore, it is not a sacrament.

But to the contrary, intercourse in the second marriage is excused from sin, as also in the first. But matrimonial intercourse is excused by three goods of the marital union, which are fidelity, offspring, and sacrament. Therefore, a second marriage is a sacrament.

Furthermore, by the second non-sacramental union of a man to a woman, irregularity is not contracted, as is evident concerning fornication. But in the second marriage irregularity is contracted. Therefore it is sacramental.

I answer that wherever those things are found that are of the essence of a sacrament, there is a valid sacrament; wherefore, since in a

second marriage everything that is of the essence of the sacrament is found--for the due matter, which makes the eligibility of the persons, and the due form, namely the expression of interior consent through words establish that the second marriage is also a sacrament like the first.

1. This is understood about a sacrament that brings about a perpetual effect; for then if the sacrament is repeated, it is given to understand that the first was not efficacious; and thus injury is done to the first, as is clear in all the sacraments that imprint characters. But those sacraments that do not have a perpetual effect can be repeated without injury to the sacrament, as is evident in the case of penance. And since a matrimonial bond is removed by death, no injury is done to the sacrament, if the woman marries again after the death of her husband.

2. The second marriage, although considered in itself, it is a perfect sacrament, yet considered in order to the first, it has something of a defect of sacrament, for it does not have the full signification, since it is not one woman for one man, as it is in the marriage of Christ and the Church; and by reason of this defect, a blessing is taken away from the second marriage. But this is to be understood when the second marriage is second on the part of the man and on the part of the woman, or on the part of the woman alone. For if a virgin contracts with a man who has had another wife, nevertheless the marriage is blessed, for the signification is preserved in a certain mode also in its order to the first marriage; for Christ, even if he had one Church as his bride, still had many espoused in the one Church; but the soul cannot be the bride of anyone other than Christ, for with a demon it fornicates, nor is there a spiritual marriage; and because of this when a woman marries a second time, the marriage is not blessed because of the defect of the sacrament.

3. The complete signification is found in the second marriage considered in itself, but not if it is considered in order to the preceding marriage; and in this way it has a defect of sacrament.

4. The second marriage impedes the sacrament of holy orders as regards its defect of sacrament, not as regards its being a sacrament.

Exposition

All whom we receive in penance, are our sons just as those received in baptism: not by reason of some family relationship, but because of the danger to be avoided, as was said.

Indeed, Paschal II prohibits the neophytes from being joined physically after compaternity. That prohibition is now not in force; for it was more because of a certain propriety than because of any bond.

If someone accidentally married the daughter of his own spiritual commater, having kept the more mature counsel, let him have her. This is said therefore, because spiritual family relationship passes from a spiritual child to a natural child by the father; for all the natural children of a spiritual father are spiritual brothers to him; but not in respect of the father: for a father's spiritual sons do not become natural sons of the mother, or vice versa.

But since someone who married two commaters or sisters, incurred expiative disgrace, a greater penance should be enjoined upon him. This is to be understood when one of these women was made *commater* of the other, afterwards is his wife in consummated marriage, and through the proper act: otherwise, it is prohibited, as was said.

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