

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

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

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

Peter L.P. Simpson
August, 2020

The translation is now being revised and reformatted, to correct some looseness and error of translation, supply some omissions, and help reduce file size.

NB: The interpolated texts, added at various points in some of the questions, are texts inserted in the *Ordinatio* by earlier editors from equivalent passages in other surviving commentaries on the *Sentences* by Scotus. The Vatican editors placed these in footnotes or an appendix and they are translated here for the convenience of the reader.

May, 2025

THE ORDINATIO OF BLESSED JOHN DUNS SCOTUS

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Book Four

Fourteenth Distinction

Question One

Whether Penitence¹ is Necessarily Required for Deletion of Mortal Sin Committed after Baptism

1. “After this about penitence” [Lombard, *Sent.* IV d.14 ch.1 n.1].
2. After the Master has made determination about the sacraments of baptism, confirmation, and the Eucharist, here he makes determination about the fourth sacrament, namely penitence, which is a common sacrament, however after a lapse, because “the second plank after shipwreck – according to Jerome [*Epistle 130 to Demetriades* n.9; also in Lombard’s text] – is penitence.”
3. About this distinction I ask first whether penitence is necessarily required for deletion of mortal sin committed after baptism.
4. It seems that not:
Because with the interior and exterior act ceasing, the sin ceases to be, because the privation of rectitude in the act ceases, which [privation] is sin formally; therefore, it is destroyed at once without penitence. The antecedent is plain, because sin is not if not a disordering in some interior or exterior act.
5. Second thus: a man offended can remit the offense without this that the offender repent, – therefore much more [can] God, who is supremely merciful; but with offense remitted sin is dismissed; therefore etc.
6. These two arguments prove that penitence is not required for this deletion.
7. Again, that [penitence] does not avail for this deletion of sin, is proved:
First, according to Augustine in a sermon on *Matthew* 5.7, “Be ye merciful,” [*On the Psalms*, ps.32 sermon 1 n.11], where he says, speaking of the damned, “There will also then be penitence, but yet fruitless;” which he proves through that statement about the damned in *Wisdom* 5.3, 8-9, “They will say among themselves doing penitence [and in anguish of spirit groaning... What has our arrogance profited us? Everything has passed away like a shadow.]”
8. If you say that as long as a man is in this life penitence is of value for deletion of sin, but not afterwards, – against this is the authority of Jerome [*On Matthew* IV 27, 5] and it is in the text [Lombard, *Sent.* IV d.15 ch.7 n.8; taken from Gratian, *Decretum*, p.2 cause, 33 q.3], “It profited Judas nothing to have done penitence through which he was not able to emend his crime.”

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

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

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

11. The opposite is proved in similar ways.

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

The Savior says, *Luke* 13.5, “Unless you will have done penitence, you will all likewise perish.”

13. Again, Jerome, “Second [plank...]” [n.2] – *Epistle to Demetriades* (and it is in the text) – “after shipwreck” etc. The first plank is compared to an undamaged ship, which when broken, the one shipwrecked is in peril unless he cling to some plank – this is called the second plank; therefore, by similarity, one falling into mortal sin, and therein has suffered spiritual shipwreck, is in danger, unless he cling to penitence.

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

In *Matthew* 3.2 it is said, “Do penitence [for the kingdom of heaven is at hand];” therefore [penitence] is of value.

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

I. To the Question

16. Here there are three things that need to be seen: first, what remains in a sinner, the act by which he is called a sinner passing by, because if nothing such remains, it is not necessary to ask what is to be deleted, indeed altogether alike would be he who has committed nothing and he who has committed [something] who yet has ceased from act of sinning interior and exterior; second, that that is destroyed, and for this some punishment is required; third, that not just any punishment but a penitential one. And in this the solution of the question is plain.

A. What Remains in a Sinner after a Sin Committed

1. Things to be Noted First

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

18. Also, after the intrinsic and extrinsic act pass away, there remains a certain habitual injustice; but not by that alone is anyone said to be a sinner, otherwise he who had committed two thousand mortal sins and he who had committed one would be equally sinners intensively and extensively, because in them is both the whole of grace as to intension and it alone as to extension taken away, both in him who has committed a single less grave sin and in him who has committed two thousand very grave sins; and so the one will not be called less a sinner after the act passes away than the other. The assumption is proved, because in any mortal sin whatever grace is so taken away that nothing of it remains, and consequently through no succeeding thing can it become more intense or more extensive (speaking of that habitual privation), because it does not deprive but one habit, just as it is not of a nature but to be uniquely present.

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

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

2. Opinion of Others

a. Statement of the Opinion

21. It is said therefore [Aquinas *Sent.* IV d.13 nn.27-82] that there remains in ‘the soul which has sinned’ the conviction of guilt,² which is a certain obligation to the penalty due to that fault; now this obligation is a certain real relation, not founded on the act of guilt, but on the essence of the soul, not however without previous actual guilt, just as was often said above how on action there is founded a relation [*Ord.* IV d.13 nn.27-82].

b. Rejection of the Opinion

22. Against this it is argued in two ways: first, because no real relation remains in the soul; second, because if it were to remain, the soul would not by that be called a ‘sinner’.

23. The first is proved, because a real relation intrinsically arriving necessarily follows the positing of the extremes; but this [relation] does not follow (it is plain, because with the soul and God remaining the same, or with the penalty disposed in the same way, the soul is not because of this in the same way liable for punishment, because not before sin³). But if it be a relation arriving from without, it is necessary to grant it a

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

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

cause through which it may arrive when the extremes are already posited (just as it is about ‘where’ and the rest [cf. *Nicomachean Ethics* 3.2.1111a3-6]): for there cannot be a real respect which does not follow the extremes posited unless to it, as to the term, there respond some real action; of this obligation [n.21] there cannot be given a real action nor an agent really: for not the soul, because in sinning it did not have but a single disordered action, which was to that ‘to will’ deprived of its due circumstances, and so not to this respect [sc. of obligation] as to the term; nor can this obligation be called the immediate term of divine action, because no soul is called a sinner precisely by that which is the immediate term of divine action.

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

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

26. Against this stands the prior deduction [n.23], because this stain, or distancing or unlikeness, by whatever name it be named, cannot be only a lack of the habit of grace, because that [lack] is totally present in the first sin; nor is it the lack of rectitude in the act, because that is not of a nature to remain if not with the stain in the act remaining.

27. Again, the stain of supreme hatred for *a* and supreme love for the very *a* are repugnant; therefore, by one is the other taken away, and consequently the stain of hatred for *a* could be taken away by immoderate love for that very *a*.

3. Scotus’ own Opinion

28. I say therefore as to this article [n.16], that nothing real, absolute nor respective, is in anyone, when all act of sin ceases, by which he may be called ‘sinner’, – and this either gravely or in many ways a ‘sinner’ – as anyone is called after the transient act.

29. And if it be said that something left behind by the act does remain, – that is not formally the sin, because it can stand in someone justified, just as a vicious habit or a disposition for that remains in someone suddenly justified; which is plain, because at the beginning he is prone to following that vicious habit’s inclination, – but in fighting against the inclination of it he merits well and acquires for himself a habit to the contrary. Hence great sinners do not at once, when they have been justified, have that peace which the perfect and exercised in virtues have.

30. Any habit too or vicious disposition that might be left from the acts would cease to be after a flow of time, unless it were strengthened by frequent acts (just as universally every disposition for a habit ceases to be when the acts perfecting that habit

cease); but that by which a sinner is called a ‘sinner’ after the act does not cease to be through time however much, although like acts not be added on; for always to infinity a he is sinner from when he committed [sin]; there is not therefore anything absolute or respective there, positive or privative, by which he may be called a sinner, from the time of the cessation of the act until penitence, but only a certain relation of reason, insofar as it is an object of the intellect or will of God, because – after he has committed [the sin] – the will of God ordains him to a penalty corresponding to the sin, and the intellect [of God] foresees for all time, until the penalty due be paid.

31. This is proved through Augustine on *Psalms* 31.1-2, *enarratio* 2 n.9, “Blessed are those [whose transgression is forgiven, whose sin is covered]”: ‘To see sins’ – he says – belongs to God for imputing for penalty; ‘but to turn his face from sins’, this is for him not to reserve for penalty; so he [Augustine] says that sins are covered over by him [God], not so that he not see, but as he does not will to attend to them, that is to punish them; therefore, that he [a sinner] remains in guilt after the transient act is only that he is ordained by God’s will for penalty befitting that sin. But an object of the intellect or will, as understood or willed, has only a relation of reason; therefore etc.

32. It is confirmed through a likeness, because let it be that God, in the multiplication of merits, does not intensify the habit of charity, as is possible if the merits be remiss, – or even if they were intense, yet he who had more merits, with the exterior or interior acts passing by, is more deserving than another. Which is nothing else but because he is ordered to a greater glory, by which there is not had anything real, positive or privative, absolute or respective, intrinsic to him, but only a relation of reason, insofar as he is an object of the divine will and as he is ordered to a greater glory: for there in the divine acceptation merits are ordered, or this [man is ordered] through merits, to such or to such a glory. Just as therefore this acceptation because of transient merits is nothing really except an act of the divine will, and in this only a relation of reason, just as in the object willed, so on the other side – because of the sins that pass by – the casting away of this [man] is nothing but a reprobation or repulsion in the divine will, and in the sinner but a relation of reason (as of one cast off or reprobate) to such or such penalty.

33. This is at length plain in a like gross case, because if someone offend a great prince with the sort of offense that a great penalty may respond to, when that act cease, there is nothing in him that previously there was not before the act, because of which he may now be called an enemy and not before, but only in the will of the offended lord himself is there an act passing over him; and through this a relation of reason in him, as in the subject or object willed for such sort of penalty.

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

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

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

36. And this is proved thus, because sometimes [someone] predestined falls into mortal sin (it is plain about blessed Peter [*John* 18.17, 25-27] and blessed Paul [*Acts* 7.57-59, 9.1-6, *Galatians* 1.13-16] and others quasi innumerable); but he cannot be beatified – for which he is principally ordered through predestination – except with the sin deleted, taking ‘sin’ in the way above stated [n.30], because none is beatified while remaining obligated to paying a penalty (for either it must be paid simultaneously with glory – which is impossible because, at least according to divine disposition, that glory and any penalty at all are repugnant); or it must be paid after glorification, which is similarly impossible, because God has disposed that that glory in anyone at all is final, such that there does not follow any penalty; therefore it is necessary before glorification that this obligation for at some time undergoing a penalty is remitted or deleted.

37. Secondly I say that it is not remitted without a penalty or the equivalent in divine acceptance, because God is offended by any sin at all, as Scripture sufficiently proclaims [e.g. *Genesis* 6.5-12, *Matthew* 5.19-48, 6.1-7, *Mark* 7.20-23, *Romans* 7.23, *Galatians* 5.19-21, *Colossians* 3.5-15, etc.]; but his offense or anger – as was said [n.34] – is his ‘to will to avenge’, or to exact something else sufficient for placating; therefore, whatever sin is posited, God wills to vindicate it on the one sinning. But ‘to will to vindicate’ is to will to punish; therefore, after sin committed, for its deletion some punishment is required or the equivalent in divine acceptance. And although the fault that is taken away be taken away regularly through a penalty (just as an obligation for anything is taken away by payment of it), and although sometimes it be taken away by something other than the penalty equivalent in divine acceptance, yet as a rule it is put in order by punishment, but not taken away.

38. And this is what is said commonly [nn.37-38], and it is taken from Boethius [*Consolation of Philosophy* IV prose 4 n.20-21], that a penalty is ordinative of guilt, such that there cannot be left in the universe any guilt to which there does not correspond an ordinative penalty; and it is simply better for a sinner not corrected to be in penalty than without penalty, because in the first there is something of good, namely the just correspondence of the penalty to the fault, and in the second there would be only the malice, namely guilt and it unpunished.

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

C. About Voluntary Penalty or Punishment

1. About the Thing of Such Punishment or Penitence
 a. The Penalty or Punishment must be Voluntary

40. About the third article [n.16], it must first be seen about the thing; second about the name.

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

41. This is proved, because through some punishment sin is destroyed, as was said in the second article [nn.36-39], and through some it is not destroyed, as is plain in the damned, and about that penalty which immediately follows guilt, according to that [remark] of Augustine in his book *Confessions* I ch.12 n.19 [cf. *Ord.* II d.7 n.92]: “You have commanded, Lord, and so it is, that each sinner should be for himself the penalty.”

42. Now the difference between the punishment by which sin is destroyed and by which it is not destroyed is not as provable as about the voluntary and the involuntary: first because the punishment of the damned is far greater, intensively and extensively, than the punishment of a wayfarer whose sin is destroyed through the punishment, – and consequently the more and less intensively and extensively does not make the difference between the punishment deleting sin and not deleting it;⁴ second because we so see it in human offenses that a voluntary penalty or distress placates him offended, but not one altogether involuntary and undertaken with murmuring.⁵ Therefore it is reasonable, if through some penalty an offense has to be destroyed and through some not, and the difference as to this is not as provable by anything as by the voluntary and involuntary, that a voluntary penalty is required regularly for deletion of sin.

43. Then there follows a corollary, how in two ways guilt is put in order by a penalty: for an abiding guilt is put in order by a penalty concomitant but involuntary: and a guilt that is put in order by a voluntary penalty is deleted by it.

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

44. But if you ask how some penalty can be voluntary, since it is of the idea of penalty to be involuntary, because just as no one sins in that which he does not will, so neither is he punished in that which he does will, – I reply: this difficulty requires a longer clarification.

45. Where it must be understood that the ‘involuntary’ is simply that against which the will simply murmurs back.

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

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

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

47. And this distinction is plain, because in the first two modes sadness is the object only of the will; in the third, it is an effect only, and not the object; in the fourth [it is] object and effect, unless something else gets in the way (these members will immediately be made clear [nn.49-55]). This order is also plain, because the second adds to the first as to the idea of the voluntary, and the third to the second, and the fourth to the third.

48. And penalty too can be understood [to be] either whatever is disadvantageous or disagreeable, – and that can be in man in the sensitive part or in the body conjoined with an act of the sensitive soul; or it can be the first thing disagreeable, which is the sadness that properly and first is a penalty, about which Augustine says, *City of God* XIV ch.15, “sadness is the dissent of the soul from these [things] that have happened to us against our will.”

49. Supposing, therefore, about the exterior penalties, as about things manifest, how they can be voluntary in each of these four modes of the voluntary [n.46], – let us see specifically about this first penalty, namely sadness.

50. It is plain that it can be voluntary in the first way, namely in a certain respect, that is, ‘patiently tolerated’ [n.46], because a disagreeable evil – provided however it not be against right reason – not only can absolutely patiently, but in ordered way patiently, be sustained.

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

52. But the third [n.46], how the will causes grief or sadness voluntarily as partial cause, is a difficulty. I say that sadness in any will cannot be caused naturally except by two causes concurrent, namely from actual volition of the existence of something and from actual apprehension of that existence, according to the description of sadness premised from Augustine [n.48]: whatever therefore is cause of the volition is partial cause of the sadness itself, though it not intend to cause sadness, nor must it [so] intend. Now these two causes, whenever they concur, as far as is from themselves cause sadness as an effect naturally consequent.

53. From this third one the fourth [n.46] is made clear, because from the fact sadness follows, as a natural effect, the actual volition of something and the actual consideration of the thing willed, although these two proximate causes can concur in many ways (because from as many causes as such actual consideration in the intellect and such actual volition in the will can be from), yet nothing one can be cause of sadness – speaking of natural causation – unless there can be a cause of the concurrence of these two that are the naturally necessary proximate causes.

54. Now a common cause of this sort the will can be, as commanding an act of consideration and an act of volition of the same object, and this in order to that intended end, so that a punishing sadness may follow; therefore the will, bidding the intellect to consider something as existing in act and the will to will that as existing in act, causes sadness as one cause also as intending this effect, – and this not as proximate [cause], because there cannot be one proximate sufficient cause, but it causes sadness as one remote cause, because it is cause of the proximate causes in respect of sadness and of the application of them.

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

56. Then to that argument ‘all penalty is involuntary’ [n.44], – it is true according to itself, and this in comparison to a will following the affection of advantage. However, it [a penalty] can be voluntary in antecedent will, namely in the voluntary application of the causes on which it follows; it can also be voluntary with accepting will, and this with a will following affection for justice, because thus it accepts whatever has an order to something to be justly willed per se; and this sadness can be toward something to be justly willed per se.

2. About the Name of the Aforesaid Penitence

a. About the Word ‘Penitence’ Equivocally Taken

57. About the second conclusion of this article [n.32], namely about this word ‘penitence’, I say that – just as in this voluntary punishment [nn.49-55] – many things arise to consider: first indeed ‘to will to punish’, which is a commanding or efficacious ‘to will’ conjoining the proximate causes of the passive punishment itself; second, the not willing to have sinned or to displease, which is the proximate partial cause of the penalty, although it not intend that penalty; and third, to will, that is, to accept the passive punishment now inflicted; fourth, to bear the punishment patiently. And let these four be thus briefly expressed: to avenge the thing committed, to detest the thing committed, to accept the penalty inflicted, to bear patiently the penalty inflicted.

58. To these four correspond another four on the part of the term of volition, in which there is the same material thing, namely ‘to punish’ – and four things formal are superadded, namely the thing willed by the will causing, by the will detesting, by the will accepting, by the will patiently sustaining.

59. Now it is plain that not per se the same is any aforesaid volition and the passive punishment itself. And so the name [sc. ‘penitence’], which per se signifies volition and connotes punishment, will not signify punishment univocally in connoting volition; and consequently, if any expression signify per se the punishment willed and the volition of the penalty, this will be equivocally; again, if it signify that fourfold volition, this will be equivocally.

60. On these eight, then, could some name be imposed equivocally the same.

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

61. But putting the force on this term ‘to be penitent’, since ‘to be penitent’ is ‘to hold a penalty’⁶ (according to the etymology of the word), and since ‘to hold a penalty’ imports suffering in respect of the penalty, not merely the suffering of it as inherent,⁷ it properly seems that the thing signified by this term consists in four things first.

⁶ In Latin ‘to repent’ is ‘poenitere’, which here is made to derive from ‘poenam tenere’, or ‘to hold a penalty’.

⁷ Sc. not just suffering the pain of present (inherent) punishment, which the impenitent can do, but suffering the fact that it is a ‘penalty’, something one deserves for a sin one now detests, which only the penitent can do.

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

First is this: ‘To be penitent is to avenge a sin committed by oneself’. And it is plain how there it is ‘to hold a penalty’, because ‘to apply a penalty to one’s very self’ is to hold it; and this can be understood whether it apply or inflict the penalty in effect or in affect, because he who avenges no less avenges although sometimes the penalty may not follow because of a defect of some second cause, provided however he himself does equally intend to inflict the penalty.

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

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

The fourth description: ‘to be penitent’ is ‘to suffer patiently the penalty inflicted on oneself for one’s sin’. And it is plain how here it is ‘to hold a penalty’, because not to cast off by murmuring back; hence also similarly it is called in this sense ‘to sustain’⁸, as if to hold oneself under the action of the agent and inflicter by conforming oneself to it.

63. All voluntary punishment is contained under one or other of the four modes of penitence; but for deletion of any actual mortal sin whatever committed after baptism, some voluntary punishment is required; therefore, for deletion of this there is required penitence said in one or other of these four ways.⁹

D. Solution of the Question

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

65. And from this reason it is plain how the conclusion, on which the solution of the question stands, should be understood, namely that ‘penitence is required for deletion of sin etc.’ [n.40]: for it is not understood except of actual penitence, that is, of an act of

⁸ ‘Sustinere’, a word derived by Scotus from ‘tenere’ (like ‘poenitere’) and from ‘sub’ or ‘under’; hence to sustain is to hold oneself under something. ‘Sustinere’ can thus also be translated, and is so elsewhere, as ‘to undergo’.

⁹ Vatican editors: this paragraph n.63, probably written by Duns Scotus in an added folio, is missing in some mss.

being peni-tent, which is an actual ‘penalty-holding’ (so to speak); nor is it understood of that act except by indistinctly taking it for any of the four things aforesaid [nn.61-63]. – But whether it is necessary for this act to be right or virtuous or not, or formed or not, about this in the following question [nn.84-150].

66. The conclusion is also understood not of being required simply necessarily, the opposite of which may include a contradiction, because God could remit [sin] without any act of him to whom he remits it; but neither of being required necessarily with the act supposed of the man to whom it is remitted: for God could remit [sin] through any fervent act of love for God, without any at all of the four acts aforesaid under their proper idea, – as in an act of zeal for a martyrdom to be at once undergone, where perhaps there would not be a thinking about any sin previously committed, nor as a consequence any act of repenting the [sin] aforesaid, and this formally, although virtually in that motion there would be a repenting according to the second signification [sc. virtual, n.62].

67. And this is proved, because none is excluded from the Kingdom of Heaven who does that which is simply necessary; but it is possible for someone, existing up to instant *a* in mortal sin, to be from instant *a* necessitated to insisting with his whole heart on acts distracting from thought about sin committed, namely when the most straitened martyrdom is being at once exposed to him.

68. And because of this it is said in the conclusion that ‘[voluntary punishment] is required for this, that mortal sin be regularly deleted’ [n.40], because this is said ‘to be done regularly’ which is done according to rules determined by Divine Wisdom, of which this is one: that sin committed may not be destroyed without displeasure at the sin committed. Which [rule] much appears reasonable, because just as sin averts from the end and converts to the creature, so it is reasonable that it not be destroyed except by an opposite motion averting from sin or from the creature (as about that the sin was) and converting to God.

69. And to this which is ‘to be displeased about sin committed’ [n.68] the other three members can be reduced of what it is ‘to be penitent’ [sc. the second, third, and fourth, n.62].

70. Now as to the special conditions how an act of repenting is required for deletion of sin (whether as a disposition preceding or as concomitant), it will be plain in the following question [nn.130-132].

II. To the Initial Arguments

71. To the first argument [n.4] it is plain from the first article [nn.29-30].

72. To the second [n.5]: it is proof only about God’s absolute power, and this was conceded in the second principal article [n.39].

73. But if you argue that of his ordained power he can remit [sin] without a penalty, just as also an irate human being [can], – I reply: his remission is not through change of his will, because his will, both in itself and in the act of willing, both absolute and insofar as it passes over the object, is uniform, and consequently, if in eternity he wills someone is to be punished for some time, he wills that he is always to be punished for that time, unless something in the creature be changed; but not so about the will of an irate human being, which changes as to act of being willing and unwilling.

74. To the third [n.7], about the penitence of the damned, I say as before [n.73], because they do not truly repent, because neither do they ‘hold the penalty’, since it is not there voluntary but a murmuring back. And about this which is said of Judas [n.8], I reply that not just any act of repenting suffices for deletion of sin (as will be plain from the following question [n.127]), but it is necessary that the act be ordered, and especially by the circumstance of the end, which is first among the circumstances of a moral act; and Judas did not repent with this circumstance and from love of God.

75. To the last [n.9], it will in some way be plain in the following question [n.145] which act of repenting is a disposition previous to deletion of sin, and which [act] is formally required in which sin is deleted. And this second [act] is as good as the sin is bad, because the malice of sin consists in aversion from the end; therefore, the good bringing back consists in conversion to the end; and so the act of conversion converts perfectly to God just as the act of sin turns away. And just as there is not really in the second act a goodness intensively infinite, so there is not in the act of sin a malice intensively infinite, because malice is not greater than the good it takes away; and it only takes from the act the good that would be of a nature to be in the act; but in the act, since it is something finite, there is not of a nature to be a good except a finite one. There is therefore precisely infinity and malice in sin and goodness in the opposite act, because of the infinity of the object itself from which sin averts and to which the good act converts. And this is only an infinity participated, or rather according to ‘way of speaking’, in the act itself, because of the infinity, real and simply, in the object itself.

Question Two

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

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

77. That not:

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

78. Again, an act of virtue is voluntary, because [an act] of choice, from *Ethics* 2.5.1106b36-1107a2; but penitence is involuntary: for nothing is penal except what is against the will, and then as before [n.77, cf. n.56].

79. Again, the virtues would have been in the state of innocence and they will remain in the fatherland, because nature will remain perfect and it would then have been perfect, whose are these virtues; but neither in the state of innocence was there penitence nor will there be in the fatherland, because neither any evil for which voluntary punishment would be due; therefore etc.

80. Again, if ‘to be penitent’ were an act of virtue, it would not have been of other than the will (it is plain inductively); but it is not any ‘to will’, because it is in respect of evil, nor a ‘to unwill’ save this which is ‘to unwill to have sinned’. But this is not an act of virtue, because neither an act of choice, for choice is not in respect of the impossible; and ‘the past not to have been’ is impossible even for God, from *Ethics* 6.2.1139b10-11: “From God is taken this alone, to make undone what has been done.”

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

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

I. To the Question

83. In this question it is first necessary to see how ‘to be penitent’ can be an act of virtue (and this according to any of those four ways that were posited in the preceding question, article three [n.62]), and of which virtue; second, whether any of these acts is required as act of virtue. And therefore it must be indistinctly treated in each article about the four, because from the preceding solution is only had that any of them may suffice.

A. About ‘To be Penitent’ as an Act of Virtue

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

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

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

86. This is proved, because according to right reason any legislator at all takes vengeance on transgressions of law, – hence the Philosopher at the end of *Ethics* 10 [1179b34-81b79b23], after the teaching about vices and virtues, at once introduced positive law as avenger of vices and rewarder of virtues; but if the legislator avenges by right reason, the minister carries out by right reason because, universally, rectitude in the act of him sub-ministering is from the conformity of it to the agent to whom he sub-ministers; therefore, according to right reason someone can, as minister of the legislator, avenge sin committed against the law, and this on him on whom he has been commissioned to take vengeance, because otherwise he would not be sub-ministering.

87. But to each it has been committed to be minister of God, passing his [God’s] law on himself for the sins which he has committed; and ‘to be penitent’ in the first way [n.85] states thus to take vengeance on oneself: for ‘to hold’, when there is not added a dative expressing for whom it is held, signifies that it is held for oneself (this is plain from common speech¹⁰); therefore God, although he punish the sinner, is not said to be penitent, because he inflicts the penalty not on himself but on another. But the one ‘inflicting [a penalty] on himself’ is said to be peni-tent, that is, in applying a ‘penalty [poen-a]’ to himself to ‘hold [ten-ere]’ it.

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

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

89. The second conclusion is what virtue this act ‘to be penitent’ is of according to the first signification of this word [n.62].

90. For whose solution it needs to be known that ‘to be penitent’ requires a distinct prior knowledge of that about which one is penitent, according to this understanding. Where I say that these [following] things are disposed in order: [1] to command the conjunction of the partial proximate causes of sadness; [2] and these conjoined partial causes, which are the proximate effect of that command; [3] and further, there follows a remote effect of this command, namely the sadness itself; [4] afterwards there can follow contentment in the sadness, which is an act of will having sadness for object; [5] and lastly joy over the sadness, according to that [remark] of Augustine, “Let the sinner grieve over his sin and rejoice over his grief” [n.51].

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

92. I say therefore that of all these five nothing is ‘to avenge’ per se save the first of them, namely the imperative ‘to will’ itself (it is proved, because in an inferior and a superior taking revenge, or at least in anyone avenging immediately the same sin under the same idea and the same circumstances of avenging, there can be an act of taking revenge of the same idea); but to take revenge on oneself and on another, according to right reason on this side and that, cannot be anything uniform besides the first of these; therefore etc.

93. This could be proved *a posteriori*, because those actions pertaining to the second [n.90] can be from causes indeterminate to whatever extent, but justly to avenge cannot. But this – not arguing in a circle – will be at once shown from things prior.

94. Let it therefore be sufficient here to say that it is possible to find some act prior to the proximate causes of sadness, and conjoining them, as was made clear in the last article of the preceding question [nn.53-54], and consequently this act precedes the sadness, and thereby precedes the contentment, and much more the joy, in the sadness [n.90]. That first act possible I call ‘to avenge’ or to inflict a penalty for the thing committed; and by consequence we have a distinct idea of that which is ‘to be penitent’, according to the first signification of the name.95. With this supposed, let there be this third conclusion [nn.85, 89]: ‘to be penitent’ is an act of a special virtue. It is proved, because this act is of a nature to have a special object and special or ordered circumstances about the object, which come together in the act as rightly tending to such object, namely the end and the mode and the like.

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

97. It is plain at once, because it is an act of appetite as appetite, because to command the intellect to consider and the will to detest, as was said in the preceding solution [nn.54-56, 64-69]), this 'to command' does not belong except to appetite and will: for neither can any sensitive power give command to the intellect and will and conjoin them in their acts, nor [can] the intellect to itself and to the will, but the will alone to itself and to the intellect, according to that [remark] of Augustine [*On the Trinity* XI ch.9 n.16], "it joins the parent with the offspring"; and this as to the intellect. And as to the will, the will gives commands to it [sc. the intellect].

98. This conclusion [n.96] also is plain thus, because an intellectual virtue says 'it is' true or not true in things to be speculated about or done; this [other virtue, n.95] inclines also to acting thus, namely to avenging, but not to saying that so must it be done. Avenging therefore is an act not of intellectual virtue, but of appetitive.

99. There follows another conclusion, that [to be penitent] does not belong to an appetitive virtue bringing order to itself, of which sort are temperance and fortitude; therefore to a virtue bringing order to another, of which sort is justice. This argument holds on the supposition of this famous distinction of appetitive virtues, that all may be reduced to two genera [*Ord.*III d.34 n.33; Aristotle, *Ethics*, 5.3.1129b31-33].

100. The antecedent is proved, because someone can exercise that act of avenging in the same way, according to right reason, on another as on himself; if he exercise it also on himself, he does not exercise it on himself save as on someone else, because he does not exercise it save to the extent it is committed to him by the legislator to take vengeance on this culprit.

101. But it happens that he to whom it is committed, as to a minister of the judge, is this culprit, because he exercises [the act of avenging] in the same way on the culprit, according to the right reason of a minister, as if he were altogether other in person; therefore that virtue, to which this act is of a nature to belong, is contained under justice, as far in general as every virtue ordinative to another, or as if to another, is called 'justice'; nor is it an obstacle that he in this act is ordered toward himself because of this, because not to himself except as to another, namely as a minister of the judge over a culprit against the law, authority over whom has been committed to him by the judge.

102. Further inquisition, for under justice friendship is contained, speaking of justice in general, because friendship is a virtue to another, *Ethics* 8.1.1155a3-31 and 9.4.1166a1-33, – this act, then, of repenting or punishing, is it an act of friendship?

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

104. Again, it is a mark of friendship to correct a friend so that he be worthy to be loved, with that being excluded which is repugnant to honest friendship; this 'to vindicate' is to correct a friend, so that he becomes worthily lovable; therefore etc. Proof of the minor, because if he is only punished so that vengeance may be exacted or the avenger be satisfied, it is cruelty, – therefore vengeance is not according to right reason except so that he, on whom vengeance is taken, may be corrected; but this is friendship; therefore etc.

105. It is confirmed through the Philosopher in *Rhetoric* 1.10.1369b12-14, who says that reproof differs from punishment taken strictly in this, that reproof is for the sake of the one reproofed, namely so that he be amended, but punishment is done for the sake of the punisher, so that he be sated; but the second seems to belong altogether to cruelty,

and this both in the minister and in the judge, because the minister should carry out the sentence for the same end as that for which the judge passes it, because his end should be the end of the one moving him, – and consequently, what is of cruelty in one, also is in another.

106. I reply:¹¹ ‘to vindicate’, even when it is an ordered act, is not an act of friendship toward him on whom vengeance is taken, because vengeance properly has respect to the corresponding penalty of the fault committed, according to law, even if the reproof of the one himself punished is not concomitant. Hence too sometimes a just vengeance happens by exterminating the culprit, – where it is plain that it is not done in reproving him; nor yet is it cruelty, as the second objection proceeds [n.104], because the proximate end of this is conservation of the law, and the further end is that which is the end of the law. But the end of the law posited by man passing the law is not the legislator himself or his good, but the common good; on account of that end, therefore, the law exists and its observance. And thus vengeance is more rational insofar as it is for that end than if it were for the private good of a public person.

107. But, in the matter at hand, it could be in like manner said that the Divine Law is on account of the common good of men, to whom has been given also the punishment of anyone¹² sinning against the Law: and this second [sc. the punishment] is on account of observance of the Law, and further because of the common good of those to whom the Law has been given, but lastly because of the Legislator himself; and this therefore here, but not in the law posited by man; because here the good of the Legislator is simply better than the good of the community; but not there.

108. Now an act of friendship that would command some punishment of a loved one, as loved, would not command that except precisely because of the correction of the one loved; and although this would be a way of correcting, yet if there were another way of more easily correcting in friendship, as friendship, it would more command the other way.

109. Through this to the first objection [n.103], because if through penitence someone be reconciled to God, yet God does not take vengeance principally on this [person] so as to reconcile him to himself, calling ‘reconciliation’ to be brought back to the pristine friendship, but so that the one reconciled may be held immune from the penalty due to sin, the penalty now having been paid that he avenging requires to be paid per se – because of the correspondence aforesaid to the fault committed – according to law.

110. Very similarly to the second [n.105] I say that ‘to vindicate’ is not principally because of correction of the one punished, although sometimes that correction may follow, but it is per se so that the fault may be put in order through the penalty, and so that the punitive law may be observed, against which it has been transgressed. And when it is said that this is [a mark] of cruelty, – it is plain that [it is] not, because the ulterior end is the common good; but it would be cruel if a stand were made in an end other than the common [good], or than in the ultimate end.

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

¹² Or the Latin could be translated: “...common good of men to whom it has been given, and [to whom has been given] the punishment of anyone

111. To the confirmation, from *Rhetoric* I [n.105], I say that the one who corrects, corrects for the sake of the one reproved, but the one who avenges, [avenges] not for the sake of the one reproved per se, nor for the sake of himself, but for the sake of the law, and this further for the sake of the common good, – and then for the sake of himself, if he himself is the end of the law, as it is in the matter at hand.¹³

112. There is therefore this act of punitive justice, which is distinguished from commutative justice, and also from friendship. And perhaps this act is nobler than any act of justice in general, the act of rewarding excepted, because that is proper to the legislator, and fitting to no one else except by commission from the judge, as in his place.

113. Now the other acts (of exchange and of friendship and the like) can belong regularly to any persons at all, – but an act which is proper to a more excellent person is, ceteris paribus, more excellent. But still the act of rewarding is more excellent, because along with this excellence common on both sides, namely that to a prince alone rewarding belongs, it has each extreme more nobly, both namely the merit for which it is done and the reward that is conferred, and the deserving person on whom it is conferred, which excel the penalty, the fault, and the culprit on whom a penalty is inflicted.

114. Another conclusion is this, that that act is an act of will whose it is to give command to intellect and will, – and this by a command pertaining to the irascible or to some power having in itself something like the irascible power; for just as the irascible in the sense [faculty] avenges in its own way, so also does that power which commands vengeance in the intellective part have something similar to the irascible; and now this does not belong in the intellective part except in the will.

115. From this there could be a doubt about the relation of this virtue to charity: for wherefrom this [virtue], by its own act, commands the act of charity, it seems to be superior to charity.

116. But the opposite is manifest, because the object of charity per se is God under the noblest objective idea; but the proper object of this [virtue] is the avengeable bad, or the culprit on whom vengeance is to be taken.

117. And from this it is plain that penitence not only is not a theological virtue, as was argued before [n.81], but not either the virtue simply noblest among those that are about a created object.

118. To the second objection [n.104], about the use of virtue, I say that the will according to diverse habits can use itself quasi-circularly, in this way: from love of God in himself, which is an act of charity, it can command an act of will vindicative of sin, and conversely from an imperative act of vindicating it can command an act of love of God in himself, on which there follows an unwilling or displeasure about some sin committed, and so sadness about this sin. Therefore, charity can use an act of penitence, and also an act of any virtue in the will or intellect. And penitence can use charity and any virtue at all – in the intellect and will – that can be the principle of a consideration or an unwilling of an object about which it wills to cause sadness.

119. I say therefore that that [virtue] – to which, from the object, it more belongs to command – is superior simply to another; but to charity from its object, namely from

¹³ The ‘he’ and ‘himself’ here must be taken as a reference to God, the supreme lawgiver. But if the Latin ‘he’ and ‘himself’ are rendered instead as ‘it’ and ‘itself’ (as is possible), they would be a reference to ‘the law itself’, and the translation would be: “for the sake of itself, if it itself...”, with the ‘for the sake of [the law] itself’ being understood, not as mere legalistic conformity, but as fulfilment of the end of the law, which end is again God.

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

120. So does it appear about the first act of repenting, or about the first signification of this word ‘to be penitent’ [n.62]: what it is (because an imperative ‘to will’), and of what the effect (because [effect] of sadness), through what as if through instruments (because through the proximate causes of sadness, namely actual consideration and actual unwilling of some object), and about what object (because about a sin committed), and by whom (because by a minister having commission of punishing from the legislator), and because of what end (because on account of observance of the law and further because of the common good), and hereby that this can be an act of a special virtue (because [act] of a certain special justice), and of what subject (because [it is] of the will), and what comparison it has to the theological virtues infused and acquired.

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

121. About the second signification of this word which is ‘to be penitent’, about that to be sure which it is to detest sin committed or to have displeasure about [sin] committed, I say that this can be an act of virtue.

122. It is proved as before [n.85], because it can be an act of choice concordant with right reason; for right reason, just as it dictates that it is necessary to be pleased with the honorable good, so it dictates that it is necessary to be displeased with the dishonorable bad.

123. From this is plain a second conclusion, namely which virtue this act can be of, because of no special one, but of any appetitive virtue; for any virtue inclines to being pleased in the honorable good, inclines also to detesting the dishonorable bad (as chastity inclines to displeasure about anything disordered against chastity, humility about an inordinate act of pride, and so about the rest). Any [virtue] however inclining to such displeasure is an appetitive virtue, because nothing is principle of hating nor of loving unless it be an appetitive virtue.

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

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

loves for oneself cleanliness and innocence, out of that [love] one can accept the penalty that pays the guilt which was present.

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

B. Whether 'To be Penitent' as an Act of Virtue is Required for Deletion of Sin

127. About the second principal [one, n.83], namely whether 'to be penitent', as an act of virtue, is required for deletion of sin, I say not as an act of one determinate virtue; and, secondly, that neither as an act of any virtue of such or such sort indifferently; and third, if as an act simply perfectly circumstanced, whether as formed, or does it suffice as unformed?

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

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

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

129. I prove the second [n.127], because an act equally perfect according to all moral circumstances is equally accepted by God for deletion of sin; but without generated virtue an act equally perfect according to all moral circumstances can be had, just as [it can] now with generated virtue, because – according to a perfect dictate of intellect about some doable thing – there can be a perfect choice, circumstanced with all the circumstances, which is the first thing generative of virtue; and consequently, a right act perfectly circumstanced, which is required for the deletion of sin, does not have to be of virtue as from a virtue already existing within, but it can be of virtue as first generative of virtue.

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

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

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

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

133. For the understanding of this it needs to be known that a sinner existing in sin (in the way in which it was said in the preceding question, in the first article, that sin remains after the act [nn.28-34]) is able, from his natural [powers] with their common influence, to consider a sin committed both as offensive to God and as against the Divine Law and as aversive from God and as impeditive of reward and as inductive of punishment, and under many such ideas; and the will is able, under any of these ideas or under many, to detest that sin thus considered, and that motion [sc. of the will] can be continued and intensified before infusion of grace.

134. This detestation can also be totally conditioned with the due moral circumstances: for it is not likely that it is necessary, because of this immanent sin, that any act whatever concerning the sin committed is defective in any moral circumstance. This whole motion is called ‘attrition’, and it is a disposition or a merit by congruity¹⁴ for deletion of mortal sin, which [deletion] follows in the last instant of some time, in which time the attrition has endured.

135. Nor is it certain if God was wanting such attrition to be the disposition for justification, unless it be perfectly morally circumstanced. At any rate if there is some circumstance disorderedly circumstanced, it is not a disposition for justice, because then it is actually offensive. But if it is only lacking some due circumstance from inconsideration or omission of will as to that circumstance, then there is doubt whether it disposes sufficiently for justice.

136. But if there is an attrition perfectly circumstanced in the genus of morals, it seems altogether a disposition sufficient for acquiring justice in the term of that attrition, – in the term, I say, which God has prefixed should be the term of that motion of attrition which he wills up to then to be continued. For either it is necessary to say that a sinner may be justified without any disposition sufficient by congruity on his part, and consequently it is difficult to save that with God there is no acceptance of persons, as was said in *Ord.* II d.6 [rather: d.7 n.47; *Rep* IVA d.7 qq.1-3 n.14 and *passim*];¹⁵ or no [disposition] can be a more sufficient disposition for this justification than this attrition perfectly circumstanced in the genus of morals, and then in the ultimate instant, or in some [instant] to which God has determined the attrition has to endure for this that it be a merit by congruity for justification, grace is infused, and then simply sin is destroyed.

137. And if the same motion against sin remains in the ‘to be’ of nature and of morals as before, the same motion also, which before was attrition, in that instant becomes contrition, because in that instant it becomes concomitant with grace, and so [becomes] an act formed, because having with it charity, which is the form of the act as we are speaking here.

¹⁴ Merit by congruity is not a merit that altogether deserves deletion of sin (the only such merit is Christ’s, not the sinner’s). It is the congruity that if the sinner does what he can (namely to be sad with natural sadness for sin committed), then God does what he can (namely forgive sin and infuse supernatural grace).

¹⁵ If there is no disposition at all on the part of a sinner for which God, by congruity, gives charity and deletes sin, then that this sinner receives charity and that other does not bears no relation to any difference in the sinner but is arbitrary on God’s part. Hence it would thus seem that God does engage in acceptance of persons, choosing this one and not that one regardless of the presence or absence of any disposition.

138 There however it is necessary to distinguish moments¹⁶ of nature between the act as it is such in the ‘to be’ of nature and of morals, and between charity and between the act as formed; because in the first moment of nature there is such an act there, in the second [there is] charity, in the third the act formed by a charity now inherent, inclining; and thus attrition becomes contrition without any real change of the act itself.

139. On the contrary: therefore guilt is not deleted through contrition, because contrition is only in the third moment of nature, and in the second it [guilt] is deleted, – nor even through this contrition as through merit, because it follows that deletion.

140. It can therefore be said that God disposes through attrition at some time, as through some merit by congruity, to give grace, and for that attrition – as for merit – he justifies, just as it is the merit of justification. And although the act would not be continued the same about a sin in the genus of nature and morals as before, still in that instant grace would be infused, because now merit sufficient by congruity has preceded. For let it be that in the final instant the intellect and will cease from the past act, converting themselves to some other non-pertinent act, why will he not be justified in the final instant, just like another having in that instant the act that he had before? For he who, in that instant, has the act is through an act of that sort in that instant not justified, but through the act as it has preceded in time; and in this way did the other have that act.

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

142. But what, if in that or in some instant he put an obstacle in the way? For just as he can then have a non-pertinent act, so an opposite one.

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

144. But this is nothing, because although he cannot, in the instant of reward after merit by congruity, put an obstacle in the way, namely in the instant of death one cannot demerit (for then for his merit impeccability should be rendered), yet he who has merited by congruity can put an obstacle in the way in that instant in which he would receive the term of merit, if there were not an obstacle; and just as in the term of merit by congruity he is able not to have that which he did not merit, because he puts an obstacle in the way, so it is likely that, unless he continue in that instant an act alike in the genus of morals, he will not have that for which such act disposes meritoriously by congruity.

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

146. And when it is argued that ‘contrition as contrition follows deletion [of sin]’ [n.139], I reply: the act, which is contrition, in the same instant of time precedes deletion by nature, although as contrition, that is as formed, it follow deletion in order of nature; and thus it must be conceded in the sense of division that through the act, which is contrition, sin is destroyed as through a disposition altogether proximate; nor is it

¹⁶ Strictly ‘signs’, but these signs are as it were distinct moments of understanding, succeeding each other progressively not in time but in completeness of analysis.

unacceptable, rather it is acceptable, that the proximate disposition at the same time is with the form for which it disposes.

147. If it be asked about those four aforesaid acts [nn.62; 57, 120-126], by comparing among them which of them is simply a disposition more fitting for deletion of sin, – I reply: the more an act is elicited from more virtues and more perfect ones, the more it is a better act; therefore the first, if it is elicited from justice alone, mediately or immediately, and the second act and the third are elicited from some virtue more perfect, since from charity, it is plain that the second or third is more excellent than the first. In the same way it must be understood about the fourth: for that is simply most imperfect, both because it has less of the idea of the voluntary and because from a less perfect virtue.

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

149. But if it be asked which of these acts is more efficacious in respect of the inhering of sadness, – I reply: the two last suppose a sadness already inherent. And of the two others there can be a mutual excellence in inducing sadness: for sometimes, from charity or from contemplation of God, there is at once present a certain detestation of sin, and there follows a very great sadness, with still no act of justice posited in respect of the sadness; and sometimes the first act of justice is present within, and intense in itself, and yet the proximate causes (namely the intellect in considering and the will in detesting) are not efficaciously moved by that command of justice, perhaps because they lack the habits that would be the principles of perfection in their acts. And although these be sometimes moved, sadness does not follow: which, although it could be on account of many causes, is because of this sometimes because, just as the intellect is conformed to the sense part in us, so also is the intellective appetite to the sense appetite, as to being easily delighted and saddened; therefore whose sense appetite is not of a nature to be saddened or to grieve, of him the will is not easily saddened.

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

II. To the Principal Arguments

151. To the first principal [argument, n.77] I say that although sadness be a passion, yet to command it is an act; and, as was said before [nn.52-53], to be sad is not an act of the virtue of penitence, in whatever way of taking penitence, – but of penitence-virtue taken in the first way sadness is the remote effect, but the proximate effect of the immediate cause of the sadness itself.

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

153. To the third [n.79] it can be said in two ways:

In one way, that from whence virtue is for us a supplement for a natural defect in us (hence moral virtues are not posited by certain [thinkers] in angels), neither in the state of innocence would they have been of the sort in nature as they are now; nor therefore would there then have been a necessity for having all the virtues that there is [a necessity for] also now; and this especially of virtues that do not have the good for object, but the bad, as penitence, because in that state [sc. of innocence] there would not have been that evil, just as neither perhaps then would there have been patience, nor the matter of patience.

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

155. To the last [n.81, the fifth]¹⁷ I say that [penitence] is not theological, but about a created object.

156. And when it is argued [n.81¹⁸] that it cannot be unformed, – I deny it; rather, from many acts of taking vengeance on oneself justly as culprit, a habit can be acquired that may remain with mortal sin; and it could be acquired before deletion of mortal sin, if not perhaps because the Lord justifies before acts can be had sufficient for generation of penitence.

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

158. And if it is argued to the contrary through authorities, of which one is Augustine's *On Patience* ch.23 n.20, "without charity in us there cannot be true penitence,"¹⁹ and another is [Ps.]-Augustine's *On True and False Penitence* ch.17 n.33, "Since fruitful penitence is a work of God, he can inspire it whenever his mercy wills," and in the same place [ch.9 n.24], 'that without love of God someone may obtain pardon' he holds this for unacceptable, and in the same way [he holds for unacceptable] 'that true

¹⁷ No response is given by Scotus to the fourth argument [n.80], but a response can be constructed from his answer to the question of what, after the act of sin, remains to stain the sinner. For he says that such a stain can be the object of a choice, because it can be removed by an act of penitence, which act is chosen [nn.34-43].

¹⁸ The responses in the following paragraphs, up to the end of n.158, all relate back to n.81.

¹⁹ Augustine's text reads 'patience' for 'penitence', but 'penitence' is given in the citation of it by Gratian, *Decretum* p.2 cause 33 q.3, and Lombard, *Sent. d.15 ch.7 n.1*.

penitence may be without love of God',²⁰ – these authorities all have one response, that penitence, whether the act or the virtue, is not true [penitence], as to attaining the end of penitence, without charity. And this is what the second authority says about fruitful penitence: for penitence absolutely can be born within from man's natural [powers], but not fruitful [penitence], that is, bearing fruit; rather, as fruitful, it is in the ultimate instant. But that third [authority], that without love of God none obtains pardon, there 'pardon' can be taken not only for mercy, but for the end of penitence; and thus do we commonly say that through penitence pardon is acquired, and that pardon is when someone through grace is accepted for the mercy or for the friendship of God.

Question Three

Whether Penitence-Virtue is Inflictive only of One Penalty

159. Whether penitence-virtue is inflictive only of one penalty:

160. That so:

It inflicts a penalty as ordinative of fault; and of one fault there is one ordinative penalty, as of one disordering there is one ordering; therefore etc.

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

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

163. On the contrary:

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

164. From these it is argued thus, according to [Ps.]-Augustine, *On True and False Penitence*, ch.9 n.23: "True penitence strives to lead back to the innocence of baptism;" but it is not led back save through these three [n.163].

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

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

I. To the Question

167. Here it is said that to any virtue whatever in the appetite there corresponds some rule in the intellect, whether a different rule for a different virtue or one for several (about this in *Ord.* III [d.36 nn.43-59, 72, 92, 95-100, about the opinions respectively of

²⁰ Ps.-Augustine *ibid.* "For true penitence tries to lead the penitent to the purity of baptism... Let him know that he remains hard in guilt who laments the ravages of time or the death of a friend, and does not with tears show grief for sin."

Henry of Ghent and Scotus]); penitence according as it is a virtue and a certain particular justice, from the solution of the preceding question [nn.85-88, 112]), has the proper act 'to be penitent' according to the first of those four significations before set down [nn.57, 120], therefore it is necessary to seek the rule of that virtue in the intellect, and according to that [rule] there follows an act of choice inflictive of one penalty or several.

168. Now the rule of it is said to be a certain naturally knowable one, namely that it is necessary to be displeased about sin. And this would be known to the angelic intellect if an angel had been a wayfarer after sin committed, and consequently, he could have had something in his will correspondingly inclining to this rule for an act of avenging or being displeased. And this penitence, as also its rule, could be in every state uniform, because if knowledge natural and fitting human nature did not fail, it could for any state reach knowledge of this rule, and consequently equally have in the will something inclining proportionally to this rule.

169. In another way, the rule – respecting the detesting of sin – is known only from Revelation, namely that sin is to be detested insofar as it is offensive to God or aversive from God or impeditive of the acquisition of beatitude or insofar as adductive to final misery. And under these ideas there corresponds to this rule some justice in the will, another [justice] as its rule is other.

170. To the matter at hand:

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

171. A second [rule, n.169] is inflictive of whatever its rule is dictative of; and its rule, namely knowledge had from divine Scripture, dictates several penalties to be inflicted, which the Author of that law, of whom the penitent is minister, wanted to be inflicted for this, that he might be sufficiently placated; and of such sort there are many, as is collected from Scripture [nn.163-166].

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

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

174. I reply: in all ordered teachings, both speculative and practical, and both in matters of doing and in those of making, the superior knows something in the way in which it cannot be known to an inferior. It is plain from *Metaphysics* 1.1.980b29-982a3 and *Ethics* 1.1.1094a1-1906a13; and through manifest examples, because in matters speculative the superior knows the 'because of what' where the lower knows only the 'that'; and in matters of practical action the superior intends the superior end and knows it under its proper idea, – but the inferior not, but only his own end. Likewise, in the arts, speaking of the ends of the subordinate arts, *Ethics* 1.5.1097a15-30.

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

176. Similarly in practical [matters] we cannot know that God under his proper idea is the end of the intellectual creature, except by Revelation.

177. Similarly, if some art could be found thus excellent, whose proper end would not be naturally knowable, it would be necessary to have knowledge of its end through Revelation.

178. Now among the virtues some are possible for human nature, orderable to the end under a higher idea than the knowledge of this state of life may extend itself, as that because of Christ all things are to be abandoned, for Christ in all things licit obedience must be given, and the like. In such things therefore it is necessary for there to be directive rules known from Revelation, and such are universally all the rules of the Evangelical virtues (as poverty, chastity, and the like), because the principles or practical conclusions, on which these virtues rest as on rules, cannot naturally be known.

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

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

181. And in this way poverty and humility and chastity and the like are moral virtues, because according to perfect and right reason, although not purely natural, they are generated from habit, that is, from ‘to elicit them frequently in this way’. So, with this rule being supposed known from the Gospel ‘Do penitence’ [Matthew 4.17], the will is able, from ‘to elicit frequently an act conform to this rule’ to generate in itself a habit inclining to like acts; and that truly will be a virtue, because consonant with right reason – indeed with most right [reason] – and yet moral, because generated from habit and custom.

182. Against these it is doubted: first, how by natural reason it can be known that some sin falls under the idea of sin in human acts; second, how it can be known that sin is offensive to God; third, how it can be known that sin is aversive from God; fourth, how it can be known that sin is dispositive as demerit preventive of eternal beatitude; fifth, how it can be known that sin is dispositive as demerit for final penalty. All these doubts rest on this, that ‘none of these seems knowable by natural reason’.

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

II. To the Principal Arguments

184. To the first argument [n.160] it can be said that a penalty ordering sin according to itself can be one [penalty] of one [sin]; but when ordering [sin] in order to a second whom the fault offends, it is multiple according to the will of the one in comparison to whom it orders. It is plain in human actions, where a penalty satisfactory to someone offended is as great and as multiple as suffices to the one offended for amends. But penitence, as a penalty subordinate to the justice of the judge, is a virtue inflicative of the penalty corresponding to the will of the one himself offended; and that is multiple, speaking of penitence in the second way [n.169], as is plain from Scripture [n.163] where the justice of the Chief Judge in avenging fault is expressed.

185. To the second [n.161] it is plain through the same [point], because the equal from the nature of the thing can be returned and yet it would not be sufficiently punishing, because this punishment respects another in comparison to whose acceptation this punishment is done.

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

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

187. To the third [n.162] it is plain in the same place in the preceding solution [n.118], because an act of penitence-virtue is to command, and this – approximately – to command acts causative of the penalty [n.90], which are in respect of sadness consideration and non-willing of some object. And this sadness following is a remote effect, and it can well be multiplied, with the one act standing of penitence-virtue itself, and – through the one act of avenging or commanding punishment – someone can command all the punishments corresponding according to justice to this fault.

Question Four

Whether through the Sacrament of Penitence Guilt is Deleted

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

189. It seems that not:

Because in *Psalms* 31.5 it is said, “I have spoken, I will confess my injustice to the Lord;” Cassiodorus there [*Exposition of the Psalms*, 31.5]: “The great piety of God that for a promise alone he dismisses sin: for the wish is judged for the operation.” And Augustine on the same place, [*Narrations on the Psalms*, Ps.31 nar. 2 n.15], “He is not yet pronouncing [his confession], but he promises he will do it, and God dismisses [his

sin];” but without pronouncement [of confession] penitence is not a sacrament [citations taken from Lombard’s text, *Sent.* IV d.17 ch.1, and Gratian, *Decretum* p.2 cause 33 q.3.]

190. Again, Augustine on that of *John* 11 [vv.43-44; *Sermon* 67, ch.1 n.1], about the raising of Lazarus: “No one can confess if not raised.” And he proves it in three ways [*Narrations on the Psalms*, psalm 87 nn.10-11]: first from the raising of Lazarus, who is raised before led out of the tomb; second through *Ecclesiastes* 17, “From the dead,” as he who is not, “confession perishes;” third, through that of the *Psalms*, “Will the healers rise and confess to you?”

191. Again, if through the sacrament of penitence sin be dismissed, since the priest ministers the sacrament, therefore the priest would dismiss the sin. The consequent is false, through that of Jerome *On Matthew III*, 16.19, “I will give you the keys of the Kingdom etc.”: “Certain [persons] (he says), not understanding this place, assume something of the pride of the Pharisees, so that they think to damn the innocent or to absolve the guilty, although with the Lord not the judgment of the priests but the life of the condemned is what is sought;” and of this he points to the proof, adding: “In *Leviticus* [14.2] the leprous are bidden to show themselves to the priests; and they [the priests] do not make lepers or the unclean, but discern who are clean and who unclean.” So also here [sc. in the sacrament of penitence; texts from Lombard, *Sent.* IV d.18 ch.6 n.2.]

192. On the contrary:

Matthew 16.19, “Whatever you bind on earth etc. [will be bound in heaven].”

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

I. To the Question

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

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

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

B. Something is under the Idea of the Aforesaid Name

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

1. It is Possible for the Idea of the Name that Something is under it

197. The first is shown by this, that it is possible for God to absolve from sin, according to that [part] of the *Creed* “remission of sins;” and consequently it is possible to institute some sign of that absolution, and this an efficacious sign, as ‘efficacious’ was

expounded before in the material about the sacraments in general [*Ord.* IV d.2 nn.14, 27-32]; and, by parity of reason, whatever words and by whatever minister proffered; and then the whole possibility of that name is plain.

2. It is Congruous with the Idea of the Name that Something is Under it

198. Congruity [n.196] is proved as to the individual particulars.

First, because it is congruous for something to be a sensible sign of this absolution from sin, for the same reasons because of which in *Ord.* IV d.1 nn.225-234 the congruity of a sacrament in general was spoken about.

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

200. It is fitting too in the matter at hand that the sign of interior absolution is instituted in words signifying absolution, so that the sign may represent the thing signified. This therefore is what is meant in the idea that penitence is an ‘absolution’ [n.195], that is, a certain definitive sentence absolving the guilty party; not however the sentence of the Principal Judge, but of a secondary judge or commissary: for someone can from commission take cognizance of a cause, and so from commission pronounce sentence either for condemnation of the guilty party (if he is unworthy) or for his absolution (if he is worthy).

201. It is congruous too that this exterior absolution be done by a priest, because it is fitting for extremes to be brought back through the middle to the extreme;²¹ and so, in the ecclesiastical hierarchy, [it is fitting for] the extremes, namely sinners, to be brought back to God through the hierarch, that is, the priest, as is in the Church triumphant.

202. It is fitting too that [this be done] by one having jurisdiction, because a sentence not passed by its judge is null.

203. From this follows a corollary, that the doctrine about the sacrament of penitence is assimilated or sub-alternated to the doctrine about judgments and also to the doctrine about sentences. For to the extent there is in the Church a double forum, namely public and private, to that extent there is a double judgment; and as to some rules of justice it is necessary that there is agreement here and there, just as each definition here and there is an act of justice. And to that extent the sacrament of penitence can be called a judicial sacrament or a sacramental judgment, and therefrom that a sacramental judgment is firmer and more irrevocable than another public judgment.

204. From this appears the reason why it is not necessary that there are here as precise words in this sacrament as in baptism or the Eucharist, because it is sufficient that the act of the absolving sentence be expressed, – just as also in a public judgment it is not necessary that there are limited words: for one says about the holy martyr Theodore, “I command you to be committed to the flames;” another about St. Cyprian, “It pleases us to have recourse to the sword” [*Acts of the Martyrs*, Augustine, *Sermon* 309 ch.4 n.6]. Commonly however those words are apt “I absolve you,” whatever others precede or follow, according to diverse custom in diverse Churches.

²¹ Sc. the extremes are sinners on the one side and God on the other side, from whom sinners are alienated; and to God, through the middle of the priest, sinners are brought back.

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

206. It is also congruous on the part of the recipient that he is penitent, that is have some displeasure about the sin committed; for this we see also in secular judges, that they condemn the impudent in their sentencing, but the penitent they in their own way absolve, that is, they sentence or judge [him] as if one not guilty or not needing to be punished.

3. Something Really is under the Idea of the Name

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

208. Of which the foundation is assumed from the authorities adduced for the opposite [nn.192-193].

209. And that by a priest alone it can be dispensed is had from *Extra* ‘On the supreme Trinity and the Catholic faith’, Gregory IX, *Decretals*, I tit.1 ch.1.

210. And it is fitting that the same [sc. the priest] have power over the true and mystical body of Christ.

211. And from this there follows a corollary, that nothing – pertaining to the sacrament of penance – can be dispensed by a layman, just as neither the confection of the Eucharist; and therefore confession (which is a disposition previous to the sacrament of penance, as will be said later [d.16 n.26]), when done to a layman, is worth nothing by virtue of the work worked.

212. And further, there is doubt whether it not be to the detriment of salvation, because this revelation [sc. to a layman] cannot be confessional.

C. Solution of the Question

213. As to the third article [n.194], it seems to be the opinion of the Master [*Sent.* IV d.18 ch.6 n.3]: “In pardoning guilt (he says) and retaining it, a Gospel priest so works and judges as once a legal [priest did – sc. a priest under Mosaic law] on those who were contaminated with leprosy, which signifies sin.” And he proves it through that of Jerome, which has been adduced [n.191].

214. But this seems to derogate too much from the sacrament of penance. For, according to this, by the sacrament of penance never would sin be deleted, but it would need first to be deleted through contrition for this, that the sacrament of penance might be worthily taken up, because none is worthily shown clean of sin unless he be first devoid of it. And there would follow a further unacceptable result that never could the sacrament of penance be a ‘second plank’ [n.13], because never would the one shipwrecked be liberated from danger of sinking.

215. It is said therefore that thus does God require a disposition by congruity for this, so that he may confer grace on a sinner, and this, so that he not bind his power to the sacraments, so that nevertheless without that previous and fitting disposition (which would suffice) he may confer grace through the sacrament. And this is [mark] of greater mercy – namely to institute a double way through which a sinner may be justified – than to restrict him to one way. Just as therefore an adult can have the first grace, destroying

original sin, in a double way, namely from a good movement disposing for that grace by congruity, or from reception of baptism, so in the matter at hand.

216. This is made clear thus, because for the first reception of grace there is required in adults some motion meritorious by congruity, – and for the second there is not required but a reception of baptism voluntary and without pretense, and with the intention of taking up what the Church confers, and without will or act of mortal sin, so that in the first [way] there is required some intrinsic work, in some way accepted as a merit by congruity, in the second way there is only required an exterior work with removal of exterior impediment.

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

218. He who is willing however to receive the sacrament of penitence as it is dispensed in the Church, and without impediment and will of mortal sin in act in the last instant of the proffering of the words, wherein is the force of that sacrament, he will receive the effect of the sacrament, namely penitential grace, – not indeed from merit, because the interior disposition was not sufficient by way of merit, but from the pact of God aiding his own sacrament to this effect, for which he has instituted the sacrament, otherwise it would not appear how the sacrament of penitence is ‘a second plank’ [n.13], if never through it (as it is a sacrament) there could be recovered the second grace lost, but only through attrition as through preparatory disposition, and through contrition as through completive disposition.

219. If you ask whether penitence is a sacrament, I say that what you want happens in the word if ‘penitence’ is taken as in the two preceding questions, namely for the actual ‘penalty-holding’ according to any of those significations [nn.62-65], or also for the habitual holding that is a certain special virtue whose act is the actual holding [nn.120-126]. According to the first signification, penitence is not a sacrament, because it is not a sensible sign; but in these [latter] ways it could be called ‘a sacrament of penitence’, understanding a transitive construction, and not an intransitive one [n.189], just as this ‘creature of salt’²² is taken, unless here the name of ‘penitence’ is equivocal.

II. To the Principal Arguments

²² ‘Creature of salt’ in the intransitive sense is, ‘creature that is salt’, and in the transitive sense, ‘creature that comes from salt’. In several rites, including that of baptism, the words ‘I exorcize you, creature of salt’ are used for blessing salt. One could speak instead here of objective and subjective genitive, as in the case of ‘love of God’, which in the objective sense means the love we have for God, and in the subjective sense the love God has for us. So ‘sacrament of penitence’ in the transitive or objective sense is the sacrament that has penitence for object (namely the penitent sinner receiving forgiveness), and in the intransitive or subjective sense it means the sacrament that penitence is (namely the sacrament in which the penitent confesses and receives sacramental grace).

220. To the first argument [n.189] I concede – according to those authorities of Augustine and Cassiodorus [n.190] – that frequently sin is dismissed by some motion of attrition or contrition, as through merit by congruity, before reception of the sacrament of penitence, just as in an adult frequently original sin is dismissed before reception of baptism. It does not however follow that it may not be dismissed through the sacrament, because if that other dismissal sometimes not be present, this one does not fail; and this one requires less, namely the intention alone of receiving baptism, or the sacrament of penance without obstacle against the effect.

221. To the second [n.190] I say that confession is double: of praise and of crime. By confession of praise no one worthily confesses unless first raised up, through Jerome in that *Epistle* ‘You compel me’ [in fact Paschasius Radbert, *Epistle on the Assumption of the Holy Virgin Mary*, n.36], “Not seemly is praise in the mouth of a sinner” [*Ecclesiasticus* 15.9]. But confession of crime is accepted in the mouth of a sinner, that is who still is a sinner, in the way in which it is expounded in the first question of this distinction [nn.28-34] that sin remains after the act, provided however he not be a sinner in desire (whether in interior or exterior act). I concede therefore that, before worthy reception of penitence, it is necessary to be raised up: either simply, and then through the penitence-sacrament sin is not destroyed, but the grace – which was before – is increased; or raised up in a certain respect, so that he has some displeasure about sins and a purpose of avoidance for the future, and wills to receive the sacrament of penitence, wherein attrition becomes contrition and then he is raised up simply through the sacrament, – and this indeed is necessary, as will be stated in d.17 n.50, just as also it was said above, that for one justified by the baptism of desire the baptism of water is necessary [*Ord.* IV d.5 nn.43, 48-51].

222. When it is argued about Lazarus [n.190] that he was raised first before loosed from his bonds, – I reply: the guilty party is obligated to a debt of eternal punishment, and with this bond loosed he is obligated to a temporal penalty. But first he is raised before the first obligation is commuted into the second; or, what is truer, he is first raised before he is loosed from the second obligation. And in this way it pertains to the priests to loose, not simply, but for the part of the penalty, which they can relax by virtue of the keys (which will be spoken of below [dd.18-19 nn.107-110]). And thus was Lazarus vivified by Christ (that is, a sinner resuscitated from the death of guilt through grace), and having been loosed from the prison of the tomb (that is, a sinner loosed from the debt of the punishment of hell), is relinquished to the disciples to be loosed from his bonds [*John* 11.44] (that is, from the temporal penalties into which the eternal penalty is commuted, which temporal penalties the priest can relax, the key [sc. of priesthood] not being in error).

223. To the last one [n.191], I concede that the priest thus dismisses sin in penitence just as in baptism, and so he absolves just as he baptizes, because on each side it is simply true that he ministers the sacrament; and the effect of the sacrament he causes ministerially, because he causes something, on which – according to the disposition or pact of God [cf. n.217] – there regularly follows the effect of the sacrament.

224. To that from Jerome [n.191] I say that that affirmative is true, because just as the priest of the [Mosaic] law used to display lepers cleansed, so the priest of the Gospel displays sinners justified; but the negative, namely that the Gospel priest is not otherwise disposed to the spiritually leprous than the priest of the [Mosaic] law to the bodily

leprous, namely by precisely displaying uncleanness on this side and that, is false. And the reason is because God did not give in the Old Law any ceremony or purification with which – when ministered by a suitable minister – he may assist regularly for cleansing bodily leprosy; but he did give in the New Law some sacrament with which by pact he is regularly present for cleansing the spiritually leprous, unless the obstacle of a contrary will stand in the way.

Fifteenth Distinction

Question One

Whether to any Actual Mortal Sin whatever there Correspond a Proper Satisfaction

1. “And as with the aforesaid authorities” [Lombard, *Sent.* IV d.15 ch.1 n.1].
2. The fifteenth distinction, about which I ask first whether to any actual mortal sin whatever there correspond a proper satisfaction.
3. It seems that not:
Because then satisfaction could be made for one, not making satisfaction for another: for that proper to one could be paid without that proper to another; but the consequent is false, because thus in making satisfaction for one he [the penitent] would be reconciled to pristine friendship, – and in not making satisfaction for another he would remain an enemy; therefore, at the same time he would be friend and enemy, which is impossible.
4. Again, then satisfaction could be made for one, another sin remaining, because that which is proper for the former could be paid, although the will for the other sin would remain.
5. Again, if for any [sin] at all [there is a] proper [satisfaction], then for one there is owed prayer alone, for another fasting, and for another almsgiving; the consequent is false, because then it would not be possible for any of these to be imposed for any sin indifferently, and then in some case no satisfaction could be imposed for sin, because it is possible for a pauper to sin with that sin to which almsgiving responds, and he would not be able to make [satisfaction]; similarly, then never would all such [satisfactions] be imposed at the same time for one sin.
6. Again, according to the Master [*Sent.* IV d.20 ch.1 nn.5-6], and it is taken from Augustine [Ps.-Augustine *On True and False Penitence* ch.18 n.34], sometimes there is a contrition so great that it destroys the whole penalty; therefore contrition can be a common satisfaction sufficient for any [sin]. It is also required for any [sin], because without that there is not any sin destroyed.
7. On the contrary:
Satisfaction for a fault is payment of the penalty, because satisfaction is the return of that which should be returned according to justice; but according to justice a penalty orders the fault, and to a determinate fault there corresponds a proper penalty as ordinative of the disorder; therefore etc.
8. Again, *Revelation* 18.7 it is said of that Babylon, “Give her as much torment and grief as she gave herself glory and was in delights;” and according to the number of sins will also be [the number of] beatings [cf. *Revelation* 18 v.4].

I. To the Question

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

A. About Satisfaction Taken Generally

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

1. About the Idea of the Name 'Satisfaction' Taken Generally

11. About the first, it needs to be known that of satisfaction generally taken this is the idea: 'satisfaction is the voluntary return of an equivalent otherwise not due'.

12. The first, namely 'return', is plain, that it is not an absolute giving; for this which is 'satis' ['enough'] states a commensuration corresponding to something preceding.

13. That it is called 'voluntary etc.' is plain, because if involuntary, it would not be 'satis-*faction*' ['making enough'] but 'satis-*passion*' ['suffering enough']; and in this way he – from whom is exacted unwilling the penalty due to the fault committed – suffers enough ['*satis*-suffers'] but does not do enough ['*satis*-makes].

14. What also is 'an equivalent etc.' is plain, because this does this particle 'satis-' import; justice also requires this, returning satisfaction for that to which it corresponds.

15. The fourth, namely 'otherwise not due', is plain, because if otherwise it were due, satisfaction for this would not be made, for it would not be correspondent to this according to justice, but to something else.

16. And this idea of 'satisfaction' is for any contracts and obligations whatever: for in this way he who receives a benefit can make satisfaction to the benefactor – and in this way the beloved to the lover, by recompensing equal love. And so both in free acts of the will and in acts in any way necessary, namely contracts, where there is quasi a certain obligation quasi necessitating to make return, this idea can be found. Similarly, since guilt makes the delinquent a debtor to him against whom he sins, this idea of satisfaction can be there found, namely so that he may return to him the equivalent, and otherwise undue, as much as he took away for himself by sin.

2. Whether for Man such Satisfaction for Guilt is Possible

a. Anselm's Solution

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

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

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

20. Again, from another middle term, namely from what is otherwise undue [Augustine, *86 Diverse Questions* q.68 n.6, Bernard, *On Loving God* ch.6 n.16, cited by Richard of Middleton, *Sent.* IV d.15 princ.1 q.2], it is argued in this way: because whatever we can pay out to God of obeisance and honor is all due by reason of creation, governance, and redemption; therefore, we can pay out to him nothing that is not due to him, even from the innocent, and consequently [due to him] otherwise than for sin.

21. It is said, therefore [Anselm, II chs.18-19], that in virtue of the passion of Christ the sinner can make satisfaction, because that passion is to such an extent accepted by the Triune God that, by virtue of his passion, that satisfaction is accepted, which – taken according to itself – would not be satisfaction.

b. What Should be Said about Anselm's Solution

22. But if this opinion understand [this] about the absolute power of God, that he cannot accept any act of a penitent as a just satisfaction for sin except insofar as it is conjoined with the merit of the passion of Christ, – it is rejected [cf. Scotus, *Lectura* III d.20 nn.12-39].

23. First, because it is not impossible for the Son of God not to have been incarnate and consequently not to have suffered; and, along with this, it would have been possible for God to have brought the predestined to beatitude, and justly, not however excluding mercy;²³ therefore, it would have been possible for the penitent to have made satisfaction to him,²⁴ because he cannot justly beatify the sinner without satisfaction.

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

25. Again the passion of Christ does not destroy our fault except as meritorious cause, and consequently as second cause, which is not of the essence of the thing, rather it is reduced to the genus of efficient cause; but whatever God is capable of through an efficient second cause, he is capable of immediately; therefore without that he could justly and in ordered manner remit a fault.

26. But if it be said to these two [arguments, nn.23, 25] that God could, without Christ mediating, have destroyed the fault of the wayfarer, and so have led him to beatitude (according to the first argument [n.23]), and immediately have justified him (according to the second argument [n.25]), yet not by way of satisfaction (because there would not have been anything equivalent needing then to be given back, – and now there

²³ Or: “and since this would have been possible, that God brought the predestined to beatitude, and justly, not however excluding mercy, therefore...”

²⁴ Or: “...made satisfaction for himself, because he [God] cannot...”

is a whole equivalent through the passion of Christ, with this however of the sort that his satisfaction is), – on the contrary: satisfaction is the return of equivalent for equivalent, but the conversion to God out of charity is as great a good as the sin averting from God was an evil; also, as much good and not more my sin took away, and as much good can be in my act, as was the good of a nature to be in my act; thus therefore through it altogether is the equivalent given back.

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

28. Which is proved:

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

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

c. Scotus' own Solution

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

30. Also this act could be otherwise undue, because although – if God wished to obligate us – we are bound, whatever we are and are capable of, to God, yet he of his very great mercy, considering our fragility and difficulty for good, did not wish to obligate us as a matter of rule save to the Decalogue; and then he could have ordained to obligate man only to the Decalogue, with Christ not incarnating. Man could therefore then exercise some works of supererogation, which otherwise would not be due from him, and then the whole idea of satisfaction would be saved.

31. However, of his ordained power God has not disposed to give any sinner the first grace save in virtue of the merit of him who was without sin, namely Christ, because, as was touched on above [nn.27-28], he did not dispose to reconcile an enemy to himself save through an obedience more pleasing to him than his offence was displeasing to him; and such obedience of his is the passion of Christ or the merit of it; and thus he did not dispose to give grace to the sinner without the passion of Christ, without which grace there cannot be satisfaction at all, because not equivalent in any way, neither simply nor in divine acceptance; therefore, much more is it not possible of ordained power to make satisfaction to God except in virtue of the passion of Christ.

3. In what Satisfaction Consists

32. About the third [n.10] I say that satisfaction in this understanding consists more in penal acts or voluntary sufferings than in other good acts not penal, although sometimes through some good act non-penal satisfaction could be made, because God can well accept a great act of charity for the punishment due to one fault: for although it may not be properly punishment, it is yet a greater good and more returns honor to God than that which would be its proper punishment. But regularly, just as guilt is ordered through a penalty, and not through anything else better than the guilt is [bad], so satisfaction said in this way consists in actions or passions having the idea of a penalty.

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

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

4. Solution of the Question

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

36. That the one according to species [can] is plain, because contrition can correspond to this [sin] and to that; and that [contrition] is the same according to species, especially if the objects are the same according to species.

37. That that the one according to number [can] is plain, because contrition about several [sins] together in general can correspond singly to those several sins; but then it is necessary for this, that the satisfaction be total not diminished, that something of it suffice for one sin, and something for another, something – I say – and something not of parts really in act, but of degrees of intensity, such namely that it be in so great a degree of intensity that in a far lesser [degree] it would suffice for one [sin], and in the degree which it super-adds, it would further suffice for another.

38. Several satisfactions too, whether total or partial, can correspond to one sin: total indeed, because there is not a sin that cannot be remitted through contrition alone, and then that alone is total satisfaction; the same [sin] can also be remitted through a weak contrition and other penalties supplying the imperfection of the contrition. But a contrition intense on one part and it itself remiss on another, along with other penalties, differ also in species, though they may be equivalent in divine acceptation.

39. Briefly therefore I say that there does not correspond to every sin whatever a proper satisfaction, as if, that is, it correspond to no other; nor does any other correspond

to it, but to any at all there corresponds a satisfaction proper for then, although another could be proper. I understand the ‘proper for then’ either as in itself distinct or as something virtually included in satisfaction.

5. About Satisfaction Taken Universally

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

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

42. But if a separation be understood of this satisfaction from another, such that while in act a man is rendering to God every contrition or satisfaction whatever about this sin, indeed sufficient for this sin, he is not actually rendering satisfaction sufficient for another sin, – I say that the satisfaction proper to this one can be separated from the satisfaction proper to that one, and this as to effect, though not as to affection at least in habit. For it is plain as to the effect, because just as it is not necessary for the intellect at the same time to consider this sin and that, so it is not necessary for the will at the same time to be penitent about this one and that, and this when taking ‘to be penitent’ for any of those four significations set down in the preceding distinction in question 1 [d.14 n.62]; but however while he considers one sin and is penitent about that, he does at least in habit satisfy for the other, that is he is prompt in heart, should he think [about it], for at some time satisfying for it.

B. About Satisfaction Properly and Strictly Taken

43. About the second principal [point, n.9], namely satisfaction strictly taken, four things need to be seen, proportionally to the things said [n.10]: first, the idea of the name as before [nn.11-16]; the second, about possibility [nn.17-31], does not have here a difficulty, so what was third before will here be second, namely in what the satisfaction consists [nn.32-34]; and from this comes, third, the solution of the question whether to every sin there corresponds its proper satisfaction [nn.35-36]; fourth whether one proper satisfaction is separable from another [nn.37-39].

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

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

2. In what Such Satisfaction Consists

45. The second [n.43] is plain, because as an exterior act or passion is distinguished from an interior act or passion of the mind and from an act of the mouth or concomitant passion; satisfaction does not consist but in those three difficult works, namely fasting, prayer, and almsgiving (which were spoken about in the third preceding article [n.34]), or in voluntary passions concomitant with these three difficult things.

3. Whether to Every Sin there Corresponds a Proper Satisfaction

46. From this I say about the third article [n.43] that to sins in genus – distinguished into three members, namely into sin of *the flesh*, sin of *concupiscence of the eyes*, and *the pride of life* [I John 2.16] – there correspond by congruity satisfactions proper in genus: namely to the sin of the flesh, fasting, or universally any maceration of the flesh more ordered to repressing such sin of the flesh (and under this I comprehend vigils, pilgrimages, roughness of clothing, nakedness, going barefoot, indeed universally any labor of weariness); and to the sin of pride and the other spiritual sins there more appropriately corresponds prayer, which humbles the spirit to God and strengthens the spirit against spiritual sins; and to sins about things temporal, as avarice or any cupidity (as rapine, theft, unjust taking away), there more appropriately corresponds the giving out of alms. The reason for all these is because of the greater correspondence of the penalty to the guilt, because “what a man sins in, in that will he also be punished” [Wisdom 11.17]. Such has been said about this correspondence in general and by congruity.

47. But about the necessary or congruous in special cases, not so, because one of these penal works is not able to fit someone who yet has sinned with a sin for which by congruity such penalty or such satisfaction does fit, as to a pauper – who has committed theft – it does not fit to give alms, and so in other cases; and then, if the contrition not suffice, the sin should not remain entirely unavenged.

48. It is possible therefore, and for that case congruous, to impose for a satisfaction proper to this sin something that yet is not proper to it according to universal correspondence by congruity; and for this is required the discretion of the priest, so that he not impose on anyone a penalty too unfitting, but one that more fits him and that perhaps he will better fulfill.

49. As that a pauper can neither give alms nor pray, but it is necessary for him continually to labor for his necessary sustenance, – nor can he fast, because then he would not suffice for the labor necessary for continually acquiring his necessary sustenance. What then? Labor itself is for him a continuous fast, because a continual maceration of the flesh. He must only be induced to undergo that labor in remission for his sins, intending to refer that to this end, at least until an opportunity arise for him of

paying some other satisfaction – and some other things can be as temperately and lightly imposed as may be possible for him.

50. Likewise, a rich man who has fallen into a sin of the flesh, if he is so delicate that he not wish to fast nor to undergo any notable maceration, or it is presumed that if it were imposed on him, he would quickly throw it off, and thus sin with a new sin, he is to be induced to prayer and almsgiving, and that is to be imposed on him which he receives more willingly and which he is believed more perseveringly to fulfill. Or if he wish to receive altogether no penitence imposed on him by the priest, yet says he has displeasure about the sin committed and a firm purpose of not backsliding, he is to be absolved, and not to be dismissed, lest he fall into despair; and the penalty is to be announced to him that would for the sins need to be done and imposed, and that he is study to fulfill it in itself or in its equivalent without imposition, otherwise he will pay it to the full in purgatory.

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

4. Whether One Proper Satisfaction is Separable from Another a. Opinion of Others and its Refutation

52. About the fourth [n.43] it is said [Gratian, *Decretum*, p.2 cause 33 q.3, d.3 chs.39-49; Lombard, *Sent.* IV d.15 chs.1-3; Richard of Middleton, *Sent.* IV d.15 princ.1 q.5] that although exterior satisfaction for one sin can be separated from satisfaction for another (as when one prays, then does not give alms), however exterior satisfaction cannot be done about one, such that this fellow remain in another sin; and it is proved, because about one he would please God and yet he would be his enemy. And to this extent, it is necessary for satisfactions to be conjoined at any rate in the will, at least habitually, though not as actually in effect or in the will.

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

54. From this can be formed a reason of this sort: if after a lapse and before complete penitence someone not carry out the original satisfaction imposed on him, he sins mortally with a new sin; therefore if he do carry it out, he does well, because he does

an act of obedience; but he does not do an act of obedience except insofar as that has been imposed on him as part of the satisfaction.

b. Scotus' own Response

55. I say therefore without prejudice that he who is truly once penitent and receives the satisfaction or condign penitence imposed on him by the Church (the key not erring²⁵), however much afterwards he may backslide, will never be held but to fulfilling that single penitence or satisfaction. And if he fulfill it in charity, it is better, because he not only pays the penalty, but merits grace. But if he fulfill it willingly outside charity, he pays indeed the penalty, but does not merit grace; but if it is exacted from him outside charity, the penalty is paid, although he himself not be paying it.

56. And in the first [case] there is satisfaction simply, because a reconciling and pleasing [satisfaction]; in the second there is a certain satisfaction, because 'voluntary giving back etc.' [n.11], but neither a reconciling nor a pleasing [satisfaction]; and in the third there is satisfaction, beyond which there is not exacted a penalty further.

57. And from the second member [n.55] it follows that if a great part of the satisfaction imposed on him he has fulfilled in mortal sin, and afterwards again he is penitent about a new sin, there is not to be imposed on him again a penitence for the first sin about which he has made satisfaction, although outside charity, but only about the new sins, which were the cause why this satisfaction will have been dead.

And if you argue, 'dead, therefore it is not satisfaction', – it does not follow but that it is not a satisfaction pleasing and reconciling into friendship.

And if it be said, 'therefore it is not satisfaction', – it does not follow, because it is sufficient for God that someone pay by will the penalty due for punishment of sin committed, because too – which less appears – doing enough or suffering enough suffices. It is plain in human acts: for if to some offense against a king there correspond precisely according to law the cutting off of a hand, if against his will the hand be cut off, he suffers enough or does enough, and to that extent does enough for the king, because according to law and justice he [the king] ought not to demand from him a further penalty, – nor yet is such a one received into the grace and friendship of the king. Much more therefore could it suffice for punishment of guilt if someone were to inflict on himself the penalty due, although he were not in the grace or friendship of the very judge offended.

58. From the third member [n.55] it can be said that such a one, if because of a new sin into which he falls back he were damned before he had completed the whole penitence imposed on him, would be punished in hell with a penalty corresponding to that which has not here been paid; and with that paid after some time, he would not be punished further with any penalty – just as also about venial sin, because he who dies in venial sin at the same time as in mortal sin, would not be punished eternally for the venial sin, as will be said below [d.21 nn.29-31]. And in the same way in the matter at hand: for wherefrom according to full punitive justice a temporal penalty has once been imposed on this [man] for a sin about which he has truly repented, never to this man for this sin will there be due but a temporal punishment – and with that paid, none [will be due].

II. To the Initial Arguments of Each Part

²⁵ That is, the key or keys of authority belonging to the Church.

59. To the arguments:

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

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

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

62. And if you argue ‘contrition can destroy any sin, therefore to none does any other proper satisfaction correspond’, – it does not follow; however, because contrition includes some satisfaction in desire at least (as will be said in d.17 nn.77-78) and although sometimes a contrition so intense may suffice for the whole penalty to be inflicted or may satisfy [for it], yet the precept about inflicting some penalty is not unreasonable, because regularly contrition is not but a partial satisfaction, and general precepts are given because of a general remedy and according to those conditions that are found in men for the most part.

63. To the first for the opposite [n.7], I concede that some penalty corresponds equally to that guilt: either a penalty distinct in itself, or a part virtually contained in another penalty; and so there is a satisfaction proper to this, either actual or virtual, and in this way proper, because none other now corresponds, speaking of total satisfaction, although another can correspond. This one also now does not correspond to another guilt, though it can correspond to another.

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

Question Two

Whether Whoever has Unjustly Taken Away or Detains Another’s Property is Bound to Restore it such that He cannot be Truly Penitent without such Restitution

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

66. That not:

Because restitution is not anything of penitence; therefore, without it there can be true penitence. The antecedent is proved, because it is not contrition nor confession (it is manifest), – nor satisfaction, because that is ‘voluntary giving back of something otherwise not due’, from the preceding question [n.11]; this giving back is otherwise due, because if a man had not sinned and had another’s property, he would be held to restore it; therefore etc.

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

68. Again, no one is bound to the impossible, because he who says that God has prescribed the impossible, let him be anathema, as Jerome says [in fact Pelagius, *Little*

book of the Faith, to Pope Innocent, n.10; Lombard *Sent.* II d.36 ch.6 n.3]; but sometimes it is impossible to restore what is another's to him whose it is, as when it is not known whose it is. Which can happen either because, about him from whom one had it, one does not know where he is, nor about anyone close to him to whom one may make restitution in his stead, – or in another case, as suppose one find another's property and not know whose it is.

69. Again, no one is bound to a restitution more damaging to himself than the thing is useful to him to whom restitution ought to be made; but sometimes, as suppose if he to whom restitution is to be made is doing business in far off places, restitution cannot be made to him unless greater expenses be laid out in sending it to him than is the whole that is to be restored; therefore, in that case he is not bound.

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

71. Again, anyone at all is held more to love himself than his neighbor, according to that [verse] of *Song of Songs* 2.4, “He has ordained in me charity;” therefore when restitution is damaging to oneself (as suppose one is in extreme necessity), one is held rather to retain that for oneself than from love of another to restore it to the other.

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

73. Again, when an adulteress conceives a son from adultery, the putative son of the husband defrauds the true heir of hereditary, and yet the woman is not held to restore the hereditary to him; therefore etc. The minor is proved, because she could not do that without her own defamation, which no one is held to, indeed to its opposite, and worse would follow, namely wife-killing, if the husband were to know the crime.

74. Again, someone can procure for himself an ecclesiastical benefice, taking it away through his being procurator for another; but he is not held to restore that to the other; therefore etc.

75. On the contrary:

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

76. And [Gratian] 14 q.6: “Sin is not dismissed unless the thing taken away be restored.”

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

I. To the Question

78. Here four things need to be seen: first, whence the ownerships²⁶ of things may be distinct, so that this may be called ‘mine’ and that ‘yours’, because this is the foundation of every injustice in handling another’s property, and consequently of all justice in restoring it; second, how ownerships first distinct may be justly transferred; third, from this it will be plain what the unjust occupation of another’s things is, or the injuring of another in things temporal; fourth, how such a one is bound to restitution.

A. Whence the Ownerships of Things are Distinct

1. First Conclusion

79. About the first [n.78] let this be the first conclusion, that ‘by the law of nature or the divine law, there are not distinct ownerships of things for the state of innocence, rather all things then were common’.

80. It is proved through that of [Gratian] *Decretum* p.1 d.8 ch.1, “By the right of nature all things are common to everyone.” And for this is adduced Augustine *On John’s Gospel* ch.2 tr.6 n.25, saying: “By what right do you defend the villas of the Church, by divine or human? The first right we have in the divine Scriptures, the human in the laws of the king. Whence does each possess what he does possess? Is it not by human right? For by divine right ‘the Lord’s is the earth and its fullness’ [*Psalm* 23.1]. Poor and rich, is it not by human will the one earth carries [both]? Therefore, also by human right is it said, ‘This is my house’, ‘this my villa’, ‘this my servant’.” Again *ibid.*, “Take away the laws of the Emperor, who dares say, ‘This villa is mine’?” And later *ibid.*, “By the laws of kings are possessions possessed.” And [Gratian, *Decretum* p.2] cause 12 q.1 ch.2, “Most beloved”: “A common use of all the things that are in this world there should have been for all.”

81. The reason for this is double:

First, because the use of things according to right reason so ought to belong to men as befits peaceful conversation and necessary sustenance; now in the state of innocence common use without distinction of dominions as to both of these was worth more than distinction of dominions, because then none would have seized what would have been necessary for another, nor would that need to be wrenched from him by violence, but any whoever would have taken for necessary use what would first have met him.

82. Thus too there would more have been there a sufficiency for sustenance than if from someone were precluded the use of something through an appropriation of it made for another.

2. Second Conclusion

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

²⁶ The Latin is literally ‘lordship’ or ‘dominion’, that is, what belongs to the ‘dominus’, the lord. Since in context the discussion is about a lord in the sense of an owner of property, and not in the sense of someone with a special status of political or ecclesiastical dignity (or even less in the sense of God as Lord), the word has been translated accordingly.

84. And reasonably, because of the same two things:

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

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

86. And therefore the polity of Aristotle, *Politics* 2.1-2.1260b27-61b15, that ‘not everything is common’, is much better than the polity of Socrates – which Aristotle blames – about all things common, according to this [present] state which Aristotle found among men.

3. Third Conclusion

87. The third conclusion is that ‘with that precept of the law of nature revoked, about having all things common, and consequently with the license conceded of appropriating and distinguishing [between] things common, there was not made an actual distinction by the law of nature nor by the divine [law]’.

88. By the divine not, as is proved by that of Augustine adduced above [n.80], “By what right etc.”

89. By the law of nature not, as seems to be probable, because it does not appear that that determines to opposites; but it has determined in human nature for this, that all things are common.

90. Unless it be said that that proposition of the *Institutes* [*of Justinian*, II ch.1 n.12] (‘About the division of things’), “What is no one’s among goods, is conceded to him who takes it,” is of the law of nature. But although immediately after natural apprehension of this, which is ‘things must be divided’, that [law of nature] arise as probable and manifest, yet it is more reasonable to say that it is not of the law of nature, but of positive [law]. And from this it follows that from some positive law was the first distinction of ownerships made.

4. Fourth Conclusion

91. Therefore, in order for this distinction to be just, it is necessary to see how such positive law is just.

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

Prudence, so that the legislator dictate according to right practical reason what must be laid down for the community.

Authority, because *lex*, ‘law’, is said from *ligando*, ‘binding’, but not any sentence whatever of a prudent man binds the community, nor anyone, if no one is presiding.

5. Fifth Conclusion

93. But how it will be possible for the prudence to be had for thinking out just laws is sufficiently plain, but how for just authority [to be had], which is required with this for just law, the fifth conclusion follows, that ‘there is a double principality or authority: namely paternal and political, – political is twofold, in one person namely or in a community’.

94. The first, namely paternal, is just certainly by the law of nature, whereby all children are bound to obey their parents; nor has this by any positive law – Mosaic or Evangelical – been revoked, but rather confirmed.

5. But a political authority that is over those extraneous [to each other], whether it reside in one person or in the community, can be just by the common consent and choice of the very community.

96. And the first authority [sc. parental] regards natural descent, even if not cohabiting civically.

97. The second [sc. political] regards cohabitants, however much by no consanguinity or propinquity conjoined with each other, – as suppose if, for building or inhabiting a city, some who are extraneous have joined together, seeing that they cannot be well ruled without some authority, they had the power agreeably to consent to commit that community to one person or to the community: and to one person whether for himself only and a successor would be chosen as he was, or for himself and his whole posterity. And this political authority is each just, because anyone can justly submit himself to one person or to a community in those things that are not against the law of God, in which he can be better directed through that [person] – to whom he submits himself – than through himself.

98. Therefore we have completely how a just positive law could be founded, because by one having prudence in himself or in his counsellors, and along with this having a just authority in one of the ways stated in this [fifth] conclusion.

6. Sixth Conclusion

99. From these there follows a sixth conclusion, that ‘the first distinction of ownerships could be just by just positive law, whether passed by a father or a prince justly reigning or a community justly regulating or ruling’.

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

101. Either some law was promulgated by the father, or by someone chosen by them for prince, or by a community to which the community itself committed this authority, – which law, I say, was or could be that a thing then not occupied would be the first occupier’s, and then afterwards they dispersed themselves over the face of the world, and one occupied one region and another another.

B. How Ownerships First Distinct are Justly Transferred

102. About the second article [n.78] I say that the transfer of things can be either as to ownership, namely so that a thing passes from the ownership of one to the ownership of another; or as to use or right of using, the ownership remaining however with the same man (and justice or injustice in transfer of use has different rules of just transfer of ownership). This transfer therefore of ownership can be done either by public authority or [authority] of a prince, or by the authority of law, or by the private authority of the owner immediately himself possessing it.

1. First Conclusion

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

104. It is proved, because if a just law could have justly determined the first ownerships, and not lesser is the authority of law or prince (which I have here for the same after division of ownerships as before), therefore on account of the same cause and the same effect ownership can be justly transferred after it will have been appropriated to someone.

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

106. It is proved from Gregory IX, *Decretals*, with glosses, II tit.26 ch.5, *Extra*, ‘On Prescriptions’, ‘To the Vigilant’, gloss on that ‘Property of Another’.²⁷

107. It is proved also by reason, in two ways:

First thus: that can justly be established by a legislator which is necessary for the peaceful conversation of the subjects; but that the ownership of a thing neglected, as it is neglected in prescription and long use, is transferred to him occupying it, is necessary for the peaceful conversation of the citizens, because if ownership were not transferred to him occupying it, but were to remain with the prior one [who is] holding it for derelict after however much time, there would be endless lawsuits, for – after a time however long – he who neglected it or his heir would seek again the thing neglected, it having been occupied by another or others for however long a time; and there would be such lawsuits that it would be impossible to cut them off, because neither to get sufficient proof, and from such perpetual lawsuits there would be disputes and perhaps feuds between the litigants, and so the whole peace of the republic would be disturbed.

108. Second reason, because the legislator can justly by law punish a transgressor whose transgression verges to the detriment of the republic, and if with a corporal penalty, much more with a pecuniary penalty, and this in applying it to the treasury; therefore by equal reason he can punish him with this sort of penalty, applying that in which he is punished to someone who in this is minister of the law. But he neglecting his own affairs for so long a time transgresses in such way that his transgression is to the detriment of the republic, because an impediment to peace; therefore the law, just as it can justly apply

²⁷ The gloss says: “Others say – which seems truer – that he who possesses another’s fixed property by prescription is no longer bound to give it back, because it would now not be another’s, rather his own, and justly does he possess it.”

that neglected thing to the public treasury, so can it for the greater peace transfer it to him who is for so long a time occupying it as if in [the place of] a minister of the law.

109. And from this it is plain how that presumption of right and by right must be understood, which proof is not admitted against, namely that being so negligent of his own property he has held it for derelict: for even if this not be true in fact, yet the legislator has punished him as if he had held it for derelict, because in some respect he is made like him who does hold it for derelict, and that in which he is likened to him who leaves it derelict does justly require a like penalty.

110. This also appears probable through this, that if anyone at all can transfer his ownership to another, the whole community can transfer the ownership of anyone of the community to anyone (because in a deed of the community I suppose the consent of anyone at all is included); therefore the community, having this consent as if already offered to it – by the fact that anyone at all consents to just laws needing to be passed by the community or the prince –, is able through a just law to transfer anyone's ownership to anyone.

2. Second Conclusion

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

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

113. This is proved, because from the fact he was owner by act of his will, therefore by will he can cease to be owner; and another wills to receive it, therefore he can begin to be owner; and not any superior cause prohibits this one ceasing and that one beginning to be owner. Therefore, through this donation a transfer of ownership is truly and justly done.

114. From this is plain what is required for a just donation: because a free handing over on the part of the one giving, and a will of receiving on the part of him to whom the giving is made, and freedom on the part of both (of this one of giving and of that one of receiving), and that by no superior law is this one prohibited or that one, nor by act of another on whom they may depend in this transfer.

115. Because of defect of the second [sc. willing receiver], one cannot give money to a Friar Minor, because he does not will to be an owner. Because of defect of the first [sc. free transfer by the giver] a monk cannot give aside from the abbot's permission, nor the son of the family without the will of the parent or parents, – nor too a cleric in any case without the will, or at least against the will, of the Lord Pope, as is had in *Extra* [Boniface VIII, *Sixth Book of the Decretals*, III tit.20 ch.1] 'On censuses', "Roman". For the observance of which chapter Gregory X sets down a penalty, of which the chapter is today in *ibid.* ch.2, "It demands", namely that [clerics] making visits receive no little gifts from the visited, and if they have received, let them be held to restore double, – or let

them not be absolved from the curse that they *ipso facto* incur, as is said in the *Sixth Book*, in the new constitutions [Innocent IV, *ibid*, ch.1].

116. Now to this corresponds – in transfer of use – liberal accommodation.²⁸ And it has similar laws for this that it be just, because it requires in him accommodating free will, and him receiving that he will to receive the thing accommodated for use, and that there not be any will of law or prince standing in the way of that accommodation.

117. Another is a transfer not merely liberal, but where the transferrer expects something equivalent to that which he transfers, and it is called properly a ‘con-tract’, because there the wills of the parties are drawn together;²⁹ for this one is drawn to transferring to that one by the advantage that he expects from that one or that he expects must be transferred to himself.

118. Of this sort of contract, in which ownerships are transferred, certain are of a thing useful for a thing useful immediately, as of wine for grain and the like, and it is called a permutation of things, ‘I give so that you may give’ or ‘I give if you give’. Certain are of a useful thing for coin or conversely: for because it was difficult to exchange things useful immediately, therefore a medium was invented through which such exchange might be done easy, which is called ‘coin’; and the exchange of coin for a thing useful is called ‘buying’, but the converse ‘selling’. But a certain [transfer] is of coin for coin and is called ‘giving of a loan’, or ‘acceptance of a loan’. There are therefore six contracts in which ownership is transferred.

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

3. Third Conclusion

120. About the first transfer, namely ‘permutation of things’ [n.118], let there be this conclusion, which is the third of this article: that ‘the owners of things justly exchange them if without fraud they keep the equality of worth in the things exchanged according to right reason’, understanding here the conditions – expounded before – for just giving [nn.114-115].

121. The other [conditions] are explained that are proper to just permutation [n.120]:

What is first added, ‘without fraud’, excludes fraud in substance and quantity and quality: ‘in substance’, so that brass not be exchanged for gold, nor water for wine; ‘in quantity’, so that namely whether quantity be measured by weight or by some other measure, namely by a rod or the like as to length, or some bodily measure, namely so that the sixteenth [of a peck], the peck or the like, either in liquid or dry goods, the just weight and universally the just measure may be kept; similarly in ‘quality’, that that not be exchanged for sour wine which is received from another exchanger as pure wine. And all these are proved in *Extra*, Gregory IX, *Decretals* V tit.36 ch.9, ‘On Injuries and Damage

²⁸ A phrase that in the legal context means bail or bailment, or the relationship where the owner transfers to another the physical possession of personal property for use for a time, but retains ownership.

²⁹ ‘Contract’ comes from the Latin *contra* which literally means to draw (‘trahere’) together (‘con’).

Given', "If by your fault:" "He who gives an occasion for loss, seems to have given a loss."

122. But someone defrauding in substance this [person] who thinks that in making exchange he is receiving another substance, or in quantum who thinks he is receiving another quantum, or in quality who thinks he is receiving another quality – he gives occasion for loss, because the other would not make the exchange unless he were to believe he is receiving another substance, quantity, and quality; therefore he seems not only from the book of *Refutations* [Scotus, *Refutations*, q.39 nn.5-6, q.40 nn.13-16; Aristotle, *Sophistical Refutations* 4.166b10-14], but by presumption of law and in truth, to have given a loss.

123. It follows in that rule that 'equality of worth is to be preserved' [n.120; inferred from *Ethics* 5.8.1133b18]. Which is proved through Augustine *On the Trinity* XIII ch.3 n.6, "To will to buy cheaply and to sell dearly is truly a vice." And this I understand about a thing cheap and dear as to use, because frequently what is a thing in itself nobler in natural being is of lesser value and less useful for men's use, and thereby less precious, according to Augustine, *City of God* XI ch.16, "Better in in a home is bread than a mouse," although however a living thing is nobler simply than a non-living thing in the 'to be' of nature.

124. And because of this there is added [n.120] 'according to right reason' paying attention, to be sure, to the nature of the thing in comparison to human use, because of which this exchange is being done.

125. Now this 'equality according to right reason' [nn.123-124] does not consist in what is indivisible, as a certain doctor says [Henry of Ghent, *infra*] moved by this because justice has only the mean of the thing, but the other virtues only the mean of reason; for this is false, as was made clear in *Ord.* III d.8 nn.58-62 [rejecting there Henry's opinion].

126. Rather in this mean, which commutative justice has regard to, there is great latitude, and within that latitude (not by attaining the indivisible point of equivalence of thing and thing, because, as to this, it would be quasi impossible for exchangers to attain [it]), in whatever degree about extremes it may be done, it is justly done.

127. Now what this latitude may be and how far it may extend, sometimes from positive law, sometimes from custom, is it made known: for the law rescinds a contract where a contracting party is deceived beyond the mean of the just price; however, below that, if from something else injustice appear, corresponding restitution should be made.

128. Now sometimes it is left to the contracting parties themselves, so that – their mutual necessity weighed – they may reckon they are mutually giving and receiving for themselves the equivalent on this side and that: for it is hard for there to be among men contracts in which those contracting do not intend to remit anything of that indivisible injustice mutually among themselves, so that *pro tanto* with every contract some giving is concomitant. And if this is the mode of people exchanging, quasi founded on that [command] of the law of nature, 'Do that unto others which you want to be done to you' [*Matthew* 7.12, *Luke* 6.31; cf. equivalent negative formulation in *Tobit* 4.16], it is probable enough that when they are mutually content, they mutually wish to make return to themselves, if in any respect they fail of this requisite justice.

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

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

131. And I understand it thus: if someone does much need his own property, and through great insistence is induced by another to sell it or exchange it for something else, since he is able to preserve himself indemnified, and from this selling or exchange he suffers much loss, he can sell it more dearly than if otherwise without such loss he were to sell or exchange it.

132. But if the one buying obtain a great advantage from the thing sold or exchanged, it cannot be more dearly sold or exchanged because he will obtain a greater advantage from that thing when sold to him, for because of the greater advantage of that which he obtains, my possession is neither more precious in itself, nor better for me, and so it should not bring me a greater price. But it is otherwise when I suffer a loss, because then it is more precious to me, though not in itself.

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

4. Fourth Conclusion

134. About the last contract, namely about the giving of a loan [n.118], let this be the fourth conclusion of this article: ‘for justly contracting a loan, it is necessary to keep equality simply in number and in weight’, certain cases excepted which will be spoken about at the end [nn.144-150]). The reason for this is assigned by certain of this sort, that the use of money is the consumption of it; therefore he who concedes it as a loan consumes it [Thomas Aquinas, *ST* IIa IIae q.78 a.2 ad 2, Richard of Middleton, *Sent.* IV d.15 princ.5 q.5].³⁰

135. Against this it is objected by that *Extra*, ‘On the signification of words’, and it is today in [Boniface VIII], *Sixth Book of Decretals* V tit.12 ch.3, that the use of certain things is perpetually separated from ownership.³¹

³⁰ Thomas, *ST* IIaIIae q.78 a.2 ad2: “He who accepts a loan of money, or of any like thing whose use is its consumption, is not held to recompensing more than he has received in loan. Hence it is against justice if he be obligated to returning more.” Richard of Middleton, *Sent.* IV d.15 princ.5 q.5 in corp.: “Now the reason why nothing beyond the principal can be demanded for a loan, but can be for a thing rented, is because a loan is of those things whose principal use cannot be conceded without the thing itself, by the fact that the use of them is the using up of them...as is plain in money, which for this was principally invented, that it be expended in the buying of other things; for because of this, when such things are yielded to others, to them is transferred the ownership of them.”

³¹ The argument of Richard, and Aquinas, is that lending money is different from renting a house, say, because a house can be used without being used up, so that the owner of the house can retain ownership of it while selling the use of it (as by renting it). Consequently, after the rental period is over, the owner gets the house back and keeps the rent in addition. The same cannot be said of money because to use money is to use it up and so to possess it at the same time. So there is no difference between use and possession that would allow charging ‘rent’ for the ‘use’ of the money. One gets back everything one lent when one gets back the same amount of money, and to get back extra for ‘use’ is ‘usury’ and wrong, because it amounts to selling the same thing twice.

Scotus’ response [nn.135-137] is first to deny, relying on Boniface VIII, that the use and ownership of money necessarily go together, or to deny the validity of the inference: ‘money is used up in being used, therefore possession

136. It is possible therefore for this sort of reason to be assigned, because in the giving of a loan ownership is transferred: for this do the words indicate ‘I give you what is mine in loan’; therefore he who concedes it in loan does not remain owner of the loaned money and consequently, if for that money he receives something beyond the principal, for what is not his he receives or sells what is not his.

137. Another reason is: let it be that the money were to remain his, however that money does not have of its own nature any fruit, as some things have that germinate other things from themselves; but only from someone’s industry, namely the user’s, does any fruit come; but the industry of the latter is not his who conceded the money; therefore he, in wanting to receive fruit from the money, wants to have fruit from another’s industry, which however that other did not give him from this that he received a loan from that other. And this is the reason why, through the opposite, the fruits of pledges that do germinate are reckoned in with the principal.

138. Excepted in this matter of borrowing are two cases in general: for sometimes someone can licitly receive beyond the capital by agreement, sometimes not by agreement.

139. The first in three ways:

Namely by reason of conventional penalty, although however it not be done for the fraud of usury; for example: ‘let it be that you need my money for trading, I concede it however to you up to a certain day, adding on a conditional penalty that unless you pay on such a day, because I will suffer much loss otherwise, you will pay afterwards so much in addition’. This penalty added on is licit, because it is licit for me to keep myself from damage by thus forewarning him with whom I contract. And the sign when it is not for the fraud of usury is this manifest one: when the merchant more want the money to be paid to him on the day prefixed than on the following day with added penalty: and, by the opposite, it is for the fraud of usury when he wants the day to be passed over rather than for the money on that day itself to be paid.

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

The third condition is when both, namely the capital and that extra amount, are placed under uncertainty. Which is proved from *Extra*, ‘On usury’, Gregory IX *Decretals* V tit. 19 ch.19;³² and also by reason, arguing through the [argumentative] place by similarity, because just as uncertainty there excuses, so here.

140. Without any pact too it is licit [sc. to receive more than the capital; n138], because the willingness alone, without any verbal pact or other equivalent sign showing

cannot be separated from use’. However, as he explains next in nn.136-137, he still considers usury to be wrong. For either (n.136) to loan money is to give possession, so that to get the loan back is to get possession back, and to get something extra back for ‘use’ as well would be to suppose one still somehow owned the money while it was being used when precisely one did not. Usury is wrong, therefore, because one sells what one no longer has. Or second (n.137) one can suppose that the lender still owns the money but that the gain that comes from the use of it comes from the borrower’s industry and not from the lender’s, so that the lender has no claim to the fruits of that use, or to extra payment because of it.

³² “By reason of this doubt [sc. about greater and lesser valuation] is he also excused who sells bread, grain, wine oil, or other merchandise so that more than they then are worth he may receive for the same things within a certain term,—provided, however, that at the time of the contract he had not been about to sell them.”

to the debtor that the lender would not lend without hope of gain, does not make him, when receiving more than the principal, to have what is another's without a pact, and therefore neither to be bound to restitution.

141. It must be understood too that money has some useful use of its own nature, as for looking at or for decoration or for displaying possibility as being rich, – and for this end it can be leased like a horse or something else leasable; and for this use, with ownership retained, money can be received. And then in its totality it is a contract for leasing or hiring (and not borrowing or lending), and the same weight numerically should be restored, unless perhaps the equal in weight and value satisfy the lender.

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

5. Two Other Conclusions or Rules

143. But when an exchanger does not receive at once that for which he exchanges, but receiving of this sort is deferred, it is asked what is of right?

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

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

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

146. But if now he was not going to sell, but at another time, when it would seem that according to the run of time he could gain more – either therefore he now sets down a certain price, or not, but lets certitude of price go dependent on something future.

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

148. But if he relinquishes a determination of the price hanging on the future value of that thing, either then for the determinate time of the payment, or for another in which it is not regularly the custom for the thing to be worth more than when he gives

that thing of his – and then he does an act of mercy, as that: ‘I concede that to you for as great a price as it will be worth at *b*, or at any time before *b*’, although however that thing has been wont commonly to be dearer at *b* than at any preceding time.

149. But if he wants the price to be determined for an indeterminate time, in this way that he puts himself in a safe [place] of gain for the most part and the other in loss, as for example ‘I want you to pay me as much for this as it will be worth at any time up to *b* when it will more dearly be sold’, it is usury, because he positions himself or his party for gain for the most part, and him with whom he contracts for loss for the most part; and then he has for himself that which happens for the most part, and against himself that which happens for the least part.

150. There is also another injustice there, because on some determinate day it is necessary for him to set out his property for sale, and not at some vague particular time, and at that [time] it might happen that it would be sold less dearly than on a dearer day between *a* and *b*, and consequently in such a pact he makes himself certain of gain further than human industry could attain.

151. These rules therefore are said about the just and unjust in any selling and lending for now or for the future – and this speaking about economic³³ exchange, which is when the exchanger intends to receive the thing for which he makes exchange, because he buys it not so as to trade it, but so as to use it.

6. Last Two Conclusions or Conditions

152. Next about business exchange, where the exchanger intends to trade with the thing that he acquires, because he buys not so as to use but so as to sell, and this more dearly; and this business dealing is called pecuniary or profit-making.

153. About this, beyond the rules before posited as to what is just and what unjust [n.154-57], I add two things: the first is that ‘let such exchange be useful to the republic’; the second is that ‘let such [an exchanger] according to his diligence and prudence and risks in exchange receive a price correspondent’.

154. The first condition is expounded, because it is useful to the republic to have conservators of things for sale, so that these can be promptly found by the needy wanting to buy them. In a further degree too it is useful for the republic to have importers of things necessary, which the country does not abound in and yet the use of them there is useful and necessary. From this follows that a merchant, who imports a thing from a country where it abounds to another country where it is lacking, or who may store this thing bought so that it may readily be found for sale by him wanting to buy it, has an act useful for the republic. This as to the exposition of the first condition.

155. A second follows, because everyone in an honest work serving the republic should live from his labor (‘honest’, I said, because of prostitutes and others living dishonorably); but he importing or conserving [things] is honestly and usefully serving the republic; therefore, it is necessary for him to live from his labor. – And not this alone, but everyone can justly sell his industry and solicitude; the industry of him transporting things from country to country is much required, so that he may consider what things the country abound in and need; therefore he justly can, beyond necessary sustenance for

³³ ‘Economic’ here is clearly meant in its original Greek sense of household management, and not in its more modern sense of business dealing for profit.

himself and his family, receive for this deputed necessity a price corresponding to his industry; and beyond this, third, something corresponding to his perils: for from the fact he transports things at his peril if he is a transporter, or stores if he is a storekeeper, he can, because of this sort of peril, untroubled receive something corresponding, and especially if sometimes without his own fault he suffers loss in such service of the community (for example: a merchant transporting sometimes loses a ship weighed down with the greatest goods; and another sometimes from a chance fire loses the most precious things that he is guarding for the republic).

156. All these things are confirmed, because what a just and good legislator would owe to any minister of the republic, so much can he [the merchant], if a legislator from the republic not be present, take for himself without extortion. But if there were a good legislator in a poor country, he ought to hire for a great price such sort of merchants, who would import things necessary and who would conserve them when imported; and not only find for them and their family necessary sustenance, but also compensate their industry, peril, and skill; therefore, this they can also do themselves in their selling.

157. From these two conditions, requisite in just business dealing, it is plain how some are businessmen blamably, as namely those who neither transport nor conserve, nor by their industry is a thing for sale improved, nor is anyone else simple made certain of the value of the thing to be sold, but he [sc. the businessman blamably] only buys so that at once, without all these requisite conditions, he may sell: this [fellow] is to be exterminated from the republic or banished (and he is called in Gallic a ‘regratier’ [‘huckster/regrater’]), because he prevents direct exchange between those willing to buy or exchange economically, – and by consequence he makes anything at all sellable or useful dearer for the buyer than it ought to be, and cheaper for the seller, and thus he damnifies each side.

C. What the Unjust Taking of Others’ Things is or the Damaging of Another in Matters Temporal

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

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

For in giving there is not justice if the giver does not purely freely give, or gives against the will of someone – on whom he depends in giving – as is plain in that case about which it was alleged there, *Extra*, ‘On Censures’, bk. 6 [n.115]; and he does not purely freely give if he gives deceived or as if by necessity drawn or compelled, because ignorance and any sort of compulsion exclude the voluntary simply, *Ethics* 3.1.1109b35-1110a18. From this it follows that he deceived about him to whom he gives, as to the reason because of which he gives, does not simply give; and therefore, if he gives to someone as to a neighbor, who however is not a neighbor, he does not simply give; likewise, if to someone as needy, who is not needy. And therefore let those see every case, namely who – being rich – yet receive alms as needy, lest they be unjustly receiving everything of this sort, because there is not in the giver there the voluntary, because of

ignorance of the condition that he respects in giving. Likewise, if he be drawn in, as in giving usury, it is not a purely free gift.

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

161. About permutation [barter] there is injustice from the same causes, namely from deception and from the voluntary and from the prohibition of a superior under whom the exchanger is in exchanging. And from this can the exchange be called unjust that happens in games of dice and the like, according to that from [Justinian] *Digest* XI ch.5 n.4 'About games of chance', the law at the end, and *Extra*, 'About the life and decency of clerics', on 'Offices' in the gloss [Gregory IX], *Decretals* III tit.1 ch.15.³⁴ However this law does not bind but those who are politically subject to imperial law, who perhaps are none today, because where precisely this law was wont to have place, municipal laws pre-judge imperial ones (it is plain in Italy).

162. Injustices in buying and selling were touched on before [nn.129-132], when touching on injustice in them; and next to this, about leasing and renting out [n.119], it is plain in the same place. About the giving and paying of a loan the principal injustice is usury, the censuring of which is had in *Extra*, 'On usury', Gregory IX, *Decretals* V tit. 19 ch.4.

163. The crime of usury each Page detests [sc. *Old and New Testament*]; that the *Old* [does], it is plain in *Ezekiel* 18.8-9, "You will not accommodate yourself to usury etc.," that the *New*, *Luke* 6.35, "Lend expecting nothing in return."

164. And if it is argued against this, because it is licit for each one in contracts to keep himself from loss, as was said before [nn.129-132] that the seller can sell more dearly, attending to his loss in selling, especially if he is induced by him to whom he sells, therefore in the same way if he be induced by him to whom he lends, it is licit for him to keep himself from loss, which he cannot do except by receiving something beyond the principal; –

165. Similarly, he giving usury voluntarily gives, because none compels him to accepting at usury, but by his own will he takes the money and returns beyond the principal, and not otherwise can ownership be transferred to another; therefore, he transfers ownership, therefore the other, namely the usurer, does not have another's; –

166. To the first [n.164] I say that if he does not want to suffer loss, let him keep back money necessary for himself, because none is necessitating him to do a mercy for his neighbor; but if he wants to do a mercy, he is necessitated by Divine Law not to make it vitiated.

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

167. It is similarly plain about injustices in exchanges, where a delay is made in the receiving: for there is injustice in selling time, or in making oneself certain of making a gain, either simply or for the most part.

³⁴ "Here it is prohibited to clerics not only to play but not even to be present at games, so much so that he who is publicly a player of dice is repelled from promotion..., nor must they be inspectors of games of this sort."

168. Likewise in doing business there is injustice if his act be an obstacle to the republic, or if he immoderately receives from the republic – beyond his industry – diligence, worry, and perils.

169. Again, besides these partial injustices in these contracts or exchanges, there is a general injustice, when someone seizes another's property the owner simply unwilling, and this both from the proximate owner and the remote, namely the legislator, who does not will, indeed prohibits that thing to be seized with the owner unwilling, except in cases of prescription and long use. But there is not in these a transfer of ownership namely in theft, rapine, and the like, although there may be violent seizure of a thing of which there is an owner; and this injustice is more manifest than any other, where because of a defective condition alone there is injustice in the transfer or exchange, as in the above said cases.

D. How the Occupier of Another's Property is Held to Restitution

170. About the fourth article [n.78]: first, for what reason restitution must be made; second, who is bound to make restitution; third, what; fourth, to whom; fifth, when.³⁵

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

172. Hence restitution is not necessarily to be made as a certain part of satisfaction, neither taking satisfaction generally nor specifically.

For taken generally it returns for sin the equivalent to him against whom it is sinned; not so this restitution, because without any return for sin there could be returned to a neighbor what is his, just as also in loans return is made to a creditor without any satisfaction pertaining to reconciliation of a sinner.

Similarly, there is not a special satisfaction, which is the third part of penitence [d.16 n.26]), because by congruity restitution is required before any part of penitence, just as voluntary cessation in act or fact from sin; but satisfaction, which is the third part of penitence, is not required before the other two parts of penitence, indeed it follows contrition and confession as enjoined by a priest.

173. Now restitution is not enjoined by the priest, but by Divine Law. And it is similar in other sins: if someone were to keep a fornicatrix, or rather an adulteress, to restore her to her husband is only to cease from one's sin or transgression of this precept, "Thou shalt not commit adultery," *Exodus* 20.14; and this precedes every part of accepted penitence. And therefore, just as he who keeps an adulteress is not capable of penitence, but is a mocker, and therefore – coming to penitence – adds sin to sin, so he who detains another's property both in will and in fact, while he is such is not capable of any part of penitence.

³⁵ The Vatican editors note that the order of topics in this fourth article by Scotus follows the order of circumstances given in Aristotle's *Ethics* 3.2.1111a3-6.

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

“Command, advice, consent, recourse, coaxing
Share, silent, not hind’ring, not revealing.”³⁶

the assertion of which stands on this maxim: ‘whoever takes away or detains another’s is bound to restore it’.

175. Now it is possible to take away as superior cause, namely by commanding; or as proximate cause, by immediately taking away; or as co-adjutant cause, if one is an ally in taking away; or as inducing cause, if one counsels or favors or flatters with such advice, favor, or flattery on account of which the taking away is done and without which it would not be done.

176. Likewise about detaining, who immediately detains or by whose command is detained positively or privatively, or interpretatively (as, namely, because he does not make it to be restored, although this would belong to him *ex officio*), or by giving aid or favor (as if he keeps silent when questioned in court, where restitution by judicial sentence could be made to its owner, and yet in speaking the truth danger of status or person does not hang over him).

177. Hence, briefly, every obligation for restitution is reduced to taking away or detaining, – and this either as principal cause or as proximate or co-aiding or inducing or not impeding when his impeding would be for the good of the republic and without danger to the person prevented.

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

179. Of all these, any at all is bound to restitution in full, – but with one restoring, all others are freed from debt in comparison to him who suffered the loss; yet the others are bound pro rata to the portion that joins them to him who made satisfaction for all.

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

181. From which it follows that the usurer is not held to restore the gain acquired³⁷ from the money borrowed at usury, otherwise he who received it could be a usurer justly, because to receive the fruit of one’s money coming through the industry of another is to make usury. And this perhaps is what could more induce men to usury, because in making profit from usury they are not bound to restore the profit they make, –

³⁶ The Vatican editors note that these verses were offered by jurists to aid memory about who is under obligation to make restitution. They are cited by many scholastics, as Albert the Great, Thomas Aquinas, Richard of Middleton, among others.

³⁷ The Vatican editors have ‘required’ which is the reading of the preferred mss. It seems however not to give the sense needed. So the ‘acquired’ from a ms. in the app. crit. has been translated here instead.

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

182. [About the fourth] – About the fourth, 'to whom' [n.170], I say that to him who suffered the loss, if however it be possible, – possible I say, as that if he knows him, or has him present or can have him so that it may be sent to him without greater inconvenience than that which must be sent would be useful to him to whom it is sent. And I mean this about him himself, or about some who are close to him, if he be dead or absent, because it is presumed by the law of nature that he would prefer restitution to be made to those close to him.

183. And therefore in two cases, neither to him nor to his: as that if it is not known to whom, or let it be known to whom, however he is dead, and those close to him are not known; in another case, if greater expenses would need to be laid out in sending than that may be worth to him to whom it is sent.

184. If you ask in these cases 'to whom shall I give it?', I say that to the poor in his stead, because to whom it cannot be returned temporally, let it be returned spiritually; spiritual return is done most by returning it to the poor for him.

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

186. One doctor says [Richard of Middleton, *Sent.* IV d.15 princ.5 q.4 ad 2] that a confessor, or someone about whose fidelity one has trust.

187. It seems to me that through oneself. Although with the advice, however, of some good man this could be distributed to the poor, because one could give to such a mediator, on whose fidelity one would presume, to make restitution, – and yet he might apply it to himself or to other uses than he ought. Hence, where the Law divine or ecclesiastical does not obligate a person, natural reason is to be followed; and that dictates that the person – who is bound – rather restore it to the poor through himself than through another, though not excluding the counsel of a good man, but including it.

188. [About the fifth] – About the fifth, 'when' [n.170], I say: it is not licit at any time to retain another's property, the owner being unwilling, that is, not willing and needing according to right reason to be not willing; and consequently by rule must restitution be made at once, just as at once must an act of any mortal sin be ceased from, not only exterior but interior.

189. But in such cases sometimes it is licit to defer exterior restitution, interior however already in place, the will namely of restoring when opportunity will have occurred and opportune circumstances. Now those cases are universally contained under this maxim: 'It is licit to detain another's property when he – whose it is – ought rationally to will it to be detained'. But in certain cases someone ought rationally to will this, namely his property to be detained by another *de facto*, with already in place the will of restoring it in opportune circumstances. For anyone ought to will restitution not to be made to him then when it is to the prejudice of the community or of him himself receiving restitution, because he ought to will his and the common good, and so any sort of deferring of that restitution of a useful good, so that a greater good may be preserved. He ought also then not to will restitution to be made, when it is to the prejudice and disrepute of the restorer, because he ought more to will the reputation of his neighbor than that little advantage of his own, and this at once. Similarly, he ought more to will

that a great disadvantage be avoided of his recovering neighbor than his own modest disadvantage, or none, in that modest deferment of restitution.

190. From these it follows that when restitution would be injurious to the republic or to him to whom it is made, or bring disrepute to the restorer or a notably too great loss, he is not held to making restitution at once, but it suffices that at once in affect he restore it, and that in act he restore it with the inconveniences ceasing on this side and that.

191. If it is objected ‘to restore is an act of a negative precept, because it is not to retain another’s property, and for observance of a negative precept everyone is bound always and at all times’, – I reply: to keep what is another’s unjustly, that is, against the will of the owner, is always prohibited; and therefore always and at all times it is necessary not to hold it in this way; but when someone has the will of restoring for an opportune time, from then he is bound, the owner willing, although not in elicited act, yet in due act, because the owner should will that he who has his [property] keep it until he can return it opportunely.

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

193. And to this particle ‘when’ [n.188] can many other cases from the aforesaid be reduced:

One is special (which also can be reduced to the particle ‘who’ [n.170]), namely when the taking away has been secret: then the one taking away is not held to betray himself, nor consequently to restore it through himself, but through another person secret and faithful; and it is expedient that through a confessor, because to him crime is uncovered in confession, and about his trustworthiness to restore what is committed to his trust, it should be sufficiently believed; it is possible therefore here for restitution to be deferred until the will of such person and opportunity may be had.

194. Another case too, when it is possible to defer to make return (which also could be reduced to ‘who’ [n.170]): for when he is impotent, he is for then not bound; however he is bound afterwards “when he has come to a larger fortune,” as is proved in *Extra*, ‘On solutions’, Gregory IX, *Decretals* III tit.23 ch.3; just as also in the gloss it is noted that the action does not expire through the indigence of the debtor, but sleeps, – hence that remark [*ibid.*, drawn by the glossator from Justinian’s *Digest* IV ch.3 n.9], “Vain is the action which the indigence of the debtor excludes.” But the right of acting remains, just as also the obligation in the debtor, though asleep.

II. To the Principal Arguments

195. To the initial arguments:

To the first [n.66] it is plain from the first part of the last article [nn.171-172], for what reason someone is not held to restitution as to satisfaction properly speaking (which is the third part of penitence [d.16 n.18]); but he is bound to it as to cessation from sin, – and this in act and in effect, with the due and opportune circumstances.

196. To the second and third [nn.67-68], it is plain from what was said in the fourth article, because he who does not know is bound to make return to the poor [nn.184-185]. But as to what is said there about not knowing the owner of a thing found [n.182], I say that a thing found should be handed over to a public person for guarding and proclaimed in public places, so that thus the owner, who has lost it, can get to it. But if, after such proclamation, no owner appear, it is necessary to act as about unfixed restitution [sc. give to the poor].

197. To the other [n.69], it is plain that a greater sum is not to be laid out in sending than that thing is worth which is sent, but the presence of the person is to be waited for, if at some time it be believed to be had. But if it not be believed to be had, nor may a messenger come in between without excessive expense, it is to be handed over to the parents; and if they not be present, it is to be given to the poor. For universally, in giving alms to the poor for someone, a spiritual good is given to him, – and in this the restitution possible is done for him, when the temporal good cannot be returned to him.

198. To the fifth [n.70]: if the person occupying another's property be very necessary to the republic, and he were in pressing necessity, and that person likewise to whom it is owed, the argument would have some evidence; but this will be spoken about immediately in response to the argument following [n.199]. But if that unjustly detained by a person very necessary to the republic not be necessary simply for him, but only for keeping his solemn status, I say that it is not licit for anyone to hold a solemn status on the basis of another's goods, nor is his solemn status – which he has through non-restitution – worth as much to the republic as is his justice and fidelity worth and common justice.

199. To the sixth [n.71]: or he detaining [sc. what is another's] is in extreme necessity and he is not whose the thing is, but has some things beyond extreme necessity, – and then I say that this thing becomes the detainer's "by right of the pole,³⁸ by which, at the point of extreme necessity, a way for providing for the support of nature is conceded to all detained by extreme necessity," *Extra*, 'About the signification of words' and it is today in Boniface VIII, *Sixth Book of Decretals*, V tit. 12 ch.3. But if both, namely the detainer and he whose property is detained, are in extreme necessity, if the owner comes first to this necessity before the detainer, it should be rendered to the owner by a double right: both because [it is] first his, and because now, from this necessity, it is made his. But if he detaining comes first to this extreme necessity, it is made his, and then to the owner afterwards coming to this necessity it does not have to be returned, because his ownership in this thing has ceased, and has become the other's by the 'right of the pole'. But if both come to it together, I say that it should be rendered to the owner, because he never fell away from ownership.

200. And if you argue that more should anyone love himself more than his neighbor, and consequently more his own bodily life than his neighbor's, and consequently more to retain this thing simply necessary for himself than to give it to a neighbor, – I reply: he ought more to love one's own life in ordered way, as it is lovable

³⁸ Vatican editors (adapted): the substantive 'pole' is taken here for 'heaven', indeed for 'God' himself, such that in juridical dealings the 'ius poli' or 'the right of the pole' (that is natural or divine right) is distinguished from 'ius fori' or 'the right of the forum' or civil or human right. The two together form a sort of jingle in Latin and are found as such in Augustine, *Sermon 335, On the Life and Morals of his Clerics*, "The bishop has it in his power not to make return, but *iure fori* not *iure poli*." Augustine's words are cited in Gratian, *Decretum*, e.g. p.2 cause 17 q.4 ch.42, and several other sources.

for eternal life, and so more the just conservation of his own life than the conservation of the life of his neighbor, but not more the unjust conservation of his own life than the just conservation of the life of his neighbor; for thus should a thief undergo hanging rather than kill the hangman so as to escape. Of which the reason is because love of bodily life unjustly guarded is not an ordered love, because it is not for love of the soul nor of God; and about this detainer, in the last case, the keeping of his life on the basis of another's [property] is unjust, – and with this too it is homicide, because he unjustly kills another who takes from him the necessary thing that is owed him.

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

202. On the contrary: that thing was made the detainer's through this, that he was in extreme necessity, and consequently it ceases to be the first owner's.

203. It could be said that such a thing, necessary simply, could not be but something pertaining to sustenance, and then it would be consumed, and justly, because he consuming was owner; he is bound however afterwards, when coming to a richer fortune, to return the equivalent, because obligation to the equivalent seems to have had its rise through comparison to that first taking of another's property, which was unjust before extreme necessity, and therefore that obligation is through extreme necessity not extinct, but asleep. But if he had never before extreme necessity taken it, justly then would he have taken it as his own, nor is he bound to any restitution.

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

205. To that about an adulteress, it is said in many ways:

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

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

207. Against the first response [n.205]: because either the son would believe the mother, or not. If he believe her, it is not probable that because of this he would let the inheritance go, because few are found so perfect that, on account of keeping justice in the forum of God, they may dismiss great possessions that they can hold by exterior right, – nor too can the mother presume this, unless she had much first tested her son's will; and she should not expose herself to certain danger of dishonor with her son on account of an uncertain correction of her son. But if he were not to believe [her], then there would be two evils, because she herself would be defamed, and he himself would hold the inheritance as before.

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

And to these evils of disgrace, of death, or at least of hatred or discord, which are very probable and seem for the most part going to happen, the woman ought not to expose herself because of the uncertain good of restoring heredity. And besides this, in lands where the first born is universally the heir, the father – if he were to believe his wife – could not take the inheritance from an illegitimate son, unless in the public forum he were to prove her such; and then it would be necessary for the woman to be defamed not only before her husband but before the whole country.

209. I say therefore that the woman ought to labor, as much as she can, for this, that the inheritance be rendered to the true heir; ‘as much as in her is’, I say, because she ought not to expose herself to infamy, but from other honorable causes induce the illegitimate son – as far as she can – to let the inheritance go. One honorable way is that he enter Religion; another, that he become a cleric and receive ecclesiastical benefices, – and content with these as if sufficient, let him dismiss the inheritance to the other brother as if to the remaining layman.

210. But if by no honest persuasion the mother is able to sway the heart of her illegitimate son so that he let the inheritance go, it does not seem that she should betray herself to that illegitimate son, because she is not certain that such [a son], thus unpersuadable by her in other honorable matters, would because of this one be swayed; rather perhaps he would hold on more tenaciously, conceiving dismissal to be to his own disgrace, because through that he would be noted to be spurious, and such notice those ill born much guard against. And then the mother ought to labor from elsewhere for restitution to be made to the true heir, as much as she can and according to correspondence of justice, because I do not say that she be held to replacing the equivalent for the whole inheritance, for there is much distance between ‘to have’ and ‘to be near’; and this one never had the inheritance, though he was near according to justice. And therefore, less than the equivalent suffices for him for restitution, and let that less be determined according to the judgment of a good man. It does seem however at least that she should provide for him of honorable sustenance and vesture, if the inheritance will be so abundant that it can suffice for the heir at double or triple of this. But if not even this be possible, – it is in that chapter [*Extra* etc. n.194].

211. To the last [argument] likewise [n.74], I say that he is bound to restore the benefice, not the whole, because there is much difference between ‘to have’ and ‘to be close’, but some portion corresponding to some part of the value of the benefice. And this if he directly took away the benefice for himself with the intention of causing him loss; but if indirectly, namely by looking after it for himself, and with this intending to cause the other loss, and he would not have otherwise sinned, he is bound [sc. to restore the loss], as I said before. But if he was only intending to provide for his own utility, and thus does he procure it for himself, and by consequence another, beside his intention, suffers loss, he is held to nothing for him, because it is licit for anyone to provide for himself, another neglected.

212. This is confirmed by that from the *Digest*, law 2 [Justinian *Digest* XXXIX ch.3],³⁹ If I cut off the streams on my farm, through which water was flowing to another’s well, with the intention of harming him, I am bound to him for restitution of the loss; but if I do this without deceit, intending to consult my own utility and necessity, as because it

³⁹ Vatican editors: this whole confirmation is taken by Scotus word for word from Richard of Middleton, *Sent.* IV d.15 princ.5 q.4 ad 7.

is useful for me to make a wall, which cannot conveniently be built without cutting off those streams, I do not harm the other, because I have the right to make my own utility on my own farm. And the *Digest* [*ibid.* ch.17 n.151], “No one causes loss except he who does that which he does not have the right to do;” but this [person] has the right of procuring a benefit for himself, with just and honest circumstances preserved.

Question Three

Whether he Causing Loss to Another in the Goods of the Person, namely of Body or Soul, is Bound to Make Restitution for this, that he be Able truly to Repent

213. Third I ask whether he causing loss to another in the goods of the person, namely of body or soul, is bound to make restitution for this, that he be able truly to repent.

214. It seems that not:

Because no one is held to the impossible; but in such a loss sometimes restitution is impossible; therefore etc. The minor is plain, for he who causes a loss cannot return ‘an equivalent spiritual good’ to him whom he has harmed in goods of the soul; likewise, if he has inflicted a loss by taking away a [bodily] member or by killing, he cannot give back neither that nor the equivalent, because no exterior good, which is a least good because a good of fortune, can be equivalent to a good of nature, which is a middle good, according to Augustine, *Retractions* I ch.9 n.4.

215. Again, someone drawing back a man – wanting to enter Religion – from ingress of Religion, causes him loss in the goods of the soul that he would be going to have in Religion, – and causes loss to Religion, drawing away from it such person; nor yet is he held to restitution of those goods to him (because he cannot), nor for restituting that person or the equivalent for that person, because then he would be bound himself to enter Religion for him, if he could not induce another person equivalent.

216. On the contrary:

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

217. Again, *Exodus* 22.16-17, “He who seduces a virgin, and sleeps with her, will give her a dowry and have her to wife, or will render her money according to the mode of dowry that virgins are wont to receive;” therefore this loss, inflicted on a virgin against chastity, requires delivering up the conjugal chastity that must be rendered for it.

218. Again, about him causing loss in body, it is had the *Extra*, ‘About injuries and loss given’ contained [Gregory IX *Decretals* V tit.36 ch.1] and it is taken from *Exodus* 21.18: “If another has struck his neighbor and he was not dead but lain on a bed, let him who struck him repay his labors and his expenses on doctors.”

I. To the Question

A. About Losses Inflicted

219. I reply: here first must it be seen about him inflicting loss on another in goods of the soul, – second, in goods of the body.

1. About Losses in Goods of the Soul

220. About the first [n.219], it is not understood of natural goods of the soul, because none can in this way inflict loss on another, since those natural goods are incorruptible goods; but it is understood of the goods of morals either acquired which are corrupted, or to be acquired whose acquisition is impeded (as namely about sins and vices, by which virtues acquired are corrupted, and at length vices are generated – and [by which virtues] which ought to be generated from good acts, are impeded).

221. In these too cannot anyone directly inflict loss on another, because sin and every vicious act to such extent is voluntary that – if it not be voluntary – it is not sin, from Augustine, *On True Religion* ch.14 n.27; therefore, only by his own will can anyone thus suffer loss.

222. But someone can in these inflict loss on another indirectly, by inducing him to sin and to vicious acts, by which the virtues are corrupted and vices and sins generated; and that induction can be multiple, namely by counseling, persuading, requesting etc.

223. About this first therefore, I say that [he inflicting the loss] is bound – in the way possible for him – to restore to him the loss, namely by inducing him efficaciously to penitence and to virtuous acts; and if inducement alone not suffice, because it is easier to pervert than to convert, he is bound both per se by praying, and through prayers procured of others, to obtain for him conversion, and through other efficacious persuaders, provided however he not betray to them the hidden sin of that other.

224. And from this it is plain how great a danger it is to solicit or to compel or induce to sin, because scarcely can he make restitution worthily, since a will already attracted to sins he can scarcely by persuasions and in many other ways bring back to virtue.

225. The reason for this is sufficiently plain, because since ‘the goods of virtue are the greatest goods’, according to Augustine, *Retractions* 1 ch.9 n.4, he causes more loss who in those things causes loss than he [who does so] in all other things whatever, – and consequently he is more according to justice bound to restoring to his neighbor such good, as far as it is possible for him.

2. About Losses in Goods of the Body

226. About the second [n.219]: he who causes loss in body, either inflicts the ultimate loss, namely death, or some other loss short of death. And that is double: either irremediable (as is mutilation), or remediable (as is wounding, or some curable injury). And if in mutilation, in two ways, because either it is extreme, which impedes in totality some human act that would belong to a man according to that part amputated (as in amputation of the right hand, where altogether is taken away human act of a nature to belong to him according to that hand), – or not extreme, that is, not impeding a human act (as amputation of a finger or some part of a finger).

B. About Restoring Goods

227. About all these losses it must be seen first what about all of them can justly be established, – second what has been established.

1. What Can be Established

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

229. And if it be objected ‘therefore the judicial Law of Moses would remain, and then it would be licit in the Gospel Law to Judaize as to matters judicial’, – I reply: some law can have strength as from the legislator in that community where it is established, and then wherever the reason for establishing it be taken from, the statute does not have force as established by another, although it come to be from another, but as from him [the legislator]. And in this way the judicial [laws] of the Mosaic Law could be established by the Pope and the Emperor to need being observed by Christians, nor would they be observed as from the Mosaic Law or as established by Moses, but as by the Gospel Legislator; nor would this be to Judaize, because the judicial law is not kept because it is Mosaic, but because the same law is established by the prince, who can establish laws in the Christian Church.

230. This is proved:

First about the fact, because many such things are received in the *Decretals* from the judicial [parts] of the Mosaic Law, as is plain in *Extra*, ‘On injuries and loss’, ch.1 and the 5 following, which are all taken from Gregory IX, *Decretals* V tit.36 chs.1-6, all of which are taken from *Exodus* 21.18-19, 33-36, 22.5-6, and are kept today as canon laws, and not because they are in the Mosaic Law.

231. This is plain through four examples:

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

232. It is plain too in cities where the governing is through a power presiding within: one [city] accepts the laws of another and ordains them to be kept in this city.

233. It is plain too in kingdoms, as the laws of England another king could accept, and establish them in his own kingdom to be kept.

234. It is plain too in religions, because another Religion [sc. Religious Order] seeing the *Constitutions* and *Ordinances* of one Religion to be honorable and well fitting for observance of regular life, could establish that those would be observed in this Religion; nor then would [the Order of] Preachers be obligated because they are the ordinances of the Friars Minor, but because approved by the General Chapter of [the Order of] Preachers.

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

if they are established by a legislator to be observed for any time whatever, they are justly established.

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

2. What has Been Established

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

For the first loss and the greatest, namely the taking away of life, regularly in many communities the law of like for like [‘an eye for an eye’] has been established, as namely that a murderer die. And reasonably, namely because not only does this belong to the Mosaic Law, but also to the natural law, and is approved and confirmed in the Gospel Law by Christ, *Matthew* 26.52, “everyone who kills by the sword shall die by the sword;” and consequently wherever such law about life to be rendered for life has been established, justly should a man patiently pay the penalty and bear it; but if anywhere it not be established, none ought to inflict it on himself, because none ought to be a murderer of himself without a special precept of God; but it is expedient for him that he expose his life in a just cause, as against the enemies of the Church, for making restitution to him whose life he took away.

238. But if he not will to make so great a restitution, he cannot be altogether immune from restitution, as some fatuous people do, who absolve murderers, not showing to them the restitution necessarily incumbent [on them], as if it is possible more easily to pass over a homicide than (so to say) a dogicide or an oxicide, because if someone had killed his neighbor’s ox or dog, he would not be absolved without restitution. He is bound therefore to making a spiritual restitution, equivalent to the life that he took away, as there can be an equivalence in such cases. Nor this alone, but if the one killed was supporting others, as a father or mother or neighbors, the killer is bound to all of them for as great restitution as he took from them through the killing of that person.

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

Let this therefore be said about him unjustly killing.

240. But who is he justly killing?

A response is had in Gratian, *Decretum* p.2 cause 23 q.5 ch.9, “If it is not licit,” and it is entitled there: ‘Augustine, *City of God* 1 [ch.2]’: “With these,” says Augustine, “excepted, whom a just law generally or God especially commands to be killed, whoever has killed a man will be guilty of the charge.” And what the just law is, he himself

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

241. To the matter at hand, Divine Law prohibits it, “Thou shalt not kill” [*Exodus*, 20.13], and to no inferior is it licit to dispense in the law of a superior; therefore, no positive law constituting a man to be killed is just if it establishes it in those cases in which God does not make exception. But he makes exception in many cases, as is plain in *Exodus* 21.12-22, 29, about blasphemy, homicide, adultery, and many others. None therefore kills justly according to the law unless the positive law inflict homicide, nor is that case excepted by God prohibiting homicide.

242. If you object that therefore the law is unjust which prescribes that a thief is to be killed, because God has not excepted this from that negative precept ‘Thou shalt not kill’, namely the sin of theft, rather he manifestly shows that he does not will to except a thief from that negative precept ‘thou shalt not kill’, nor does he want him to be punished with death, because he inflicts on a thief another penalty’, – I reply: it is clear that God in the Mosaic or Gospel Law explicitly does not except the sin of theft from that precept ‘thou shalt not kill’, so that to be sure because of this sin it be licit to kill a man; and therefore unless he has revoked it by some special revocation (which is not had from Scripture, nor have we heard it from any bull [official decree] descending from heaven), I do not see that any just law can establish anyone to be killed for theft alone; but I say ‘alone’, because if he is a thief, and along with this an intruder, he is presumed a murderer because he is willing to kill, and for this is ready if someone resist him. This is plain through that of *Exodus* 22.2-4 about a thief by night and by day: a thief by night is killed with impunity; and he who kills one entering by day to steal will be guilty of homicide. The cause of the diversity is that it is presumed that he who steals by night would kill one resisting him if he could; but not he who enters by day.

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

244. About another loss in body, namely extreme or non-extreme mutilation [n.226], there has not been established in the Church but a pecuniary penalty; and that should respond not only to the loss that someone incurs through the mutilation for the whole future time in which he was going to use the member cut-off, but also to the expenses added in curing (and this the chapter says adduced in *Extra*, ‘On injuries and loss inflicted’ [n.230, Gregory IX, *Decretals* V tit. 36 ch.1]); and further for placating the one wounded, which would also be required even if there were not such mutilation; and for the consolation of him himself afflicted, because for him the desolation is perpetual about such mutilation. And more to be weighed is the mutilation of the poor than of the

rich, if he more need the part cut off for necessary sustenance, because he would have used that part for procuring necessities; albeit on the other side there may be a certain preponderant condition, namely the dignity of the person, but this is little as to the first condition.

II. To the Principal Arguments

245. To the first argument [n.214] it is plain how it is possible to restore a good of the soul in the first article, and a good of the body in the second, by restoring corresponding exterior goods or, for killing, [corresponding] spiritual goods to him killed.

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

Question Four

Whether he who Harms Someone in the Good of Reputation is Held to Restitution so that he Cannot Truly Repent unless he Restore the Reputation

247. Fourth it is asked whether he who harms someone in the good of reputation is held to restitution so that he cannot truly repent unless he restore the reputation.

248. It seems that not:

Extra, ‘Of columniations’, Gregory IX, *Decretals* V tit.1 chs.1-2: infamous is a denouncer or accuser of a false crime; therefore he denying a true crime placed against him unjustly defames the accuser, because he shows him an accuser of a false crime, – and yet he, denying such crime placed against him, is not bound to restore reputation to him accusing, because it more seems that he accusing should restore reputation to the accused, since he cannot prove the crime placed against him.

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

250. On the contrary:

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

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

I. To the Question

252. I respond: in general someone can defame another in three ways: in one way by imposing a false charge; in another way, a true charge, however hidden, with the order of law not kept, namely by proposing it in public; in a third way by denying a true charge, but hidden, in public however imputed to him, because in denying this he marks the imposer of it with calumny.

A. Defaming by Imposition of a False Charge

253. About the first I say it is necessary to restore reputation, by retracting that which he imputed to him, because otherwise he does not keep justice in rendering to his neighbor what is his, – and this publicly, if he publicly imputed it to him.

254. It seems the contrary, because it seems he should be more zealous for his own reputation than for another's; but he could not return to him his reputation by retracting his own word unless he defamed himself.

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

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

257. An example: someone commits fornication, three seeing it; they afterwards, when accusing him of the crime, do not defame him, but he himself has defamed himself in that public fact, because briefly, by committing any crime whatever publicly, he incurs injury to his dignity, and thus loses his reputation, as far as is in himself; nor does that publication afterwards, through which that harm is made known, take reputation from him, but only makes come rather into public [knowledge] that which first, from the nature of the act, was simply public.

258. And if you ask, “someone is not exposing in public such crime to another, but is murmuring it and speaking of it indiscreetly, or telling it in the presence of many, yet not as certain to him, but that so he heard, is he not bound to make restitution?” – I reply: “Trust is therefore rare, for many speak much;”⁴⁰ and therefore he who says he only heard, unless from manner of speaking he show some greater certitude than from common report, does not take away, by the nature of his act, from the opinion of others this person’s reputation; because if these firmly conceive him – about whom the talk is – [to be] criminal, they are shallow, because “he who believes quickly is shallow in heart,” *Ecclesiasticus* 19.4.

259. However, because it is necessary to beware of scandal of the weak, according to that of Paul *I Corinthians* 8.13, “If I scandalize my neighbor, I will not eat meat forever,” and there are many weak like this, shallow for believing evils, therefore it is dangerous in their presence to relate to them things like this heard by report. And if this be done with evil mind, namely of harming him whom the talk is about, it is not easy to excuse it of being against charity, and consequently a mortal sin. But if it be done in the presence of such by inadvertence, it is hard for it to exceed the genus of venial sin, because the tongue is in a slippery place, and “he who offends not in word is a perfect man,” *James* 3.2.

B. Defamation through Revelation in Public of a True but Hidden Crime

260. About the second [n.252] I say that he is not bound to retract his word, which he put forward in public, because by doing this he would be lying, since he knows that what he put forward is true; and he is not bound to lie because of any good at all to be rendered to another; but he is bound in another licit way to return him his reputation, as for example by these words: “Do not believe him to be such, for I spoke badly and spoke foolishly;” and these words indeed are true ‘I spoke badly, I spoke foolishly because, with the order of right not kept, I proposed in public what is not true public’; and this persuasion ‘do not reckon him to be such’ is good, because anyone at all is to be presumed good until the contrary be proved, according to that *Extra*, Gregory IX, *Decretals* I tit.12, ‘About making scrutiny in order’, single chapter: “Human fragility should reckon him worthy whom it does not know to be unworthy;” but this [man] has not been proved bad in their presence; therefore, it is good to persuade them that they not reckon him unworthy nor bad.

C. Defamation through Negation of a True Crime but Hidden Imposed in Public

261. In the third member [n.252] I say similarly that he is not bound to retract his denial, whereby he denied in public a true crime charged against him, because not anyone is bound in court at once to confess himself guilty, when not at once convicted; he is however bound through certain sober words, as was said in the last article [n.160], to restore reputation to him whom he has indirectly marked with calumny, by saying, “Do not hold him for a calumniator; for I believe he had a good intention in making the charge, or perhaps he believed that he was proving his charge, and was deceived.”

⁴⁰ From the anonymous ‘Sayings of Cato’ I n.13 (Baehrens ed., *Poetae Latini Minores* III, Leipzig 1881)

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

It seems that so, because he lies with a lie pernicious both to the republic (because the republic on account of his public lie is impeded from just punishment of him) and to the person accusing (because by this he is noted a calumniator).

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

264. And when it is added that this is pernicious against the accuser, – I reply: I say that not, rather he himself is pernicious to himself who in that way brings [a charge] in which he had no duty to bring it, indeed a duty not to bring it; and therefore let him impute it to himself if any infamy follow, because he himself is cause, and not he denying it, because he is defending his innocence in public, where he is not guilty nor to be held for guilty until he has been convicted.

265. But there remains a difficulty in itself, whether he sins in lying for himself. It would seem hard that anyone at all accused in public should be at once bound by necessity of salvation to confess in public, and thus at once to expose himself to the gibbet in a cause of blood. But also, having an eye not only to the penalty but to the honorable and dishonorable, it does not appear that he honorably and according to right reason ought to confess in front of such a judge, because he himself, more than any other individual making accusation, would take away reputation from himself, because he who confesses against himself in a court of law is publicly believed.

266. What then? Cautious is the response of the jurists ‘I deny the charges as they are proposed’; these [words] indeed can without lying be said in the matter at hand, because the charges are made in public, and as public and as publicly needing to be proved; and thus to deny them can he do who knows that they cannot be proved in public.

267. But what if the judge urge him to confess the charge made or to deny it publicly? He could reply that he himself is responding sufficiently to the accusation and as it is the manner for jurists to respond, nor from that does he wish to depart; let the judge do toward the accuser what is of the law.

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

269. I reply: “It is a mark of good minds to acknowledge fault where no fault is,” Gratian, *Decretum*, p.1 d.5 ch.1, and it is entitled ‘Gregory’;⁴¹ and therefore much more, where it is doubted whether there be fault and what sort of fault, it is a mark of a good mind to acknowledge fault And therefore in such a case it is safe after such denial to be penitent indistinctly, – and this as about what sort it is, namely under this sort of indistinctness: as of mortal if it is mortal, of venial if it is venial.

⁴¹ Taken from a letter attributed to Gregory the Great, *Epistle* 11, ‘Response to Augustine, bishop of the English’.

II. To the Principal Arguments

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

271. To the second [n.249], if it be argued about him who, having been accused in public, the order of right not kept, has denied it, I concede that he is not bound to restore reputation to the accuser, rather the accuser imputes to himself his own infamy, because he has impudently and unjustly acted in public making a private accusation.

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

Sixteenth Distinction

Question One

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

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

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

3. That not:

Sin is a simple defect, therefore there can belong to it a simple remedy; penitence is such a remedy; therefore etc.

4. Again, if there were parts to penitence, either integral or subjective [parts], – and I take ‘integral’ commonly for essential and quantitative parts. Not integral, because the whole is not predicated of such part; but to be contrite is to be penitent, and to confess is to be penitent, and to satisfy is to be penitent; therefore etc. Nor are they subjective parts, because in any subjective part the idea of the whole is perfectly saved without another part: for Socrates would be perfectly man although there were not several supposits in the human species; but in contrition without the other [parts] the idea of penitence is not saved perfectly; therefore etc.

5. Again, if so, either [parts] of penitence-virtue or of penitence-sacrament:

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

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

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

7. Again, fruit is not part of that of which it is the fruit (it is plain both by example, as an apple is not part of the tree of which it is the fruit; and by reason, because fruit is the ultimate thing that is expected from that of which it is the fruit); no part, therefore, of

penitence is such an ultimate of penitence. But now satisfaction is the fruit of penitence [*supra*, d.15 nn.32-33], according to the gloss⁴² on *Matthew* 3.8 “Bring forth fruit worthy of penitence,” and according to [Ps-]Augustine, *On True and False Penitence* ch..14-15 nn.29-31 (and it is put in this distinction 16 [Lombard, *Sent.* IV d.16 ch.2 nn.1-5]).

8. To the contrary:

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

I. To the Question

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

9. Here it has to be understood – besides that way according to which ‘penitence’ is taken for the sacrament of penitence [*infra* n.25] – that ‘penitence’, or rather ‘to be penitent’, can be taken differently in many ways:

For as is had from what was said in distinction 14 questions 2 and 3 [nn.86-92, 168, 187], it happens that [penitence] has a certain justice vindicative of its proper sin; and next to that, there is an elicited act proper to it, which is a certain ‘to will’ imperative of a penalty, as of what avenges the fault; in third rank is an effect next to that elicited act, which effect is some act or some acts on which follows the penalty of avenging (for the will cannot through an act of willing command a penalty except by first commanding the cause of the penalty, because passions are not in the power of the will save by the mediation of acts); fourth and last there follows the penalty consequent to this act commanded by the elicited act of penitence-virtue itself, and that penalty is the remote effect of that elicited act.⁴³

10. Now the distinction between all these is plain through the ‘to be able to be separated from each other’:⁴⁴

For that virtue is able to be without the elicited act (it is plain of itself), and conversely, because (as was said) the first act conform to right reason – [an act] of a nature to generate virtue – can be had before anything of virtue is had, because it is the cause of generation of the first degree of virtue.

11. Similarly, that elicited act, which is second, can be without the third, namely without the act commanded, because not at once does an act that is commanded follow on

⁴² Nicolas of Lyra: “For the fruit should not be equal of him who has done no or less sin and of him who has more gravely fallen.”

⁴³ Scotus is following here the analysis of the idea of penitence given in d.14 n.90 (save for omission of the fifth part): “... it needs to be known that ‘to be penitent’ requires a distinct prior knowledge of that about which one is penitent, according to this understanding. Where I say that these [following] things are disposed in order: [1] to command the conjunction of the partial proximate causes of sadness; [2] and these conjoined partial causes, which are the proximate effect of that command; [3] and further, there follows a remote effect of this command, namely the sadness itself; [4] afterwards there can follow contentment in the sadness, which is an act of will having sadness for object; [5] and lastly joy over the sadness, according to that [remark] of Augustine, “Let the sinner grieve over his sin and rejoice over his grief”

⁴⁴ Cf. d.14 n.91: “The distinction of these is plain: of the first indeed, namely of command, from the proximate causes of sadness, as of principal and remote cause from secondary and proximate cause; of the second from the third, as of the cause from the effect and of the action from the passion; and of the third from the fourth, as of the object from the action; of the fourth from the fifth, as of the object from the passion appetitive of this object.”

an act of command in the will, because the will when commanding is not omnipotent, and conversely.

12. That third one can be without the second, namely any act causative of a penalty can be without an act of will commanding this act, just as someone can have detestation of a sin, committed by himself, immediately from contemplation of God, although he not command such act to be elicited as vindicative of guilt.

13. Also can the third be without the fourth, because not always on these acts, which would be of a nature to generate a penalty, does a penalty follow, because of some indisposition perhaps in the power itself susceptible of the penalty, just as not always on the unwilling or hatred of sin committed does sadness follow, as was said before.

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

It is therefore possible for any of these to be without any other, and any two or three together without any other or others.

15. To the matter at hand, about this term ‘to be penitent’, properly (as was said before [d.14 n.61]) it is ‘to hold a penalty’;⁴⁵ now ‘to hold’ includes the act of the holder, namely that he voluntarily hold it, and the application of the penalty to him, that he hold it in himself. This habit therefore can be called ‘penitence’, which is a certain habitual holding of a penalty, as if a principle habitually inclining to inflicting on oneself voluntarily a penalty; and its elicited act can be called ‘actual penitence’ or ‘the to be penitent which is a certain willing inflicative of a penalty on oneself’; and that act commanded next by an elicited act of justice can be called ‘to be penitent’, because it is voluntarily to have in oneself a penalty, at least in its cause; nor otherwise can what is equally principally ‘willable’ be had as in its cause; the fourth, namely, ‘to be punished with a penalty following that act’, is not properly to be penitent, but rather (so to say) to be ‘penitent-ed’, that is, to be ‘held by penalty’ or – more in use – to be punished.

B. About these Ways of Taking in Respect of Penitence-Virtue

16. To the matter at hand:

The three aforesaid things [sc. contrition, confession, satisfaction, n.2] are in no way parts of penitence-virtue, as was argued to the main point [nn.3-7], because that is a certain simple form in the will, as is charity or any other justice. And it is plain from something else, because that is permanent in the way permanent things belong to virtue. But contrition and confession and satisfaction are certain things having ‘to be’ in coming-to-be; but a permanent thing does not consist of parts having ‘to be’ in coming-to-be. Again, those last two [sc. confession and satisfaction] are not in the will as in a subject, but are certain things exterior.

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

⁴⁵ Scotus here adverts to the fact that the Latin for penitence or to be penitent can be derived from ‘poenam’ and ‘tenere’ which together mean ‘to hold a penalty’.

18. But speaking of penitence in the third way, namely for proximate cause of the punishment itself to be inflicted, which is an act commanded by an act of penitence-virtue, the parts of this can be posited those three.

19. And likewise of that fourth [part], which is ‘to be punished’, the parts can be posited the three penalties which are concomitant with these three acts. And this in this way: commutative justice universally has respect to equality in exchange, and this is not equality of the thing, but rather according to right reason; and in this way therefore penitence or punitive justice in itself, which is a certain commutative [justice] in punishment, has respect to the penalty equal to or commensurate with that fault, and this according to the right reason of that law according to which it is vindicative [justice].

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

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

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

23. That act therefore, which is the proper proximate cause of sadness, is called ‘contrition’; the second act, which is the proximate cause of blushing or shame, is called ‘confession’, where a sin hidden is made manifest to man.⁴⁶ The third cause proper to the third penalty is some laborious or penal work.

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

C. About these Ways of Taking in Respect of Penitence-Sacrament

25. About penitence-sacrament I say that those three are in no way parts of it, because, as was said in distinction 14 [n.195], penitence-sacrament is that ‘absolution by a priest done in certain words etc.’ Now of this no part is ‘contrition’, which is a something spiritual in the soul; nor ‘confession’, because it is nothing of the sentence itself of the priest, but the act of the guilty party accusing himself; nor satisfaction, but it follows that sacramental absolution.

26. These three however are required for the sacrament of penitence, for this that it be worthily received, as preceding or subsequent.

For simply there is required ‘confession’, because a priest does not absolve arbitrarily if the guilty party has not first been accused in that forum [sc. of sacramental confession].

⁴⁶ As particularly to a priest in auricular confession.

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

Now ‘satisfaction’ ought to follow the sacrament of penitence, for this that it may have efficacy, – and this I understand in fact or in will, unless the judge were able to weigh carefully that those other penalties preceding suffice for payment of the whole penalty. Now this judgment of the priest does so absolve that it yet binds: it absolves from the debt of eternal penalty, but it binds for payment of temporal penalty, unless it be sufficiently already paid; it also either in no way absolves, or at any rate not efficaciously, if that guilty party not be in himself in due way disposed, because the sacrament is a sign of an interior absolution, and that interior [absolution] is not concomitant unless there be due disposition in the mind interiorly of the one to be absolved.

II. To the Principal Arguments

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

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

In one way for such an adequately correspondent [penalty], – and thus a single penitence and a single penalty correspond to a single fault and that, if it has parts, is disposed to them as to integral parts.

In another way penitence can be taken – in the third way said or the fourth – for the general idea of that which is ‘to hold a penalty’, or ‘to be punished for a fault’, albeit not adequately, – and in this way it is a whole universal to those things that are integral parts in the first way. This is plain in an example: for let it be that someone has killed another, just can the law be that he be punished with a bodily penalty, and that a monetary penalty be handed over to the friends of the one killed; each of these is a penalty, and a penalty for homicide; in this way it can be called a penalty universal in respect of the monetary penalty and the bodily penalty, because each of these is a penalty and for this sin. In another way, taking the penalty for homicide whole and adequate to the fault, neither corporal punishment nor monetary is that penalty, but an integral part of that penalty.

29. And according to this it is plain how penitence is predicated of any at all of these three divisively [sc. contrition, confession, satisfaction], taking them for holdings of some penalty corresponding to the fault, but not totally and adequately, – and how, from another side, none of these without another makes penitence complete, and understand [sc. ‘complete’] as ‘adequate to guilt’.

30. To the third [n.5], it is plain that they [the three of contrition, confession, satisfaction] are not parts of penitence-sacrament nor of penitence-virtue, nor even acts of that virtue, but acts commanded by that virtue, which is the proximate punitive act, – and the penalties, accompanying them, are parts of the remote effect of an act of penitence; however the elicited act of penitence could in some way be said to have those parts not

formally, but quasi causally, to the extent it itself is in some way distinct as it commands this part and that; and in this way very remotely they could be called parts of that virtue-penitence as it inclines to inflicting all these.

31. To the fifth⁴⁷ [n.7] I say that of penitence-virtue and its elicited act and its commanded act the exterior laborious work is the fruit; and in this way must it be understood about the exterior work worked. And I concede that that work is not part of penitence said in any of these three ways; it is however part of that which is ‘to be punished’, which is the fourth among those [parts] before enumerated [n.9]; and it is not anything unacceptable for the same thing to be part of a prior and fruit of a posterior.⁴⁸

Question Two

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

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

33. That not:

[Ps.-]Augustine, *On True and False Penitence* ch.14 n.29 (and it is in Lombard’s text, *Sent.* IV d.16 ch.2 n.1), “It is necessary for the sinner to grieve, not only because he has sinned, but because he has deprived himself of virtue.” And from this it follows that to sin is not formally to deprive oneself of virtue, nor is to sin formally the privation of virtue; but the infusion of grace, if it is formally the expulsion of some privation, is only of its own privation; therefore, it is not itself the expulsion of guilt. Therefore, a different matter for grief is the privation of virtue and the guilt itself; therefore – by the opposite – the expulsion of guilt and the restitution of virtue is one and another matter for joy.

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

35. Proof of the antecedent:

Vice is a certain positive quality, as timidity or stinginess; for not everyone lacking fortitude is timid, but he having the habit inclining to being afraid, – nor is everyone lacking liberality stingy, but he who has acquired the habit from frequently stingily acting.

It appears also by induction in vices, that those extremes incline the powers to acts conform to themselves, just as the [virtuous] means to the acts conform to them, and this inclination is not through privation alone; but now, when there are two opposed positive forms, one of which succeeds to the other, there are different changes, because

⁴⁷ No response is given by Scotus to the fourth argument in n.6. The Vatican editors write: “The reason is that Scotus, in putting the *Ordinatio* together, follows the lectures he gave before at Paris and Oxford, the student reports of which (*Reportationes*) have come down to us. And already in *Rep.* IV A d.16 q.1 n.1 the fourth argument is lacking. In place of ‘To the fifth argument’ the codices and editions pass on ‘to the fourth’. So rightly is there here placed in edition ‘v’ a marginal note: ‘To the fifth. The solution to the fourth is clear from what has been said’. Similar lapses for similar reasons occur elsewhere too.” The answer to the fourth argument would presumably come from the answer to the third, that penitence has satisfaction as a part quasi causally or as a remote effect, for satisfaction can be a part of penitence in this way and yet be posterior to it in order of nature. This answer is in effect, anyway, what the response to the fifth argument says, that something can be both part of something, and thus not posterior to it, and also a result of it, and thus posterior to it.

⁴⁸ A bit obscure. Perhaps the sense is that it is *part* of ‘to be punished’, which is prior in universal predication; and *fruit* of the commanded act of the will, to which it is a posterior in the analysis of ‘to be punished’.

there are four terms, as is plain in alterations from contrary to contrary [e.g. from black to white, and from white to black].

Further, generation and corruption are two changes, because of the four terms, namely two privations and two forms [e.g. from non-black to black and from non-white to white]; here there is corruption of the sin that was present, and a certain generation in gratuitous 'to be' when grace is infused; therefore, two changes.

36. Further, a disposition and that for which it disposes are not the same; the expulsion of guilt disposes to infusion of grace. Proof, because by expulsion of guilt he is not an enemy, and by infusion of grace he is a friend; but 'not to be an enemy' disposes for 'to be a friend'. And from this could the main argument be made, because it is not the same thing 'to cease to be an enemy' and 'to begin to be a friend'; but by expulsion of guilt he ceases to be an enemy, and by infusion of grace he begins to be a friend; therefore etc.

37. On the contrary:

If expulsion of guilt is another change from infusion of grace, either therefore it will be a positive change or a privative one, or – as others say [cf. Scotus, *Ord.* IV d.10 nn.44-50] – either it will be an acquisitive change or a corruptive one: not acquisitive, because the term 'to which' of a positive change is something positive, but of that expulsion there is not a positive term 'to which' other than grace; nor a privative [change], because then the term 'from which' would be positive, but guilt is not anything positive; therefore etc.

38. Again, if this and that be a different change, they will have some order between them of prior and posterior, because they are ordered to the same end, – and not equally so, because not equally immediately do they attain the end; but it is not [possible] there to grant some order; therefore etc. Proof of the minor, because, if expulsion were prior in nature, then in that prior [stage] this [person] would be a friend, and yet not a friend, because not having grace, without which none is a friend: for if infusion of grace were prior, in that prior he would be a friend, because having grace, and yet at the same time an enemy, because still having guilt.

I. To the Question

A. Possible Solution

1. First Conclusion

39. Let this therefore be the first conclusion, that 'the infusion of grace and expulsion of guilt or – more properly speaking – the remission of guilt are not simply one change'.

40. This is proved in four ways:

First thus: the same thing simply cannot be multiplied and not multiplied, and this in taking uniformly 'the same' and 'multiplication' (namely if really, really, – if in idea, in idea): for this includes the opposite of a first principle, because the same thing 'as it is the same' is one and is not one. But remissions of faults are many, when there is not but one infusion of grace (in the way in which someone is called a sinner after an act of sin passing by, and is called a sinner by many faults after he has committed many), – and of these, any at all has a proper remission, because any remission at all could be without another, if he had committed only that fault and not another.

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

42. Third thus: guilt and grace are not formally opposite nor formally repugnant (proof, because then an agent acting effectively or defectively, having power over the ‘to be’ of one, would have power effectively or defectively over the non-being of the other, as is plain universally in impossibles; but the created will has power effectively or defectively over the ‘to be’ of guilt, because by it guilt is; therefore it would have power effectively or defectively over the ‘not to be’ of grace, – which is false, because grace is not destroyed unless it be annihilated; but a creature cannot annihilate anything. The first proposition is therefore plain, namely that ‘there is not formally a repugnance between guilt and grace’); but there is no single change from anything as from the term ‘from which’ to another as to the term ‘to which’, unless they be formally repugnant; therefore etc.

43. Fourth thus: there is not a single change to a positive form except from the proper privation of it; guilt, as by it after an act someone is called a ‘sinner’, is not the proper privation of grace (because a single grace has not but a single privation; now there are many guilts in this way, as was said in the first reason [n.40]). Nor is it valid to object – against the major – that any change has each positive term, for of this change, which is to grace, the per se term ‘from which’ is privation, and consequently the proper privation of the term ‘to which’.

2. Second Conclusion

44. The second conclusion is this: ‘the infusion of grace and remission of guilt are not two real changes’.

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

46. The major of this reason is proved [n.45] – and it is plain from this that here there is one real change.

47. The minor needs proof:

Where it must be understood that if actual sin were posited to be the corruption or privation formally of some degree of nature or of natural rectitude or of some positive proper thing or other, then expulsion of guilt would be restitution of that positive thing that guilt was depriving; and then that expulsion [of guilt] could be a real and positive change from privation of this rectitude to the rectitude itself.

48. But this was rejected in *Ord.* II dd.34-37 nn.36-40, 46, because intellectual nature is incorruptible through any action whatever of itself; and just as the whole of nature [is incorruptible] so also any degree of it, because if one degree could be corrupted by nature itself through its own action, it would follow that through actions several times repeated the whole could be corrupted. Hence, as was said there [*ibid. supra*], that [remark] of Augustine in *Enchiridion* [cited by Scotus in *Lectura* II dd.34-37 n.36], “sin is to that extent bad to which it takes away from the good” must be meant not that it takes away from the goodness of nature in first ‘to be’, because the defect of a contingent effect is not repugnant to the cause, because neither is it repugnant to the contingent effect to which it would more seem to be repugnant;⁴⁹ but it must be meant ‘to take away good in second act, not indeed [a good] that is present, but that ought to be present’.

49. Therefore if it were posited that some stain were to remain in the soul, proper to actual sin, and that it were expelled through penitence, then remission of guilt could be posited to be a real change from that guilt to the lack of it; but this was rejected above in distinction 14, question 1, first article [nn.17-20, 34], where it was shown that after the transient act of guilt, interior and exterior, besides the habitual injustice, which is lack of grace and single in a single soul, there does not remain any proper actual injustice, whereby he may be called a sinner with such sin, because the soul is not immediately receptive of that obliquity which is of a nature to be in actual sin, but only through the medium of the proximate act in which is that wrongness; therefore, after the act passing by, the soul only remains obligated to the proper penalty corresponding to that fault committed; and so this obligation is called ‘being accused’, which remains in the soul after the passing of the act intrinsic and extrinsic.

50. And from this can the minor be proved of that reason accepted before [nn.45, 49; from d.14], thus:

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

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

52. The antecedent is plain because, just as what is willed by me, through this that it is willed by me, has no new real form, absolute or relative, but only a relation of reason corresponding to the real volition in me, so by this that someone is willed or ordained to a penalty by the divine will, after he has committed a fault, since the fault does not remain neither as any real positive or privative thing, nor will any real relation remain founded on the fault, but only [a relation] of reason; and this, when taking relation of reason indifferently for an object willed just as for an object understood, as is had in *Ord.* I distinction 45 question 1 nn.7-110, because no more real is the conferring of an object willed through an act of will to something else than the comparison of an object understood to something else through an act of intellect.

B. Weighing of the Aforesaid Possible Solution

⁴⁹ Sin is a contingent effect of nature, for no one sins by nature or necessarily; and it is not repugnant to nature, for then sin would be naturally impossible; and a fortiori sin is not repugnant to acts of virtue, which are also contingent effects, and opposite effects, of nature.

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

54. It is confirmed, because before remission the divine intellect knows that he is deservingly to be punished, therefore this known thing is true, – after remission the divine intellect knows he is not to be punished; therefore also that is true; therefore there is a passage; therefore etc.

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

C. Scotus' own Response

56. I reply. Here must first be seen something about a created will, and next it must be applied to the matter at hand.

1. About a Created Will

57. A created will, although it cannot at the same time will affirmation and negation for the same thing for the same time, yet it is able not at the same time to will [them] for the same thing for the same time, namely through diverse acts succeeding each other in turn, and it can at the same time will them for the same [thing] for not the same time, and this for the same thing in no way varied in itself before the term of volition, – it is plain, if it were to consider the same thing for diverse 'nows', and that for those ['nows'] opposite things belong to it.

58. But neither is it necessary that that, for which it wills affirmation and negation for diverse 'nows', is varied from that volition, unless there be a sufficient cause of those opposites, and so an absolute volition, not a conditioned one: for if there cannot be a cause of these opposites, namely if both are not causables outside, because they are only beings of reason (as if I will for this [person] ownership or something such that is not causable really in him), or if that thing willed for him is causable, not however by this will (as I will for this [person] beatitude, which is some real thing causable in him, not however by my will), if too it is causable in this [person], and by my will commanding the causable, I might will it for this [person] only conditionally for *a*, and the opposite conditionally for *b*, – neither is it necessary for this opposite to be present for *a*, nor that for *b*, unless the condition were to exist for both or for either.

2. About the Divine Will

59. To the matter at hand, [I say] that whatever objects – sins excepted and things generally inordinately willed – a created will can will for the same ‘now’ or for one and another ‘now’, and this either in one act or in diverse ones, – [all these] the divine will can in one act will for the same [person] for the same ‘nows’ with a single volition really, but diverse ones in idea, because that a will is limited to some secondary objects precisely, such that it not have power for others, is a mark of imperfection in the will; and consequently for diverse instants [the divine will] can will affirmation and negation for this [person who is] in no way varied in himself before the act of volition. And this [the divine will can do] more than the created will, because the eternal depends less on the temporal than a temporal act on the temporal, indeed it does not depend.

60. If that affirmation and negation, wherewith that will wills for this [person] – not varied in himself – one thing for *a* and a second for *b*, are simply causable, it follows that they are causable by the divine will, because it is omnipotent. But if they not be causable, or that will wills only one of them or both conditionally, it follows that that will wills for this [person] one opposite for *a* and another for *b*, and without any change of itself both in itself and in its act, and without change of object as it is object; because both the volition and the object as it is object for the will have ‘to be’ in eternity, nor could the object vary, as it is object for an act, without variation of act.

61. And from this it therefore follows that the divine will can will affirmation for this (let it be called *c*) for instant *a*, and for the same *c* negation (let it be called *d*) for instant *b* without any change either in the divine will or in the object as it is object, or in anything outside; and this if between those opposites there not naturally be change (to wit, because either the affirmation is not unless only an affirmation of reason, and consequently the negation only a negation of a being of reason; or the will does not will them, except conditionally both or either).

62. But because no being of reason is new except through a new act of intellect or will, that condition, namely about a being of reason [n.61], does not save the passage from contradictory to contradictory without change, albeit not between those that are [beings] of reason, yet between act and non-act; because therefore of the omnipotence of the divine will, in no way can it will for this [person] *c* instead of *a* and *d* instead of *b* without some change in this [person], – and this if it will them with efficacious and absolute volition. But if it will both or either conditionally, and the condition not exist, then neither is there required a change. But a created will, because it is not omnipotent, can absolutely will for the same non-varied [person] *c* instead of *a*, and *d* instead of *b*, and without any change preceding or following.

63. To the form therefore of the reason⁵⁰ I concede the major, taking change properly. But the minor in this way I deny, because the divine will, for the instant for

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

which this [person] sins, and for the whole time had up to instant *b*, wills him to be punished, not insofar as ‘to be punished’ is a participle of future time but insofar as it is a noun, that is, he wills this [person] to be deserving to be punished, – which is nothing else if not to will to punish this person for then, and this with conditioned will, namely if it be done in the end [sc. if the person persists in sin until death]. But if in instant *b* he repent, he [God] wills him for then, and for the whole time following up to the instant of a new sin, not to be punished, – which is to will him conditionally not to be punished if he come to be in the end.

64. Here therefore there is not a passage from one opposite to the other, but here there is about the same object a conditioned ‘to will’ of affirmation for one instant, and a conditioned ‘to will’ of negation for another instant; and these two ‘to wills’ in eternity stand together, and about the same object willed in eternity, although not for eternity, but for one and another ‘now’.

65. And by this it is plain to that proof about the divine intellect [n.54], which knows this [person] before remission [of sin] to be deserving of punishment, and after remission not to be deserving: for this is not other than to know him to be ordained to punishment through an act conditioned for this instant for which he is thus ordained, and not ordained for that instant for which he is not so ordained.

3. Objections and their Solution

66. If you argue that simultaneity of every sort is impossible, because [God] would then will opposites at the same time and for the same time, therefore necessarily some succession is required there, and thus change, – I reply: there is not required succession of act to act, nor of act as it tends over an object to an act as it tends over another object, because in eternity it tends over both; but not succession either of one object to another in the external thing, because for that volition the existence of an external thing is not required, just as neither the temporal for the eternal, but there is required there some succession of those things that are objects in objective ‘to be’.

67. Nor is this the same: ‘thus to have an order’ and ‘to have an order in being object’, for the prior as ‘prior’ and the posterior as ‘posterior’ can be understood at the same time, such that in being an object for the intellect itself they do not have an order, and yet there is an order of them as they are objects, namely in their objective ‘to be’. Nor from this order of objects in objective ‘to be’ does any change follow, because opposite does not succeed to opposite, neither in ‘to be known’ nor in ‘to be’.

68. If you argue against this, that always there stands a difficulty of idea, because first one part of a contradiction is true, namely ‘this [person] is ordained to punishment’, and second the other part is true, namely ‘he is not ordained to punishment’; but there is not a transition from contradictory to contradictory without a change; therefore etc.; – I reply:

In eternity this is true ‘he for [time] *a* is ordained to punishment’ and ‘he for *b* is not ordained to punishment’. Nor are these contradictories at the same time true, nor succeeding to each other in truth, but the things for which the affirmation and negation are denoted to be present, they are apprehended as succeeding to each other really or possibly.

Or in another way: nothing else is ‘he is now ordained to punishment’ but ‘he is willed for punishment for *a*, if then he be judged’, and ‘he later is not ordained to punishment, that is, he is not willed for punishment for *b*, if he then be judged’, – and these are not contradictory.

But that each volition, pertaining to retention and remission of guilt, is not but a conditioned [volition] is plain, because if [God] were to will absolutely to punish the sinner immediately when he had sinned, at once he would punish.

69. Against this whole process about diverse ‘nows’, for which there is offense and remission: because God could for a sinning angel existing in the aevum⁵¹ remit the offense without all time, and then it would not be [possible] to grant such diverse ‘nows’ for which there would be guilt and remission, especially if the aevum be posited indivisible; if it be said that then there would be another aevum for the guilt, and that that then would cease to be with remission arriving, – on the contrary: one or other of these two, either guilt or remission, is only a privation, and so does not have a proper aevum; by comparing also with the aevum of an angel abiding first under guilt, afterwards under remission, in that same aevum and for that same aevum there would be these two opposites.

70. Let the response to this be looked for in *Ord.* II d.2 nn.48-79, in the question ‘About succession of the aevum’.

71. But let it be that God remits guilt in this way after the offense, without any change in the act or in the object as it is object, or in the object as outside, surely to this act of remission in Peter – to whom remission is made – does there not correspond outside some change of reason?

72. It seems that so, otherwise Peter is no more absolved or reconciled after remission than before. But if it does correspond, about that the question will be whether it is the same as the giving of grace or something else.

73. It can be said that where an act – in which the object has the ‘to be’ of reason – can be the term of a real change, there the object can change with a change of reason (just as a stone can come from non-understood to understood by me, because there can be a new intellection of it); but where the act is in no way the term of a real change, there the object in the act cannot change with a change of reason. Of this sort is the divine ‘to will’; and consequently Peter, as he is an object of this act, because as outside having a new ‘to be’, does not have the idea of an object recently, but uniformly in eternity; and so it does not seem a change – neither of thing nor of idea – needs to be posited in Peter, when the fault is said to have been remitted to him.

74. Concomitant, however, with this remission there, active of God and passive in Peter, is a certain real change, – and this always of [God’s] ordained power, which is for giving grace to Peter, because God of his ordained power remits [sc. sin] to none for *a* without then giving him grace; but of his absolute power, both in the thing outside and in the act inside, these could for eternity be separated, so that namely he would give remission to Peter in *a*, with *a* arriving, which is not but an imminent act in God, and yet not give him grace in *a*, with some act passing by outside, if in eternity he willed to give remission for *a*, when *a* arrives, and yet not did not will in eternity to give him grace for *a*;

⁵¹ The ‘aevum’ or ‘aeviternity’ is the scholastic term for the duration in existence of angels who, unlike God, are not eternal and, unlike men, are not measured by time here below.

because the first says nothing but the negation of a positive act, which is ‘to will to punish’, but the second states a positive other act.

75. And if you argue ‘Peter cannot be otherwise disposed to the divine will, as to punitive will or non-punitive, except because he is otherwise disposed according to something else, to wit because accepted or not accepted, for an object not varied in itself, according to anything else prior in act, is not differently an object for divine volition’, – this is false, because our will too can in some act be differently disposed to an object when being uniformly disposed also before the act, and could [be so] if it always had the same act contingently passing over secondary objects.⁵²

II. To the Principal Arguments of the First Part

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

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

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

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

III. To the Reasons Adduced for the First Conclusion

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

⁵² That is: the will is free and not determined by its (secondary) objects, so that its acts relative to them are contingent. Consequently, if the same contingent act about the same object were always being done it could always be done differently. Scotus is not of the view that if we were in the same conditions again we would choose and do the same act again. On the contrary, our will could always have chosen differently; and if ours then a fortiori God’s.

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

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

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

IV. To the Principal Arguments for the Other Part

84. To the principal arguments for the opposite.

To the first [n.37] I say that just as guilt or obligation to a penalty, which alone remains after the passing of the interior and exterior act in the sin, is a being, because [a being] of reason, and so is a positive being, – and consequently non-guilt or non-obligation or non-debt is privation of a being of reason; and so if there were anywhere a passage of reason from obligation to non-obligation, that would be a change of reason privative or corruptive. But that would be nowhere, neither in an act of the divine will nor in the object as it is object nor in the object as outside, – unless it be said that to the extent it is in the object outside, to that extent that object is in that ‘now’ for which the act of the divine will respects that object; and then that the object outside passes from ‘not being in that now’ to ‘being in that now’ is for it concomitantly to change with a change of reason from ‘being obligated’ to ‘not being obligated’. When therefore you argue that there is not a corruptive change, because the term of it ‘from which’ is not anything positive, I deny it. Nor yet is the fault anything positive, nor does that remain, but the obligation following the commission of the fault is something positive, and that remains.

85. The second argument [n.38], about prior and posterior, is pondered by some in this matter, because in positing a distinction between these changes, they look for an order between them [Aquinas, *Sent.* IV d.17 q.1 a.4; Richard of Middleton *Sent.* IV d17 princ.4 q.4].

86. Briefly therefore I say that according to the Philosopher, *Metaphysics* ‘On the Prior’ 5.11.1019a2-14, and 9.8.1049b17-21, 9.9.1050a4-7, some things are prior in generation, some in perfection; and these priorities are commonly conversely disposed; for in the way of generation the more imperfect are prior. In this way, I say that if expulsion of guilt were some being, and infusion of grace similarly, prior in the way of generation would be the expulsion of guilt; but, conversely, the infusion of grace would be prior in the way of perfection, because more immediate to the end itself, which is simply perfect in this order. Likewise about priority of consequence, it is plain that the more imperfect is prior, just as animal according to consequence is prior to man, and

universally the consequent is more imperfect than the antecedent.⁵³ Thus in the way in which there would be a consequence between them, expulsion would follow on infusion, not conversely; for they are not immediate opposites simply from the nature of the extremes, but from divine institution. But the induction of one does not follow the removal of the other, except in opposites immediate in themselves.⁵⁴

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

88. But it could be said, denying that [point, n.87], that it is a contradiction to be a friend to God and an enemy to him: by grace one is a friend, by guilt an enemy; therefore etc.⁵⁵

89. But this is not compelling, because ‘friendship through grace’ is to be ordained to eternal life, ‘enmity through guilt’ is to be ordained to condign penalty: these can stand together, though not for the same ‘now’. At any rate, in whatever way they are opposites, there more seems to be a formal consequence from ‘grace is present’ to ‘guilt is not present’ than conversely, because in the second the antecedent in no way posits the consequent.⁵⁶

90. But if it be asked about the priority of causality among these, I reply: there is no question; for neither is this negation of obligation, which is only a negation of a being of reason, a cause of grace nor conversely, because the divine will alone from its own justice determines this obligation or, from mercy, non-obligation.

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

92. Or if it be said that by ‘to be in’ or ‘not to be in’ nothing is posited in this [person] externally, but only as he is an object of divine volition, it can consequently be said that these secondary objects according to perfection have a certain order, as the

⁵³ In the consequence ‘if...then...’, the antecedent entails the consequent but not vice versa, as that ‘if it is a man, it is an animal’ but not ‘if it is an animal, it is a man’. So ‘animal’ is prior to ‘man’ in the sense that in order to be a man it is necessary to be an animal, but it is not necessary to be a man in order to be an animal. The consequent (animal) is thus not only prior to but also more imperfect than the antecedent (man), because it does not include the antecedent but the antecedent does include it.

⁵⁴ The correct consequence is, ‘if there is infusion, there is expulsion’ but not ‘if there is expulsion, there is infusion’. The reason is that expulsion [of guilt] and infusion [of grace] are not immediate opposites simply by the nature of their extremes, but by divine institution. For instance, non-x and x are immediate opposites by the nature of the extremes, so that if one then not the other (if non-x then not x, and if x then not non-x). But expulsion of guilt and infusion of grace are not immediate opposites by reason of the extremes of ‘guilt’ and ‘grace’, but by divine institution. For while by that institution expulsion of guilt and infusion of grace go together, there is no necessity in the nature of ‘grace’ and ‘guilt’ that they should, or that the removal of the one extreme, guilt, should necessitate the presence of the other, grace.

⁵⁵ Sc. therefore grace and guilt in concrete fact are opposed as contradictories, and so as immediate extremes.

⁵⁶ The consequence that ‘if grace is present, then guilt is not present’ holds; but the converse that ‘if guilt is not present, then grace is present’ does not hold.

divine will tends toward them, but according to causality and generation they have no order, etc.

Seventeenth Distinction

Single Question

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

1. "Here arises a question etc." [Lombard, *Sent.* IV d.17 ch.1 n.1].
2. About this seventeenth distinction I ask whether for salvation it is necessary for a sinner to confess all his sins to a priest
3. That not:
Ambrose [*On Luke* 10 n.88] on that of *Luke* 22.62, where it is had about Peter that after his denial "he wept bitterly," says, "Tears wash away the transgression that by voice it is a shame to confess; I read his tears, I do not read satisfaction."
4. Again on *Psalms* 31.5, "I said, I will confess," Cassiodorus says [*Exposition on the Psalms* 31.5, taken from the gloss, Nicolas of Lyra]: "'I said', that is, I deliberated with myself, that 'I will confess, and you have forgiven'; great the mercy of God, that he remits sins for a promise alone."
5. Again, Augustine *ibid.* [*Expositions of the Psalms*, ps.31, 2 n.15; Lombard, *Sent.* IV d.17 ch.1 n.3], "He does not yet pronounce [his sins], but promises he will, and God dismisses them."
6. Again, *Ezekiel* 18.21-22, "In whatever hour the sinner laments [his sins], his life will live" [*supra* d.14 n.128].
7. For this too are set down some authorities here in the text [Lombard, *Sent.* IV d.17 ch.1 n.4], about Lazarus, *John* 11.44, that he was resuscitated first before being loosed from his grave clothes, and about the lepers, *Luke* 17.14-15.
8. Again by reason:
The precepts alone of the Decalogue are necessary for salvation, according to that response of the Savior in *Matthew* 19.17, "If you wish to enter into life, keep the commandments," and elsewhere [*Luke* 18.20, 28], "You know the commandments...this do and you shall live;" therefore, if confession were simply necessary for salvation, it would be contained under one of the ten precepts of the Decalogue; but this is false, because the precepts are of the law of nature, and at least they were binding in the time of the Mosaic Law; but neither in the law of nature nor in the Mosaic Law was there obligation of confessing sin to a man; therefore etc.
9. Again, "none is obligated to the impossible" [*Digests of Justinian*, L ch.17 n.185]; but the dumb cannot speak. Again, everyone who is a stranger among those for whom he is a barbarian is dumb; therefore, he is not held to confess.
10. Again, he who does not have a priest present cannot confess to him in words, nor is he bound to confess in writing, because about this there is found no precept issued.
11. Again, none is bound to lie, rather everyone is bound by the Divine Law not to lie, at least perniciously; but he who has a conscience that through his whole life he has lived innocent or without mortal sin, if he were to confess that he had sinned at least mortally, would be lying; therefore etc.

12. On the contrary:

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

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

14. One is of Ambrose [*On Paradise* ch.14 n.71], “It is not possible for anyone to be justified from sin unless he has first confessed his sin.”

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

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

I. To the Question

17. In this question there are three things to be seen: first, by what precept a Christian is bound to making confession of his sin committed to a priest; second, what that precept includes about confession; third, what about that through a precept of the Church has been further explicated.

A. By what Precept a Christian is Held to Making Confession of his Sin Committed to a Priest

1. About Natural Right and Positive Divine or Ecclesiastical Right

18. About the first, for the matter at hand we cannot find a precept by which one is bound to confession except either of natural right or positive right, and this either divine or ecclesiastical.⁵⁷

19. Now that is ‘a practical truth of natural right’ whose truth is known from the terms, and then it is a principle in the law of nature (just as also in speculative matters a principle is known from the terms or what follows evidently from such truth thus known, of which sort a demonstrated practical conclusion is); and strictly speaking, nothing else is of the law of nature save a principle or a demonstrated conclusion; thus however, by extending it, sometimes that is said to be of the law of nature which is a practical truth consonant with the principles and conclusions of the law of nature, to the extent that at once it is known to everyone that that belongs to such law. And from this it is apparent that not rightly does Gratian speak [*Decretum* p.1 d.1⁵⁸] about the right of the law of nature, wanting all things that are in the Scripture of the Old or New Testament to be of the law of nature, because neither are all those practical principles known from the terms, nor demonstrated practical conclusions, nor truths evidently consonant with such principles and conclusions; he needs to be expounded therefore that he is extending

⁵⁷ These three members are at once explained: natural right [n.19], divine positive right [n.20], and ecclesiastical positive right [n.21].

⁵⁸ “Natural right is what is contained in the Law and the Gospel”

natural right to right posited by the Author of nature, as it is distinguished from positive right, which evidently is posited by someone who is not author of nature.

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

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

This is also plain, because those [things] that are of the law of nature, whether properly or by extension, are always uniform; not so these ceremonies, which were different for the time of the other Law.

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

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

a. In the Time of the Law of Nature and of the Mosaic Law

22. To the matter at hand I say that one is not bound by a precept of the law of nature to the confession of sin about which it is being asked, because then this obligation would have been for the state of any law at all, – which is false because neither was it in the state of innocence nor in the state of the Mosaic Law.

23. If you object, through the gloss [Nicolas of Lyra] on *Genesis* 3.9 “Adam, where are you?”: It is the voice – [the gloss] says – “of one rebuking and seeking after confession etc. [and not of someone ignorant];” therefore there was confession in the time of the law of nature after the Fall;

24. Likewise about Aaron and his sons it is read that they had “to confess the sins of the sons of Israel” [*Leviticus* 6.25, 7.1, 8.1-2, 14, 16.21], and frequently that he who had sinned in the Law, that he had to confess his sin and offer such or such a sacrifice [*Leviticus* 4-5, 9.1-15, et al.];

25. This is also confirmed, because in the *Old Testament* many are the authorities about making confession, as that: *Proverbs* 18.17, “The just man is the first to accuse himself etc.” [cf. also *Joshua* 7.19, *3 Kings* 8.33, *Nehemiah* 1.6, 9.2 et al.];

26. Besides, that it is a conclusion following from the principles of the law of nature is proved thus: this [proposition] is known, ‘every culprit should be judged’, and this that ‘none should be judge in his own cause’; therefore, a culprit should be judged by another. By another he cannot be judged unless he be accused to that other; nor can he be accused except by himself if his sin was secret; therefore, he ought to accuse himself before another by whom he may be judged; and it is more consonant to reason that in

secret than that in public, if his sin be hidden; indeed it is perhaps sufficiently known to natural reason that if the sin be hidden, that the accusation ought to be hidden. Therefore, from propositions known by the law of nature, or at any rate very evidently consonant [with the law of nature], it follows that this secret confession of one's own sin is to be made to another, and then to none more reasonably than to a priest:-

27. I respond to the first [n.23]: Adam ought not to have hidden his sin from God, because [God] himself is the judge to whom every sin is manifest, in whose presence every culprit should acknowledge his fault; and this confession God required from him, which he not only did not make, but excused his sin by turning it back onto the woman, saying [*Genesis* 3.12], "The woman whom you gave me etc." Hence this does not prove that in that law confession needed to be made to man, though it did need to be made to God reproving.

28. To the second [n.24]: in the whole Mosaic Law this confession was not being made that we are speaking of, but about hidden sins only was confession being made to God; about certain public failings however and the observance of legal requirements, the confession of each was being made when for such failing he offered sacrifice, and the general confession of the priests [*Psalms* 105.6]: "we have sinned, we have done unjustly etc." And in this way the public confession of the priest was a certain disposition for seeking the mercy of God for the people, – just as also now in the Church, by the confession we are now speaking of, we confess that we have sinned, and we ask mercy for ourselves and the whole people.

29. To the third [n.25] I say that all the authorities of the *Old Testament* for proving confession, as we are here speaking, are only verbal, not judicial. – Of what confession therefore are they speaking? I say that of that general one, the sort the priests made [*Leviticus*, 4.1-12, 6.17-23, *Numbers* 15.25-26, 18.1-7 etc.] and Daniel [*Daniel* 9.4-19] and many other holy Jews [*Exodus*, 32.31-32, 2 *Chronicles* 6.21-42 etc.]; or of that confession of their own public failing about non-observance of the legal rules, as are those irregularities in contracting the impurities of the Law [*Matthew* 15.1-20, *Mark* 7.1-23].

30. To that reason [n.26], I concede that that [sc. 'every culprit should be judged'] is known by the natural light, or at least very consonant with a known proposition, that 'a culprit is to be judged, because no failing is to be left unpunished in the universe, if there is one Ruler of the universe and this a just one', – which is known naturally or very consonant with things known naturally. But further, when you say he is to be judged by another [n.26], I concede it.

31. But who that other may be is not known by natural reason, nor even by any things consonant with natural reason, except about God, who is rewarder of merits and punisher of sins; and then further, 'that other [person] cannot judge unless accusation be made to him' can be denied, because he [God] knows sins even before they are done, without all accusation; or let it be that that be granted as consonant with things known, that 'to this Judge ought the fault to be accused and by the one sinning himself, because he alone knows', – from all these it does not follow but that the sin ought to be confessed to God, and I concede that this confession was to such extent of the law of nature, that is, consonant with truths known from the law of nature that, for every state after the Fall, the just, who had faith about God that he was Ruler of the universe and just punisher, were, after they had sinned against the law of God, confessing their sins to God, seeking from

him remission, knowing that he without such remission as just judge would avenge that sin.

32. And if you argue that he should accuse himself to some other who may be his judge – this cannot be proved through things known by the law of nature nor [through things] evidently consonant [with it], because no sinner can be judge of a man's sin except as minister of the supreme Judge; this, namely 'to be minister of the Judge' in judging or punishing the thing committed, is more conceded to each with respect to himself than to one with respect to another. For to each has God committed that he be minister of God in judging his own sin, inflicting sadness on himself and displeasure about his sin; but not thus is it known that he has conceded to anyone to be his minister in executing judgment against another for his sin.

33. If you argue that in the human republic one is judge of another, – I reply: it is true in those [sins] that can become known to him in that court, of which sort are public [sins].

b. In the Time of the Gospel Law after Lateran Council IV

34. If the third member [nn.18, 21] be held, namely that confession does not fall except under a precept of the Church, it cannot easily be rejected unless either because the Church would not have accepted so arduous a precept to impose on Christian men if it were not a divine precept, or because there is not found where this precept is imposed by the Church but that before [then] the saints reckoned the precept about confession to obligate. For if that chapter be alleged, *Extra* 'About penances and remissions', Gregory IX, *Decretals* V tit.38 ch.12, it is plain that that chapter is from Innocent III in Lateran Council IV [1215 AD].

c. In the Time of the Gospel Law before Lateran Council IV

35. Now before that time for many years, more than for 800 years, there was Augustine's [advice], and he himself proved confession to be very necessary, as is plain in [Ps.-Augustine] *On True and False Penitence*⁵⁹ (and certain of his authorities are put in the text [Lombard, *Sent.* IV d.17 ch.1 nn.8-9], certain in the canon 'On penitence' d.5 [Gratian, *Decretum*, p.2 cause 33 q.3, d.5 ch.1, d.6 ch.1]). Nor would a canonist easily find any Council of the Church, or any precept proper, where a precept is expressed about making confession, as we are here speaking of it.

36. This opinion does the glossator hold, 'On Penitence' d.5 at the beginning [*Gloss on Gratian's Decretum*, p.2 cause 33 q.3, d.5 ch.1], where, after diverse opinions recited about the institution of confession, he adds his own saying: "It is better said that it was instituted by a certain universal tradition of the Church rather than from the authority of the *New and Old Testament*."

37. But, saving his grace, he speaks unreasonably as a canonist. For it would be unseemly for a theologian to say something is in the Bible and not know where it is found; and so should it to be for a canonist to say that something was instituted from the universal tradition of the Church and not to find that in Canon [Law] if Canon [Law] sufficiently contains the universal traditions of the Church; and he does not allege any

⁵⁹ In fact, from Augustine *Sermon* 392, *To the Married*, ch.3 n.3, and *Expositions on Psalms* ps.68 sermon 1 n.19.

chapter of Canon [Law] for this tradition, but only afterwards adds that “the tradition of the Church is obligatory” [*Gloss on Gratian’s Decretum* p.2 cause 33 q.3, d.5 ch.1], and for this he alleges the article in d.11, ‘In these things’ [Gratian, *Decretum* p.1 d.11 ch.1].⁶⁰

38. Again, if this opinion were true, the Pope would not be bound to confess because, as is had in *Extra* ‘On the signification of words’ [Boniface VIII *Decretals Book Six* V tit.12 ch.3], “an equal does not have command over an equal.”⁶¹

Again, it would not seem that infidels were bound to the precept about confession, because according to the Apostle *I Corinthians* 5.12, “For what have I do to judge them that are without?”⁶²

39. However, one argument the glossator does hint at for his opinion, of this sort: ‘Confession is not necessary among the Greeks’; but it would be necessary, if the precept about it were from the authority of Sacred Scripture.⁶³

40. But the antecedent is not manifest; for just as baptism of water is necessary among them – just as also for us – as the first plank, so too (as it seems) penance, indeed the sacrament of penance as the second plank [cf. *supra* d.14 n.13].

41. And if the antecedent be proved because there is not a custom among them of confessing – I reply: they [the Greeks] omitted many laudable customs after they departed from the Church, and so this [custom], not only laudable but even necessary, they could omit. Nor does denial of that act induce a custom. Nor too is this so known to the Greeks, which he himself takes for antecedent, namely ‘that they are not bound [to confess]’, but that their not confessing is not known the more.⁶⁴ Nor does any doctor writing against their other abuses express this anywhere, although however there would have been a noteworthy disagreement with the Roman Church if in this they had disagreed – more noteworthy, to be sure, than their confecting [the Eucharist] in fermented bread, or their using this form of baptizing, ‘may the servant of Christ be baptized etc.’, about which the Latins do not keep silent.

3. The More Reasonable Conclusion is to be Held

42. Briefly, it seems more reasonable to hold to the second member [nn.18, 20], namely that confession falls under a positive divine precept.

⁶⁰ “In these things, about which nothing certain has been established by divine Scripture, the custom of the people of God and the institutes of the ancestors are to be held as law.”

⁶¹ That is, if the rule about making confession holds because sanctioned by a Pope, and a Pope is not under command of a Pope (for a Pope is equal to a Pope), then it would seem that Popes are not bound to the rule about making confession, whereas in fact, and as Scotus means, the value and importance of confession holds for all Christians, including Popes.

⁶² If the precept about confession comes from Church tradition, then infidels, who are not bound by the law or tradition of the Church, would not be bound to confess, but they are so bound by the law of nature [nn.22-33]. So obligation to confess cannot be Church tradition alone.

⁶³ Sc. “therefore the precept does not come from the authority of Scripture.”

⁶⁴ That is, if the glossator tries to prove his antecedent (‘the Greeks are not bound to confess’ [n.39]) by saying that the Greeks do not have the custom of confessing, then their not having that custom would be more known (to them and to others) than the antecedent. But it is not. For, as Scotus’ argument in the next lines continues, if it were thus more known, it would have been more a point of dispute between the Greeks and the Latins than disputes about the Eucharist and baptism, and it was not.

43. But then it is necessary to see whether explicitly in the Gospel immediately from Christ (because it is plain that not in the Old Law), or from him explicitly in some apostolic doctrine, – or neither this way nor that but given by Christ and promulgated verbally by the Apostles to the Church.

44. The first of these would more need to be held, if this precept could be evidently had from the Gospel. Nor is it necessary to adduce for this that of *Matthew* 16.19, “I will give you the keys of the kingdom of heaven,” because that is not but a promise about a future gift. But if anything in the Gospel has force for that, it is that in *John* 20.22-23, “Receive the Holy Spirit; whose sins you remit etc.”

a. Solution of Others and the Weighing of It

45. From this it is argued:

In one way thus [Hugh of St. Victor, Alexander of Hales, William of Auvergne]: here power is given to the Apostles, and in them to all priests, of remitting sins; not principally, because this is proper to God, therefore ministerially and by arbitration; but they cannot arbitrate in a cause unknown; therefore, the cause is to be manifested to them in which they must arbitrate. This making manifest is confession; therefore, from that conferring of the power of arbitration on priests in a cause of sin, sinners are obligated to accusing themselves to them as to arbiters, which is to confess.

46. If it be said that reason does well conclude that the sacrament of penance was instituted by Christ as useful and efficacious, however from this it does not follow that it must necessarily be received as falling under precept, because extreme unction was instituted by Christ, and the sacrament of confirmation as was said above [*Ord.* IV d.7 n.18], and yet neither is simply necessary, nor is there a precept about this one or that. And then to the form of the argument [n.45] ‘these are arbiters in a cause of sin, therefore others should accuse themselves to them’, is true: those who want to submit themselves to their judgment, and if they do submit, those [arbiters] do well have the power of judging, but it does not follow ‘therefore others are bound by necessity of precept to submit themselves to their judgment’. An example: let there be four priests, any of whom has the authority of absolving this sinner, – any at all is completely his arbiter as to power; it does not however follow that this [person] is bound to submit himself to any at all, but to the one only to whom he will have wanted. – This is confirmed through this that Christ subjoined, [*John* 20.23], “and whose sins you retain, they are retained;” but that word is not precise: for not only are those sins retained by God for penalty that are retained by the priest, because a priest does not retain any unless in some way revealed to him, although by signs undue for penitence; and yet those [sins] that are in no way shown to the priest God retains for the vengeance of Gehenna; therefore, neither was this statement “whose sins you remit, they are remitted” precise. Hence to neither affirmative did he adjoin the negative denoting that the remission done by the Apostles or the retention is precise in respect of the retention or remission to be done by God.⁶⁵

⁶⁵ The affirmatives are ‘whose sins you remit, are remitted’ and ‘whose sins you retain, are retained’, and the corresponding negatives are ‘whose sins you do not remit, are not remitted’ and ‘whose sins you do not retain, are not retained’. But neither of these negatives is simply true, because sins that the confessing penitent does not reveal to the priest are neither remitted nor retained by the priest, and from this there follows nothing about their being remitted or retained before God.

47. Although this sort of response [n.46] may seem very probable, by excluding the idea of the precept from this word of *John* “Whose sins you remit etc.,” yet, excluding it, the matter at hand is shown in two ways:

First thus: judicial or arbitrating power is committed to none unless there is imposed on someone the necessity of submitting himself to him; but to a priest – for you – judicial or arbitrating power is committed in a cause of sin; therefore, on someone, as on the guilty party, is imposed the necessity of submitting himself to his [the priest’s] judgment. – And through this the same major [sc. ‘judicial or arbitrating power is committed to none unless...’] is proved, because none is judge of anyone in whose will of judging to be sure it is to be judged by this judge or not to be judged: for then he [the judge] would have no authority of judging in himself if the other were able to be judged if he wanted, and not judged if he did not want. For to what [purpose] is the power of judging with anyone if not so that he may declare right against him who is bound to obey the right? For only to declare the right by way of punishment, if you want to, is not to judge. But neither is this compelling: for I concede that that arbiter not only has to be able to dictate right in this case, but from the fact another submits himself to him, his dictate binds or looses him. Not so the dictation of anyone knowing the right and not having judiciary power.⁶⁶

b. Scotus’ own Solution

48. In another way therefore I argue thus: whoever has lost the first grace is bound by necessity of precept – and this of that [precept] ‘You shall love the Lord your God etc.’ [*Deuteronomy* 6.5, *Luke* 10.27] – to do as much as in him is for recuperation, and also by virtue of that precept, ‘You shall love...as yourself’ [*Leviticus* 19.18, *Luke* 10.27]; this [person] by mortal sin has lost the first grace, and can recover it by receiving the sacrament of penitence from that arbiter, because this was instituted as efficacious remedy for recovering the first grace, from that word of *John* 20.23, ‘Whose sins you remit’ etc.; and thus the necessity of the precept of confession arises or follows, not from this word precisely ‘whose sins you remit etc.’, but from this along with that precept, ‘You shall love the Lord your God,’ etc. joined at the same time.

49. If you say that the major is true, that ‘he is bound to some way through which he can recover’, but not to this one determinately if another be possible; but now, although ‘to receive the sacrament of penitence’ be a useful way, not however is it proved that that is precise for recovering that grace – against this:

No other way is so easy and so certain: for here nothing is necessary but not to put an obstacle to grace, which is much less than to have some contrition, which by way of merit by congruity may suffice for justification, as was said above in d.14 [nn.136-144]. For someone can be more certain that he is not putting an obstacle [in the way] than that he has sufficient contrition as if by way of merit by congruity, because he can probably know that he is now not sinning actually with interior sin nor with exterior, and that he intends to receive what the Church intends to confer in that sacrament; not so can he know that he has contrition sufficient as merit by congruity for justification. Then I take

⁶⁶ In other words, from the mere fact that priests do in fact know or determine the right, and do also bind and loose penitents who submit to them, it does not follow that the faithful are obliged to submit to this or that particular priest. For until a penitent does so submit, no priest has such power over him.

this major: ‘where there is an easier way, that is more in the power of man, and more certain for receiving grace, everyone is bound to that way, so that, with that omitted, let him not attempt another more difficult and more uncertain, because then he would expose himself to the peril of his own salvation, and would seem a despiser of his own salvation’; but that way of receiving the sacrament of penitence is more possible for a man and more certain for recovering the first grace; therefore from that wherefrom this way has efficacy, and from that precept of love of God and of neighbor and of oneself, one is bound to this way.

50. This reason, if it do conclude that the precept of confession is had from the Gospel, from that word ‘Whose sins you remit etc.’ and from that ‘You shall love the Lord your God etc.’, well indeed. But if not, this at least it concludes, that a precept of God about making confession is very reasonable for the multitude, because although some person could have some special remedy, however about this remedy because it is more possible for the community, and more certain, rationally is a precept given, and to everyone in the community, – just as was said above about baptism [*Ord.* IV d.4 nn.126-129], that although someone may have the baptism of desire without the baptism of water, yet because the baptism of water is the easier remedy, therefore a certain [remedy], a precept about this for the whole community is very reasonable; and so at least I will have that very reasonably a precept would have been given generally about making confession.

51. But if you altogether contend that, for the reasons set down in this member [nn. 42-45, 47-50], it is not proved from the words of the Gospel that it has been given, shall we really say the second thing, that this precept is had from the words of some Apostle?

52. It is said that so, from that word of *James* 5.16, “Confess your sins one to another etc.” [Hugh of St. Victor, Alexander of Hales, William of Milton, Richard of Middleton].

53. But neither through this does it seem to me that James gave that precept, nor that he promulgated a precept given by Christ.

54. The first not [n.53]: for whence to him the authority to obligate the whole Church, since he was only bishop of the Church of Jerusalem? Unless you say that the Church of Jerusalem was the principal Church, and consequently its Bishop principal Patriarch; which the Romans would not concede, nor that from him that authority – properly for the time – was taken away.

55. Nor the second [n.53], because the Apostles, making public the precepts of the Lord in their writings, were using a mode of speaking through which it could become known that they were the heralds of Christ, as is plain from that in *I Corinthians* 7.10, – when he [Paul] wants to make public the Lord’s precept about not dismissing a wife, he says: “Now to those who are joined in matrimony I command, yet not I, but the Lord;” but when he wants to give his own conviction about the cohabiting of a man converted to the faith with his unbelieving wife, or conversely, because this is licit without insult to Christ, not however is it necessary, he says [*ibid.* 12], “I say, not the Lord;” otherwise for the Church it could not be certain that he himself as herald was publishing a precept if from what preceded or what followed he was not making it manifest that he himself in that proclamation was herald.

56. Each member too [n.53] is proved together through his [James’s] own annexed words [n.52]: for by saying “confess...one to another” he is no more saying that

confession is to be made to a priest than to another. For he adds at once: “and pray for one another so that you may be saved,” where none would say that he had instituted or promulgated a divine precept; but his intention, as in that word ‘Confess one to another’, is persuasion to humility, so that to be sure generally we may confess among our neighbors, according to that of the first canonical [letter] of *John* 1.8, “If we say we have no sin, we deceive ourselves,” thus through the second remark [*supra*, “and pray for one another so that you may be saved”], he [James] is urging to fraternal charity, so that surely through fraternal charity we may come to each other’s aid. It does not therefore appear that this [verse] is about a divine right promulgated through Apostolic Scripture.

57. Either therefore the first member is to be held [nn.42-43], namely that [the precept] is one of divine right, promulgated through the Gospel, as is made clear in the second member [nn.18, 20]; or if that not suffice, the third member must be asserted [nn.18, 21], that it is of positive divine right promulgated by Christ to the Apostles, but promulgated to the Church through the Apostles without any Scripture; just as also the Church holds many other things promulgated orally through the Apostles without Scripture, whose foundation is that of *John* 20.30 (cf. 21.25), “Many other signs truly did Jesus do” etc., and it is had expressly in *Extra*, ‘On the celebration of masses’, Gregory IX *Decretals* III tit.41 ch.6.⁶⁷

B. What that Precept about Confession Includes

58. About the second article [n.17] I say that the precept includes ‘who’ ought to confess [cf. *supra* d.15 n.163], because an adult [ought], that is he having use of reason and knowing the sin that he has committed; by which ‘adult’ I do not mean of so great or so great an age, but that he have sufficient age for knowing the just and the unjust against the Law of God. For in many [people], before the accustomed age, “malice supplies for age” [*Code of Justinian* II ch.32 n.3], and not in the bad only, as common words say, because perhaps [age] does more quickly have prudence for evil (hence also it is called ‘capable of guile’), but also among the good, according to that in the legend of Blessed Agnes, “Faith is not computed in years” etc.⁶⁸

59. And of this briefly the rule is that he ought to be judged an adult who – instructed and questioned in ordered manner – perceives distinctly what is just and what unjust in the Divine Law; which can be seen if he respond to ordered interrogations in ordered way, just as someone else, perfectly adult, would from similar premises respond.

60. This precept [n.58] also includes ‘what’ should be confessed, because mortal sin [should be]. And it does not include anything else, for through venial sin no one is in peril outside the ship of the Church, because venial sin stands with perfect charity, which is the ship that saves; and so, from the first institution of penitence, as of the second plank, it is not necessary for anyone to take refuge to it for remedy against venial [sin], but only against mortal [sin].

61. But what mortal sin?

⁶⁷ “Certainly, many of the Lord’s words and deeds we find to have been omitted by the Evangelists, which the Apostles, it is read, supplied in word or expressed in deed.”

⁶⁸ Ps.-Ambrose, *Epistle to Holy Virgins* n.6: “infancy indeed was counted in her years, but maturity of mind in her morals.”

I say that every [mortal sin] about which memory is had; and this with diligent inquisition premised, according to the possibility of human weakness. And I mean: as much inquisition as someone might impose or perhaps could impose about something very hard, which would be much in his heart, that much one should pose about all mortal sins needing to be brought back to memory, and those brought back to memory should be confessed to the same [priest], not by dividing up the confession, because, as [Ps.-] Augustine says *On True and False Penitence* (and it is put in d.16 [Lombard, *Sent.* IV d.16 ch.2 n.5]), “Certain [persons] hide from one [priest] what they keep back for manifesting to another, which is to praise oneself and to tend to hypocrisy and always to lack the pardon which they believe they reach piece by piece.”

62. But it is objected against this, that then it seems that any sinner is bound to state all his sins to anyone asking, otherwise, by keeping quiet about them or some of them, he would be a hypocrite, because showing himself more innocent than he is.

63. I say that by keeping silent before him to whom I am not bound to speak I do not show myself innocent in the things I am silent about, but [I do] to him to whom I should speak and when I should speak, – just as in confession, by keeping something quiet while confessing something else, I show myself innocent in this which I am silent about: and in this there is hypocrisy, not in the other case.

64. Nor only the sins, rather all the circumstances of sins, notably the aggravating ones, the said precept includes, according to that of Ps.-Augustine in the place before [n.61, ch.14 n.29], “Let him consider the quality of the crime in place, in time, in perseverance, in variety of person” etc.: at any rate those, I say, [that are] aggravating and necessarily have to be confessed, which are prohibited by a special prohibition, as that ‘to take what is another’s’ is illicit and prohibited; but by a special prohibition it is prohibited to take from a holy place, and therefore the special sin of sacrilege is by this circumstance constituted; similarly, it is illicit and prohibited to know [a woman] not one’s own, but if she be a close [relative], it is prohibited by a special prohibition, – and therefore a special sin, namely incest, is constituted by this circumstance; frequency too, there is no doubt, is a circumstance simply positing another sin, because by any interchange a new sin is committed; and about like things there is a like judgment. Many too are the circumstances by which a sin is in some way more serious (as because, if the temptation is minor), and this too either on the part of the object or on the part of the person sinning, – about which it is not as certain that it is necessary to confess them, yet it is safe and useful to do this. But about other [circumstances] that are nothing to the purpose, suppose without which there would be as much gravity as with another impertinent circumstance, it is fatuous to confess them, suppose if someone has sinned with a woman who is called Alicia or Agnes or the like.

65. This precept also includes ‘to whom’ confession should be made, because to a priest: for he alone has the authority of binding and loosing, as will be said in d.19 [dd.18-19, n.52], and to a priest having jurisdiction, because a sentence – passed by not its judge – is null.

66. It also contains ‘when’, because whenever one is in danger of death: for anyone at all, when judgment of damnation or mercy is imminent, should prepare himself for mercy as much as he can. And this is not only to be done in mortal sickness but also when arduous acts are entered on, in which it is likely that death threatens, as in mortal combat and shipwreck and the like; and when he wants to exercise other acts, to which a

special reverence is due, as when he wishes to receive communion, because as was said above in d.9 [*Ord. IV* d.9 nn.15-18], when opportunity is had of a confessor, none should without confession receive communion; and about similar things the judgment is similar.

67. It contains also ‘how’, because [confession should be] with displeasure of sin committed, and with purpose of abstaining from sin and of obligating oneself to the Church as to satisfaction for such sin, understand not that it be necessary for him to want to take up a penitence from a priest, because if he wanted to receive none offered to him by a priest, and yet he had the two conditions put forward here [sc. abstaining from sin and obligating himself to satisfaction], and the purpose of receiving [the penitence] to be inflicted on him by God here or in purgatory, such a one – I say – would rather have to be absolved than repulsed, as was said above in d.15 q.1 [nn.50-51].

68. But if he take up some satisfaction imposed on him by the Church, he is bound to keep it; and that purpose it is necessary for him to have, so that he may confess in due way, so that to be sure he will to obey the confessor in keeping that satisfaction which he has voluntarily taken up imposed by him.

69. If it be argued against that which has been said in this article, what things are to be confessed, because all mortal [sins are, nn.60-61], because it was said above, in d.15 q.1 [n.53], that anyone can pay the penalty due for one sin, not paying for another, indeed remaining in the other sin, therefore by similarity he can pay the confession due for one sin, not paying the confession due for another, – I reply: there it was said that he who truly is once absolved from all sins can pay the exterior penalty imposed on him either in charity or in mortal sin; and let it be that he pay it in mortal sin, he is not bound to pay it again neither here nor in purgatory nor in hell [*ibid.* nn.55-58].

70. If someone never be truly absolved from that sin, suppose because when he ought to be absolved he puts an obstacle in the way, of which sort is this hypocrite who does put an obstacle in the way, then he is bound to pay whatever sort of exterior penalty he may pay or may satisfy.

71. And the reason is because it is first necessary for an eternal penalty to be commuted to a temporal one, before any temporal penalty may be any sort of payment for that fault; but when this hypocrite confesses, [the penalty] is not commuted, because neither is he absolved from that guilt; but it is commuted when this fellow truly once repents, although afterward in some way or other he back-slide: for he was at some time truly just, and not a debtor for an eternal penalty for [sins] previously committed; but this hypocrite always remains a debtor to eternal penalty for [sins] previously committed, and also he becomes debtor anew of a new penalty for the new sin that he has here committed.

C. What Concerning the Precept of Confession has been further Explicated through a Precept of the Church

72. About the third article [nn.17, 21] I say that the Church has specified this precept as to something of the aforesaid and as to other things has not specified it. The chief specification of this precept is found in that chapter of Extra, ‘On penances and remissions’, Gregory IX, *Decretals* V tit.38 ch.12, “All of each sex:”⁶⁹

⁶⁹ “Let all the faithful of each sex, after they have reached the years of discretion, faithfully confess alone all their sins to their own priest at least once a year...receiving reverently at least at Easter the sacrament of the Eucharist, unless

73. As to the ‘who’ [the Church] has made specification, because an adult sinner “after he has come to years of discretion” etc., which is nothing other than an adult according to the understanding assigned before [n.58].

74. Sinner and adult, as to ‘what things’: some say [Richard of Middleton, *Sent.* IV d.17 princ.2 q.4, d.16 princ.5 q.1] that if he has mortal sins, he is bound precisely to the confession of them, and not of venial sins; but if he has only venial sins, because of the precept of the Church he is bound in that case to confession of them.

75. This I do not understand, because since in that chapter it is said “all their sins,” either distribution is made there for venials or not. If so, then he having mortals is bound by virtue of this precept to confession of venials; if not, then he not having mortals but only venials, is not bound to confession of those, because they simply do not fall under that which is said there “all their sins”. Hence, it seems a contradiction, when positing the same understanding of these words “all their sins”, to say this [person] is obligated to confession of venials and this one not.

76. Again, let it be that someone has lived without mortal sin up to the middle of Lent. If he were then to be confessed so that he might keep the precept of the Church, for you he would be bound to confess venials, because those he has; let him on that day sin mortally, if he wish afterwards to fulfill the precept of the Church about confession, he is not held – for you – then to confess those venials that he had before; therefore by commission of a mortal sin he is absolved from the other obligation, – which seems irrational.

77. I say, therefore, that, as far as I take from the general statutes of the Church, no one is bound to confession of venial sins in any case whatever: nor in this has the Church specified a precept about confession; and reasonably, because it [the Church] uses the sacrament of penitence as the second plank after shipwreck, which is not necessary in venials.

78. Nor is anyone bound to any contrition for venials; indeed he dying in actual will or in act of venial sin will be saved; nor does it seem that anyone is bound to the second part of penance, which is confession, about a sin about which he is not bound to have contrition or attrition. This is also plain from something else, because (as was said above, [d.14, nn.149-150]) venials are deleted sometimes as to guilt and penalty without any special work, as through some fervent act of contemplation on God, in the way a drop of water is consumed at once by a vehement flame.

79. If you ask ‘how then will a priest know the face of his flock if he who says he has lived innocently is not bound to confess his venial sins?’ – I reply: if he were to make confession to him and only venial sins, from what would he [the priest] know that he [the penitent] had only done venial [sins]? From nothing except from his confession. Hence *Extra*, ‘On the office of an ordinary judge’ [not *Decretals*; in fact Henry of Ghent, *Quodlibet* VII q.24,], “Someone confessing penitentially must be believed in everything, because it is not likely that anyone would be forgetful of his own salvation”; therefore if in the same way he [the priest] believe him who comes to him and says, “Master, I give thanks to God that from when last I confessed I do not have conscience of mortal sin; give me the Eucharist,” in this penitence he [the priest] has as much knowledge of the face of his flock as if he [the penitent] had narrated his venial sins for two days; nor could

perhaps on the advice of their priest, on account of some reasonable cause, they have judged it necessary for a time to abstain from this sort of receiving.”

he [the priest] have other certitude about his venial sins than he has now about his innocence, namely through [the penitent's] own proper testimony.

80. As therefore to 'what things', the Church does not specify a precept about that.

81. But as to the 'to whom', [the Church] seems to make specification through this that it says: 'to the proper priest', for from the first institution of the Church there do not seem to have been distinct proper priests. For when the Apostles were going hither and thither preaching the word of God, then this one was priest of one [church], now of another, and now this [Apostle] and then that one, but afterwards dioceses and parishes and priests in parishes were distinguished; for then, however, any having ordinary or commissioned jurisdiction can be called proper priests; or only those having ordinary distinction in contrast to those with commissioned; or most especially only those having immediate and proximate ordinary jurisdiction.

82. According to these understandings, disputes can come about today between the commissioned and ordinary about the understanding of that chapter [n.72]: if only indeed proximate and inferior ordinaries do not dispute against superiors, so as to be themselves alone proper, and no others; for curates do not as easily dare to resist bishops as [to resist] poor privileged [priests].

If however the force is weighed of the term 'proper priest', namely who alone [is proper] and not another, or proper to this [parish] and not to another, in neither way is anyone obligated to confessing to his own proper priest, because if many are equally in charge of any parishioner, each absolves equally – the same also equally absolves many parishioners; therefore he [the proper priest] is understood for the one having jurisdiction for immediately absolving him.

83. Nor in this is then the precept specified, because it was in general about the 'to whom', namely to a priest having jurisdiction. And if anyone can commit that immediate jurisdiction to one [priest] which another [priest] has ordinarily (which they themselves do not deny that the Pope can do), then according to this understanding a commissioned [priest] can become proper. Therefore, the 'to the proper priest' does not specify the 'to whom', as it is included in the first precept, unless it is said that in the primitive Church any priest had jurisdiction over any penitent, and now to individual [priests] individuals are the determinate penitents as subject to them, and then any [priest] was 'proper' to anyone, namely in this way, that [he was] possessed of ordinary jurisdiction over anyone – but not 'proper', that is determinate to him or his parish, as now he is 'proper'. But this 'properness' bestows no special power on the 'proper' priest which he would not have had, but only limits some [penitents] to some [priests].

84. But if you ask whether from the force of the first precept, and of the explication of it as to this article 'to whom', it is licit to confess to a layman (to this the Master seems to say in the text that so; and he puts down authorities for himself [Lombard, *Sent.* IV d.17 ch.4 nn.3-8; also Gratian, *Decretum* p.2 cause 33 q.3, d.6 ch.1; vide n.35 *supra*]), – I reply: such confession can be matter for shame, which is one penalty due to sin, and by confessing in this way one does pay some penalty that one would pay if one confessed to a priest. But if accusation for this is done from the precept, and not for anything other than that a sentence may follow, and a layman has no authority for passing sentence in that forum, it follows that no precept is about accusing oneself to a layman; and perhaps it would be more useful not to accuse oneself before him, if one

could have equal shame with oneself in thinking over the same sins and thus be equally punished.

85. Someone might say that it is necessary not to confess to a layman, because no one ought to defame himself nor reveal his secret sin, especially when he to whom he reveals it is not presumed a hider of a secret nor knows better how to give advice than he to himself; for perhaps, on account of getting advice, it would be licit for someone to reveal his sin to some layman more discreet.

86. But neither is this clear, because advice could be sought with the case posited universally about anyone, without revelation of one's own sin.

87. What then about condemned malefactors confessing to laymen?

I reply: their simplicity excuses them, nor in this do they sin, and their humility is meritorious for them to the extent they want to supply, as they can, that which pertains to the sacrament of penitence. But to a discreet man, who would know well what confession was instituted for, it would perhaps neither be useful nor – without the ‘perhaps’ – necessary to make such confession.

88. As to ‘when’, the Church has determined a precept, namely “once in a year;” and that ‘once’ seems at least to be around Easter, at which time – according to that chapter⁷⁰ – every Christian ought to receive communion, “except in case...”

89. If you say that this specification is a relaxation, because they were before bound to confess at once when opportunity for a confessor was had, but now [sc. since Gregory IX, n.72] they are not bound until Lent, – I reply: each is a doubt for some, certain saying [William of Auvergne, William of Auxerre] that both now and then, when opportunity of a confessor is had, it is at once necessary to confess, certain [Richard of Middleton, Bonaventure] saying that not then either, but only to have it in desire to confess at some time before death, and not now, but in desire to confess but once in a year. The second [sc. the situation now] seems of greater weight, because ‘penal precepts are not to be amplified but narrowed down’ [Boniface VIII, *Decretals* book Six, V tit. 42, reg.15]; nor is it found when this affirmative precept may bind or obligate unless for ‘sometime’; and that ‘when’ before the specification of the Church was indeterminate to any ‘when’ before death; after specification it was indeterminate to any single ‘when’ in the year, always however it is necessary to have the will of confessing then for when the precept obligates, – this I say simply in this way, that never being unwilling.

II. To the Principal Arguments

90. To the first argument [n.3] it can be said that at the time of Peter's denial the sacrament of penitence was not instituted, but after the resurrection, when Christ said to his disciples: “Receive the Holy Spirit” etc. [*John* 20.22]; and therefore for then he [Peter] was not bound to confession; nor after the institution of the sacrament was he bound to this, because already before the resurrection, through another remedy, his sin was destroyed.

91. And it can be in like manner replied about the infidelity of all the disciples in the passion of Christ, that they themselves were not bound to confession, because after the resurrection they repented before the institution of the sacrament of penitence. This does well confirm that confession was not in the law of nature nor in the Mosaic Law.

⁷⁰ See n.72, and footnote.

92. But to those words of Ambrose, “Tears wash away” etc. [n.3], they are not to be so understood that without confession in act or habit the transgression is washed away; but contrition can be so great that in it even before confession the transgression is washed away, which yet is so grave that the following confession of it is shameful.

93. To the authorities of Cassiodorus and Augustine on that of the *Psalm*, “I said, I will confess” [nn.4-5; 6-7], I say that this confession has the purpose or promise of the confession going to follow, and thus the sin is not deleted without purpose of confessing. Which is plain from the end of the authority from Cassiodorus, where he adds, “the wish is judged for the deed,” as if he were to say that the intention, that is, the will to make confession, is reckoned for the future confession;⁷¹ nor yet from this does it follow that without future confession the sin may be deleted as to the penalty due, because this confession is a single penalty and if that not be paid here, let there yet be a will of paying it, it will be paid elsewhere. But if there not be a will of paying it, one is already turning back from true penitence and sinning mortally, as was said above [*Ord.* IV d.4 nn.128-129] about someone baptized with the baptism of desire, contemning afterwards the baptism of water.

94. To the first reason [n.8] I say that all the ceremonies both of the Old Law and of the New are to be reduced to some precept of the Decalogue, and they can be reduced to that one “Hear, O Israel, the Lord your God is one God” [*Deuteronomy* 6.4, *Mark* 12.29], or to that one “Remember the Sabbath Day to keep it holy” [*Exodus* 20.8]; for whether through the first or through the second precept we say that God has commanded that he is to be honored as God, it follows that these ceremonies, by which he wishes to be worshipped, fall under that precept, as a conclusion under premises.

95. If it be argued against this, because then these ceremonies would be of the law of nature, because the precept under which they are said to fall is of the law of nature, – I say that from a major [premise] about the law of nature and a minor [premise] about the positive law there does not follow a conclusion but of positive right. The major is this, ‘God is to be worshipped,’ and this is of the law of nature, or at any rate very consonant with the law of nature; the minor ‘to be thus worshipped’ is merely of positive law, for it varies for one time and another; the conclusion, ‘therefore he is to be thus worshipped’ is merely of positive law, because always a conclusion follows the condition of the more imperfect premise.

96. To the other [n.9], it is said [Aquinas, *Sent.* IV d.17 q.3 a.4 ad 2] that such person ought to confess through an interpreter, or through some signs other than words, which can be known to a priest.

97. The second [‘through some signs other than words’] is to be well conceded, if some such signs be common to the confessing mute or barbarian and to the priest. But the first [‘through an interpreter’] does not seem necessary, because this forum [of confession] of its nature is most secret; therefore not anyone is bound to this in any way public forum; but although the interpreter be willing and is bound as is the priest, if however they wish to be malignant he himself and the priest can be witnesses against the accused, and so

⁷¹ Citation from Cassiodorus *Exposition on the Psalms*, Ps.31.5, at nn.3-4 supra.; “Here the great piety of the Divinity is shown, that on the promise alone of devotion sins may at once be loosed, when in this way he [the Divinity] judges a pious vow as effect of doing the work [of penance].”

from the nature of this accusation this accusation⁷² can come to public notice, and so is not penitential.

98. From this it is plain that confession is not to be made to several priests at the same time necessarily so that they may better judge; because if this be done, it is not a sacramental confession. And most of all it seems that confession should not be done through an interpreter, when it is feared that he is not a suitable secret place; and in such case this [penitent] has the impossibility of confessing to a suitable man; let him therefore confess to God with purpose of confessing to a man when opportunity has been offered.

99. To the other [n.10], confession does seem sometimes to be made in writing, as is read of [Theodore] Bishop of Canterbury who sent to the Curia for absolution [*Poenitential* I chs.4 n.5].

100. But this seems to be against the idea of confession, because all writing of its nature is naturally public: for however much someone may keep secretly with himself something written, yet from the fact he is sending it, whether through a messenger or him to whom it is sent, it can be made public, and is always of its nature wide open to all who read it, saying what is contained there.

101. Anyone therefore writing something, does – in this – what is contrary to the nature of a sign suitable in confession, and in this writing is shame taken away, which is a great penalty, and this unless he confessing is present at the same time that the confession through writing is made. And therefore what is said in Gratian, *Decretum with Glosses*, p.2 cause 30 q.5 ch.4, that someone can confess through writing, Jerome expounds [in fact Ps.-Augustine, *On True and False Penitence* ch.10 n.26; Lombard, *Sent.* IV d.17 ch.3 n.4]: when he confessing is present, because absent he cannot [do so] licitly; therefore, let him absent wait for presence, with purpose of confessing when opportunity is had.

102. To the last one [n.11] I say that he innocent of mortal and venial sin is simply bound not to confess; hence if the Blessed Virgin had confessed to Blessed Peter after the Ascension, she would by confessing have sinned. But if one is innocent only of mortal sin and not of venial, he can confess venial sins, and it is possible for him not to confess them, as was said in the third article about ‘what things’ [nn.71-80]. Nor is it incredible that there are many in the Church who through a whole year live without mortal sin; indeed, by the grace of God, many in much time guard themselves without mortal sin, and they exercise many works of perfection, from whose merits the treasury of the Church is collected.

Eighteenth and Nineteenth Distinctions

Question One

Whether the Power of the Keys Only Extend itself to Temporal Penalty

⁷² The accusation, namely, that any penitent makes against himself in confession, which in this case is communicated though a third party, the interpreter: and that such interpreter can function as joint witness with the priest against an accused seems true enough, but also not altogether compelling. For while two witnesses to a confession would carry more weight in a court of law, bearing such witness would be a mortal sin for both witnesses together as for either separately. The Vatican editors note that Thomas Aquinas did counsel confession through an interpreter, *Sentences* IV d.17 q.3 a.4 qc. 3 ad 2.

1. “Here it is wont to be asked” [Lombard, *Sent.* IV d.18 ch.1 n.1].
2. The eighteenth distinction, in which the Master treats of the power of the keys, – and in the nineteenth distinction he treats of the conferring of them.
3. About this [eighteenth distinction] I ask whether the power of the keys only extend itself to the temporal penalty.⁷³
4. That not:
Because if so, either therefore to remitting it, or to inflicting it:
Not to remitting, because then through frequent absolutions the whole penalty due to sin could be remitted, and thus with any priest at all there would be the power of absolving from guilt and from penalty through frequent absolutions, – which is unacceptable and impossible.
Nor to inflicting, because then any penitent would be bound to any penalty at all enjoined on him by a priest, – which is false, because if any [priest] indiscreetly impose an immoderate penalty, about which the penitent can know that it is disproportionate to the guilt (he can surely know from Scripture, which contains the correspondence of penalties to guilt), he is not bound to fulfill it, because he is not bound to obey an inferior against the will of a superior; nor even at a tangent [to such will], because he does not obey an inferior except because of the will of a superior; and it is not the will of the superior, namely of God, that so great a penalty be inflicted for that fault.
5. Again, *John* 20.23, “Whose sins you remit [they are remitted]” etc.; therefore, the power of the keys of the Church is for remitting sins; it does not therefore extend itself precisely to temporal penalty; therefore etc.
6. To the opposite:
That power of the keys is for or extends itself to something; but not for anything other than temporal penalty; therefore etc. – The major is plain, because otherwise there would not be any power. The minor is proved, because [that power is] not for remission of eternal guilt or penalty because – according to the Master in the text [Lombard, *ibid.* ch.4 n.6] – these two belong to God alone.
7. Again, before use of the keys by contrition alone and the will of confessing sin is remitted, from Augustine and Cassiodorus on *Psalms* 31 “I said, I will confess” [d.17 nn.4-5]; therefore, if use of the keys have regard to anything about such [contrition etc.], this will not be but to temporal penalty.

Question Two

Whether on Any Priest at all in the Reception of Orders the Keys of the Kingdom of Heaven are Conferred

8. “After it has been shown” etc. [Lombard, *Sent.* IV d.19 ch.1 n.1].
9. Because the solution to this question [n.3] depends on the solution of the following, which is about the conferring of the keys, or how the Church has the keys, that are here being dealt with, therefore about this distinction I ask whether on any priest at all in the reception of orders the keys of the kingdom of heaven are conferred.
10. It seems that not:

⁷³ Sc. and not also to the eternal [nn.86-95].

In *Revelation* 3.7 it is said of Christ, “he closes and no one opens; he opens and no one closes;” therefore Christ alone has the keys.

11. Again, Augustine *On Baptism against the Donatists* V ch.21 n.29 [Lombard, *Sent.* IV d.19 ch.1 n.6]: “From sin the dove alone absolves, that is Christ, or the members of the dove;” therefore, no unjust priest has the keys by which he can absolve from sin, and yet an unjust priest can have the keys of priesthood.

12. Again, one key is commonly said to be the key of knowledge; but this is not conferred on anyone whatever ordained to be a priest, because one unknowing before does not after ordination find himself knowing, nor too does he knowing before find himself after ordination more knowing than before. And if it [knowledge] were conferred on us, it would not escape our notice, according to the Philosopher at the end of *Posterior Analytics* 2 [19.99b26-28]: “It is impossible that we have habits the most noble and that they escape our notice” [cf. Scotus, *Metaphysics* 1 q.9 n.36].

13. Again, ‘a sentence passed by one not his judge is null’ [Gratian, *Decretum*, p.2 cause 11 q.1 ch.49 d.5 ch.1; *Code of Justinian* VII ch.48 n.1, 4]; therefore none has the key for opening heaven to anyone except to his subordinate; but from reception of the priesthood there is not given him a subordinate, nor jurisdiction over subordinates; therefore not the keys either.

14. Again, if so, they cannot be had by a non-priest. The consequent is false because an archdeacon, who does not have to be a priest, can bind, absolve, excommunicate, and reconcile, – it is plain in *Extra* [Gregory IX, *Decretals* I tit.23 chs.1-10]; therefore etc.

15. To the contrary:

Matthew 16.19, it is promised to holy Peter and to priests, “I will give you the keys etc.,” and *John* 20.23, that promise is fulfilled with Christ saying, “Whose sins you remit etc.”

16. Again, he to whom is given what is greater is not regularly denied what is lesser; but the greatest power possible for a wayfarer is the power of confecting the body of Christ [sc. the Eucharist], and this is conferred in reception of the Order of the priesthood; therefore a power in respect of the mystical body, which is lesser, namely the key of binding and loosing, is in ordination conferred on the same [person].

I. To the Second Question

A. Solution of the Question

17. This second question, as said before [n.9], first needs to be solved, – where there are five things that need to be seen: first, that in the Church, and this with a priest ordained according to rite, there is one key, which is the power of giving sentence in the forum of penitence; second, that with him there is the key that is the power of taking cognizance in the case of someone guilty who is making confession; third, that this one and that are not the same key, but two; fourth, in what way he having these two keys has power through them over their acts, or what sort of power he may have through them in respect of the acts of the keys themselves; fifth, if besides these there be some other key in the Church.

1. About the First Key of a Priest

18. About the first: all those transferring [a term] transfer it according to some likeness; now a material key is the proximate instrument for opening or closing a door through which a house is entered into, – but it is not thereby the opening nor the opener, nor the cause because of which there is opening, to wit the worthiness of the person for entering, or the lack of worthiness because of which he is excluded. In this way it is possible to consider spiritually the opening of the Kingdom of Heaven, which is done through a definitive sentence when sentence is passed that heaven is to be opened to this [person], because this opening is not actual, but is the disposition, declared worthy, of him to whom it is opened.

19. It is possible also to find him who opens, and it is this one giving sentence.

20. And the cause too because of which it is opened to this [person] through a sentence of introduction, and because of which it is closed to this [person] through a sentence of exclusion, namely the demerit of the latter and the merit of the former.

21. None of these is the key, because the first is the opening [n.18], the second the opener [n.19], the third the remote cause [n.20]; therefore, that power in him passing sentence, which is the immediate instrument as it were of passing sentence, which passing sentence is called ‘opening’, that most properly is called ‘the key of the Kingdom of Heaven’.

This about the name.

22. About the thing thus: ‘the judiciary authority for passing the sentence that heaven is open or is to be opened to this [person]’ can be understood in one way[to be] the authority simply principal; in a second way, not principal, yet excelling; in a third way neither principal nor excelling, but partial and particular.

23. The first belongs to God alone, for two reasons:

First, because he alone of himself is just, rather is justice; and the first judgment cannot belong but to the first Just: for judgment is not perfect unless it be just, according to *Psalms* 118.12, “I have done judgment and justice,” since indeed to judge is to declare right or the just. Now the first just ought to be most perfect and so most just; and so [to be] of the first Just.

Second because to judge is of him who presides, because in *Romans* 14.4 it is said, “Who are you, who judge another’s servant?” Now among the ‘first’ things aforesaid, the first presider cannot be but only God. Hence, just as he cannot communicate divinity to another, so neither the first power of judging, nor consequently the key simply principal for opening heaven.

24. The second key [n.22], namely ‘not principal, yet excelling’, can be understood as to a double preeminence: one indeed in universality of knowledge of the causes to be judged, – the other in firmness of definitive sentence. And each preeminence can belong to him who knows all merits and demerits, which are the causes because of which heaven is to be opened or to be closed, – and who with this has a will inseparably conform to divine justice.

25. Because of the first [n.24] he has power to pass sentence in all cases, because he knows all; because of the second, his sentence can be simply firm and irrevocable, because always just.

26. This key, with each preeminence, is properly Christ's, who knows the merits and demerits of those needing to be judged, and who always judges conformably to divine justice.

27. Nor can this [key] be in the Church Militant, at least fittingly it cannot, because none in the Church knows all causes to be judged, nor has a will immutably just.

28. The third key [n.22], namely a 'partial' one as far as knowing causes, and infirm as far as passing sentence, namely because it can be from elsewhere revoked, can be conferred on anyone in the Church Militant who is able to take cognizance of that cause and in it to pass sentence according to Divine Law with right reason; and if sometimes he give sentence not according to it, his sentence will not be firm, and [if] according to that it will be firm.

29. There can therefore be in the Church one key for opening heaven, namely authority for giving sentence partially – and not irrevocably – that for someone heaven is open.

30. It is fitting too that this [key] is in the Church, and this in the priest, so that the ecclesiastical hierarchy be ordered and everything be reduced to the First through the middle. The hierarchy is the middle between God and the sinner needing to be brought back to God, – about this Bernard *On Consideration* III ch.3 n.13. This also is fitting for the perfection of causes in moral 'to be', just as of causes in natural 'to be': for God universally does not deny causality to creatures, which can belong to them, indeed he both communicates that and assists second causes in their actions. From the fact therefore that in gratuitous 'to be' it is possible for man to have this causality of bringing back, which is called a 'key', it is fitting that this be given to him supreme in the Church – namely to the priest.

31. Third I say that it has been given. It is proved through that of *John* 20.23, "Whose sins you remit" etc. And this rightly is called 'the key of power', because the authority of judging is rightly a power, since to judge belongs to the one presiding.

2. About the Second Key of a Priest

32. About the second article [n.17] I say that that which is ordained for this authority of passing sentence [n.29], or the use of which is ordered to the use of that, so that namely without the use of that the use of this is not right, can be called the 'key', because [it is] a certain instrument of opening, although not proximate, rather it quasi comes together into one with the proximate instrument: for without this it does not rightly open nor close; but the authority of taking cognizance in the cause of a sinner is of such sort, because without this cognizance one does not rightly judge heaven, neither that it must be opened nor that it must be closed; therefore, this authority can be called the 'key of the kingdom of heaven'.

33. And this [authority] can be distinguished in three ways, just like the preceding [n.22].

34. And about key taken in the third way [n.28], it can be proved that it is fitting for it to be had in the Church and that it is had (from the preceding article [nn.30-31]), because he who has the authority of definitively passing sentence in a cause has the authority of taking cognizance in that cause, unless to someone it were committed that without knowledge of the cause he might pass sentence in a cause at his pleasure (which

commission does not seem it is rationally to be made to anyone who could err in passing sentence, of which sort is every wayfarer). God therefore, rightly committing to the Church the first authority, which is called the ‘key of power’ [nn.21, 31], has committed to it the second authority, which is called the ‘key of knowledge’.

35. And in the conferring of the first key, which is had from *John* 20.23 [n.31], is understood also the conferring of the second key, as being previous – as concerns use – to use of that second [key].

36. Nor is this ‘key of knowledge’ any actual or habitual knowledge, or any discretion whatever, as yet the Master seems to say in the text in this distinction ch.1 [Lombard, *Sent.* IV d.19 ch.1 n.3]: “Many indiscrete persons (he says) who – neither before priesthood nor after – have knowledge of discerning, presume to receive the rank of priesthood, and therefore they do not receive this key in consecration; those however who before priesthood were endowed with knowledge of discerning, although they have discretion, yet there is not in them the key, because they are not able to close or open with it. And therefore, when [such a one] is promoted to the priesthood, he is rightly said to receive the key of discretion, because the discretion even had before is increased, and in him the key comes to be, so that now he is able to use it for closing and opening.”

37. But this knowledge, actual or habitual, is not this key, because the authority of taking cognizance, although it require knowledge or discretion concomitant with the right use of it (in the way the key of power requires some justice for the right use of it), yet just as the power of judging is not justice, indeed it can be without justice, so the power or authority of taking cognizance in some case can be without discretion of cognizing.

38. And so the Master needs to be expounded [n.36] – he who wants to hold him and preserve him – that ‘knowledge is required for the key of knowledge’, supply: for this ‘that someone may rightly use it’, but not for this ‘that it absolutely be in him’.

39. If it be objected, ‘why therefore is this more said to be the key of knowledge than that of justice or than justice, if knowledge not be required here except as to right use just as there justice is required as to right use of that?’, – I reply: he having authority without justice, and giving some sentence about something, does what is of his power, though unduly. And so he without knowledge having authority for taking cognizance in a case, if he attempt something, does do something, though unduly, – that however which the first does is always of his power, and so it is always said to be ‘the key of power’; but this which this one does is always of his knowledge, that is, of his cognizance in a case, though not of habitual knowledge.

3. About the Distinction between the Aforesaid Keys

40. About the third article [n.17], certain say that these keys are the same as the character of the priest, – and then it would be easy to see how they are conferred on any priest in his ordination just as also the characters [are].

41. But against this it is argued thus:

Those are distinct powers of which one can be without another; but the power of confecting the body of Christ or the character of a priest, as it is for this, can be without that power which is included in the keys; therefore etc. The minor is proved, because so was it in the Apostles in the Cena, when it was said to them “Do this in remembrance of me” [*Luke*, 22.19, *I Corinthians* 11.24-25], where power was given them of confecting

the Eucharist, but not the power of the keys until after the resurrection, with Christ saying in *John* 20.23 “Whose sins you remit” etc.

42. In like manner it seems it can be argued about any priest now ordained in the Church. For first the bishop says to the ordinands, ‘Receive the power of confecting or celebrating mass, both for the living and for the dead’, giving them the chalice; and, certain things being interposed, placing his hand on their heads, he says, ‘Receive the Holy Spirit; whosever sins you remit’ etc. Hence it seems that any priest first in time receives the power of confecting than of absolving; therefore, it seems that there is one and another [power]. And this proves that [this power] is not only distinguished from the character, if the character is something one [*Ord.* IV d.6 nn.279-359], rather that they are powers distinct among themselves.

43. Again, the character, as was said above [*ibid.* n.317], cannot be but a relation; and a relation cannot be the same to several terms, to the body of Christ true and mystical – or the consecration of this [sc. the true body in the Eucharist] and the absolution of that [sc. the mystical body in penitence] are distinct terms; therefore that which is the power for consecration, if it be this sort of relation, will not be the same as the power for absolution.

44. I say therefore that simply there are two keys, so that absolutely true is that word of Christ, “I will give you the keys” etc. [*Matthew* 16.19].

45. And they can, of the absolute power of God, be separated from each other: for just as someone now presiding can commit to someone the authority of taking cognizance in a case without the authority of passing sentence in it (as if he were to say ‘I commit to you the authority of examining this case, and you are to refer it to me so that I may pass sentence’), he could also confer authority of passing sentence without authority of taking cognizance (as if he were to say, ‘I commit to you that without any cognizance of the case you give sentence as it pleases you’, such commission however would not be ordered for anyone whose will could be perverted), – thus could God commit [to someone] the authority of taking cognizance without authority of passing sentence; and this commission would be, if it were simply ordered, also reasonable; [God] could also of his absolute power commit to someone having a will unable to be perverted the authority of passing sentence without cognizance in the case.

46. But of ordained power, or *de facto*, both are committed to any ecclesiastical priest, at least to one completely ordained. Which I say to this extent, because if first in time authority is given him of celebrating before authority of absolving, he is not perfectly ordained priest, as to each power if – with the first done – the second were omitted.

47. But whether precisely together in time each power is given, I do not assert.

48. But if first one be given before the other, when therefore is the character of priesthood impressed? And how is this double power disposed to the character?

49. To the first it could be said that just as there are two powers, so also two characters; and each is impressed in its own sensible sign signifying that invisible thing, as the first in the giving of the chalice with those words “Receive the power of celebrating” etc., the second in the imposition of hands in those “Receive the Holy Spirit” etc.

50. And according to this it would be plain what would need to be said to the second [question, n.48], because each power is a certain character, but these two integrate

the total order of the priesthood; but according to this too there would seem to be two characters, corresponding to the two keys, or they would be the two keys.

51. If therefore it does not please to posit so many characters, corresponding to one priestly order, it can be said that through a single priestly character does one have the power of confecting the body of Christ, whenever that [character] is impressed; and through that he is ascribed to the family of Christ in such excellent degree, namely in the degree of one feeding the people of Christ in the Church.

52. Now, just as in these cares of the great, he promoted to an excellent degree in the family of a lord is through this disposed to have authority in respect of the other servants, so through this that this [person] in the family of Christ is constituted in an excellent degree through the priestly character, he is disposed by congruity to having power over the mystical body of Christ of binding and loosing, and then the priestly character is a disposition for these keys, at least the conferring of one key is not separated from the conferring of the other, because, as was said [n.44], just as Christ in the same word of *John* 20.23 conferred both [keys] on the Church, so the bishop in the same sensible sign and word confers both: one as if excellently and explicitly, the other as if implicitly, the use of which is antecedent to the use of this one.

53. And from this it is plain that in some way they can be called one key by unity of Order, because they are ordered to one ultimate act, namely of opening; and to that [act] one is subordinated to the other, because more remote from that effect.

4. About the Double Power of the Priest in the Use of the Aforesaid Keys

54. About the fourth article [n.17]: an active power, to which there corresponds at once a passive [power], and it is not preventable, is itself always a power proximate to acting; but if there be some [power] to which there does not correspond a thing passive in nature at once or – with the passive thing had – is itself preventable, while it is impeded in act is not a proximate power, but a remote one, as is plain in *Metaphysics* 9.5.1048a5-7, where the Philosopher maintains that an active and a passive thing, having completely their active and passive power, at once act. Nor is it necessary to add ‘with nothing exterior preventing’, because this is included in the idea of the potential, – which is not true save of the potential as it states a power proximate to act.

55. To the matter at hand, the power of confecting at once has in nature the matter, because all wheaten bread; and it is a power not preventable, because whenever anyone attempts through it to act on determinate and due matter, he does do it. If it were in this way about the key, namely that at once there would correspond to it for matter a penitent sinner, and it could not through the act of anyone else be impeded but that he – intending to use it – would do what he intends to do, then the key would be the power proximate to absolving. And then it would follow that the priest, from this that he had been ordained, could absolve any sinner whatever confessing, – not indeed that he could do so licitly, but he would sin mortally if he were to attempt this against the prohibition of a superior, yet he would do it (just as a priest, however much prohibited, if he attempt to consecrate, does consecrate).

56. But these two suppositions are not held: for the first at least is not held, namely that from ordination he has the matter, but it is necessary that someone be subject to him before he may have jurisdiction, not for this that he may absolve according to the

rite, but absolutely for this that he may absolve, because a sentence passed by not its judge is null [nn.10, 13]; and thus it would seem as a consequence it should be said about the second, that a superior could for a time remove the subject by suspension of him [sc. the priest], – and then this one's power would be impeded simply, so that if he were to attempt to absolve, he would not absolve in fact.

57. The power therefore of confecting [the Eucharist] is, according to this opinion, a proximate power, but the key is a remote power: both because from this, that the key is in someone, there does not correspond to it anything passive, unless it be made passive for him from elsewhere, – and because, if it is in someone, it can be impeded by someone superior prohibiting [him].

58. And a reason for the unlikeness might perhaps be posited, because from the beginning it harmed no one, not even the ordination of the Church, that any priest might consecrate any matter; but it would have caused harm if by the conferring of the keys in ordination any priest at all would have been judge of any penitent at all, and would have been able, however much prohibited, to carry out the act of the keys, because in this he would be able to act to the prejudice of another of whom this one is subject.

59. How therefore, according to this common way, will this proposition be saved 'to every active power there corresponds a passive power'? For in nature, if there were some power to which a passive [subject] could not correspond except through another active power, that power would not be an active power; therefore, by a likeness here, since through the key matter cannot correspond to this except through another active power, namely jurisdiction, it follows that the key is not an active power.

60. And this could be confirmed about this judiciary power: for none seems to have the power of judging to whom none is subject as judgeable by him; therefore the key, whence it is a key, is not a power of judging.

61. If you say that an active power, however much it may be perfect, requires matter, – it is true; and the power of confecting [the Eucharist] requires matter, namely bread, but yet as soon as the power of confecting is had, it is not necessary to require another active power for this that the bread be consecratable: for if it were necessary for this, that thus it would be consecratable, that he [the priest] would be owner of the bread, already the priestly power would not be a power of confecting except a remote one. So in the matter at hand, it indeed is necessary that there be some penitent offering himself to this [priest] so that he may absolve him; but if he cannot be matter for absolution unless he be made such through another concurrent power, this does not seem to be an active power of absolving.

62. Similarly, this proposition is universally true in natural things, that 'when to an active power of one idea there corresponds first a passive power of one idea, to anything at all under that [power] corresponds anything at all under this [power], if there not be a deficiency of active virtue; but in the matter at hand not so, because to one key this person corresponds as absolvable and to another not, unless it be said that to the key the sinner as penitent does not correspond, but the sinner as subject penitent.

5. About Using the Two Keys of the Church in the External Forum

63. About the fifth article [n.17] I say that in the Church there is a double forum: one most secret, wherein the same [person] is accuser and culprit – and to this the

aforesaid keys pertain; another is the public forum, because the Church also has authority for correcting public transgressions, – and there a double authority is required corresponding to the double one aforesaid, just as for any right judgement there is also required knowledge in the cause and passing of sentence.

These authorities, pertaining to the public forum, could be called ‘keys’.

64. About this power given to the Church is had *Matthew* 18.15-18, with Christ saying to Peter [and to the other disciples; to Peter alone at *Matthew* 16.18-19], “If your brother sin against you” etc., and there follows, at length: “tell it to the Church; if he will not listen to the Church let him be to you as a heathen and a publican;” and there follows, “Amen I say to you, whatever you bind on earth will be bound also in heaven; and whatever you loose on earth will be loosed also in heaven.”

65. This about the public forum, because God approves the loosing and binding done in the public forum by the Church, – which he who has despised is to be had as “a heathen and a publican.” In this forum the Church, that is the communion of the faithful, is closed through excommunication and opened through absolution – or reconciliation – from excommunication.

66. From this it is plain that these keys are not the same as the former keys, because those are separated from these, as in having jurisdiction without priesthood (as in an archdeacon and certain others having jurisdiction according to the ordination of the Church without sacerdotal Order), – and conversely, as in certain priests to whom that power is not given of excluding from the Church or of reconciling.

67. But surely anyone at all, having jurisdiction, can excommunicate and reconcile?

I reply: excommunication which simply is excommunication, which is alone greater, is exclusion of someone from the communion of the faithful, not indeed bodily exclusion, which happens in sequestration or incarceration or exclusion of this [person] from others, but exclusion through prohibition, lest he communicate with others and others with him. And none – not subject to this [person] – is held to keep this [person’s] institution, as neither his precepts; therefore, it seems that ‘he not subject to this [person]’ is not bound to avoid one excommunicated by this [person].

68. If therefore through excommunication simply any Christian at all is bound to avoid him excommunicated, it is necessary that this be through a precept that any Christian at all is bound to obey; and then it follows that no inferior too by his own authority could excommunicate, though he could excommunicate as to his own subjects, that is warn them that to beware of him, – and then it follows that any inferior, if he does simply excommunicate, excommunicates by commission from him whom all others are bound to obey, who are bound to avoid this [person] excommunicated.

69. From this it follows that this falls under that rule of law ‘what is not conceded is prohibited’ [Justinian, *Digest* I ch.3 n.29; Henry of Ghent, *Quodlibet* 10 q.2 a.2]: for this rule is true of things that do not belong regularly to anyone save by some special concession; and then Christians generally are bound to avoid the one excommunicated by authority of the same [person] by whose authority they incur the penalty of excommunication of law, if they do not avoid him; for they incur that [penalty] by authority of the legislator, and not [by authority] of this particular judge.

70. If these conclusions do not please, it is necessary to ask whence first from the beginning of the Church any such inferior, who commonly excommunicates in the

Church, had authority over all Christians, so that they were bound to obey him, and to keep from this [person] excommunicated by him, because of his precept as his; and then [it is necessary to ask] how inferior authorities would have been more limited as to number of subordinates, at least as to observance of that precept; and why inot so of these as also of others. Let him inquire who will!

71. If the first opinion [nn.68-69] is true, then parish priests and others the like can in no case excommunicate, except when it is found expressly conceded to them and certain dangers are excluded that proceed from the proneness of certain fatuous persons for excommunicating: since frequent indeed is this striking with the sword in the Church, which however is found rarely drawn by the Apostles.

72. For in all the epistles of Paul it is not found that he excommunicated except on three occasions:

First in *I Corinthians* 5.1-5, "The report (he says) is heard altogether that there is fornication among you, and a fornication of a sort not heard among the Gentiles, such that someone has his father's wife," and later, "I have already, as one present, judged concerning him who has done this deed, in the name of the Lord Jesus Christ, when you are gathered together and my spirit, to hand over a man of this sort to Satan for the destruction of the flesh, so that his spirit might be saved in the day of the Lord."

73. Again, *I Timothy* 1.19-20, "Some have made shipwreck concerning the faith, of whom are Hymenaeus and Alexander, whom I have handed over to Satan that they may learn not to blaspheme."

74. Again, *Galatians* 1.9, "If anyone preach to you a gospel other than that which you have received, let him be anathema."

75. In another way however elsewhere the Apostle is read to have prohibited communion with the evil:

I Corinthians 5.11-12, "If anyone within who is called a brother is a fornicator, or covetous, or an idolator, or a curser, or a drunkard, or an extortioner, with such a one it is not licit even to take food."

76. Again *II Thessalonians* 3.6, "We command you, brothers, in the name of the Lord, that you withdraw yourselves from every brother who walks disorderly;" and later he adds in the same place, 3.14: "If anyone not obey our words through this epistle, note him, and have no company with him, so that he may be ashamed." But how it is licit to commune with him he adds saying, 3.15, "Do not reckon him as an enemy, but admonish him as a brother."

77. Again, *2 Timothy* 3.2, 5, "Men shall be lovers of themselves," and a little later, "avoid these."

And in the same place, 4.14-15, "Alexander the coppersmith did me much evil...whom also avoid."

78. Again, *Titus* 3.10, "A man who is a heretic after the first and second admonition, avoid."

79. And *2 John* 10-11, "If someone comes to you and does not bring this doctrine, do not receive him into your house, nor say 'hail' to him; for he who says 'hail' to him shares in his evil works."

80. In the first two authorities [nn.72-73] a sentence of excommunication seems simply passed; and it is plain that there was there a just cause, because a sin enormous and public; and due form, because a legitimate process; and right intention, because the

correction of a delinquent was intended. Hence too the first was corrected through the excommunication, as is plain through the second epistle [2 *Corinthians* 2.7], where he admonishes them to console him lest he be plunged in deeper sadness. Others are not read to have repented, perhaps they were already apostate from the faith, and there they remained.

And the third, to the *Galatians* [n.74], is against someone preaching something that is repugnant to sound faith, of which sort then were the false apostles.

Now in the others [nn.75-59], where he bids them avoid the evil either simply or as to some acts, a sentence of excommunication does not seem to have been fully passed, because they do not seem through this handed over to Satan: for it is said that those whom the Apostle handed over to Satan, at once the devil had power of vexing them; but not thus is it probable it was done about all those evil [people] whom he writes must be avoided.

B. To the Principal Arguments

81. To the principal arguments:

To the first [n.10], it is plain that that authority of *Revelation* must be understood of the key not ministerial but preeminent, which is the authority of passing sentence universally and irrevocably.

82. To the second [n.11], the Master is expounding that authority, in this distinction ch.3 [*Sent.* IV d.19 ch.1 n.8], that ‘only through the dove or his members is the remission or redemption from sins done worthily’: “It is done however through others, but not worthily nor rightly: for God gives blessing to him worthily asking, even through an unworthy minister...” Which is proved by the authority of Jerome on *Matthew* 16.19, “I will give you the keys” etc.;⁷⁴ and through [Ps.-]Augustine in the book *Questions on the Old and New Testaments* [q.11 nn.1-2], “The will of the priest cannot harm or help, but the merit of him asking the blessing.”

83. To the third [n.12], it is plain from the second article [n.36] that the key of knowledge is not any science or knowing but is the authority of knowing, that is, of inquiring and examining the case of the accused.

84. To the fourth [n.13], it is plain from the fourth article, because – according to one opinion – the key is of itself only a remote power [n.54]; and for this, that matter respond to it, there is required in the priest another power, namely jurisdiction, or at any rate through another active power matter is subjected to it, so that the matter is made capable of its action. According to another opinion [nn.56-58], the key is a proximate power, and includes private jurisdiction. For what else is jurisdiction than the authority of declaring right? And this, what else is it than the authority of sentencing and judging?

85. To the fifth [n.14] it is plain from the fifth article [nn.68-71]: for I concede the non-ordained can have other keys pertaining to the extrinsic forum, and the ordained not have [them]; however for this that he be a hierarch of the Church, that is, in eminent principality, and have these exterior keys, it is presupposed that he have the interior ones; hence none is a consecrated bishop unless he was first ordained a priest.

⁷⁴ In fact Bede, *Homilies on the Gospel* I hom.20: “The other Apostles have the same judiciary power, and the whole Church has it in the bishops and priests...”

II. To the First Question

A. Solution of the Question

1. Two Conclusions of Others

86. To the question moved about the eighteenth distinction [n.3], two conclusions are stated:

The first negative, namely that ‘the power of the keys does not extend itself to the removal of guilt or of eternal penalty’ [Thomas Aquinas, *Sent.* IV d.18 q.1 a.3; Richard of Middleton, *Sent.* IV d.18 princ.2 q.1].

87. Which the master seems to think in this distinction [Lombard, *Sent.* IV d.18 ch.6 n.3]: “God (he says) per se only thus dismisses sin, because he also cleanses the soul from interior stain and releases it from the debt of eternal death.”

88. What therefore do Gospel priests do?

He replies: “He [God] bestows on them the power of binding and loosing, that is, of showing them bound or loosed.”

89. Which he proves about the leper cured first before sent to the priest, *Luke* 5.14; similarly about Lazarus raised first before handed over to the disciples for being set loose, *John* 11.44.

90. Again, Jerome on *Matthew* 16.19, “I will give you the keys” etc., “In *Leviticus* 14.2-4 (he says) lepers are bidden to show themselves to the priests, whom they [priests] do not make leprous or clean, but discern who are clean or unclean.”

91. From this the Master says [*ibid.*], “What once the legal priests had in the Law in curing the leprous, this now the Gospel priest has in retaining or remitting faults.”

92. An affirmative is added [n.86; Aquinas, *ibid.*, Richard of Middleton, *ibid.* q.2], that ‘the force of the keys extends itself to the temporal penalty’.

93. And in this, the Master gives exposition in another way [*ibid.* n.4] how the Gospel priest looses and binds, because “he binds to the temporal penalty which he imposes on the one confessing, – and he looses when he dismisses something from the penalty due, or admits the sinner purged through it to the communion of the sacraments.”

94. And it is added that this power is in respect of the temporal penalty, that the act of it is not ratified unless it be in conformity with divine judgment, namely unless it impose as much penalty as according to divine justice responds to these sins. For example, posit: this [person] for his sins is bound according to strict rigor to such penalty of ten days; the priest by virtue of the keys can remit to him a penalty of three days; and let it be that from the treasure of the Church this [priest], as dispenser, can remit one day or two – after all this, this [penitent] remains obligated to six or five days, from which, if a priest dismiss something, this his obligation is not ratified, because then the key of power errs in binding and loosing; for it makes him more loosed from temporal penalty than God judges him loosed;⁷⁵ and consequently, unless this [penitent] pay here those six days, the remainder will be exacted from him in purgatory.

2. Refutation of the Conclusions

⁷⁵ That is, the priest, by virtue of the keys, remits to the penitent in confession three days of the ten that are due. Then, by virtue of being dispenser of the Church’s treasury (and not by the power of the keys), he remits another one or two days, leaving the penitent with five or six days still to pay. If the priest remits more, imposing a lesser penalty still on the penitent in confession (as Richard [n.92] seems to allow he may do), the penitent’s obligation to this lesser penalty is not ratified by God, but the penitent must pay the full five or six days remaining, at least in purgatory.

a. Against the First Conclusion

95. Against the first [n.86]: because then the sacrament of penitence would not be a sacrament of the New Law, nor would it have any causality or causal disposition for the first grace, because it would never be worthily taken up save by one having already the first grace: for none is worthily *shown* loosed by God unless he *is* first loosed.

96. Again, the taking up of this sacrament is an instrument for grace, that is a disposition efficacious and necessary from divine statute for the taking up of grace; but an instrument or preceding disposition is not a sign recollective or ostensive of something as already past, but future; therefore, the conferring of the sacrament of penitence, for this that it be worthily done, does not have to be sign of a preceding divine absolution.

97. I concede these [points], as was diffusively made clear in distinction 14 question 4 [nn.130-150], that the sacrament of penitence can be worthily taken up by the attrite, and this with as much attrition as would not suffice by way of merit for receiving justification at the term of attrition; and if it not be fictively received at the term, first grace is received, which is conferred by God; and sacramental absolution is an efficacious sign of that absolution following in the final instant of it, just as the proffering of the words is a sign of the confection of the body of Christ.

98. According to this it is plain how this sacrament is an instrument for first grace as a disposition previous to it, in the way in which alteration can be called an instrument in respect of the generation of substance, because it is a disposition previous to it.

99. It is not therefore similar about a legal priest [sc. a priest in the Law of Moses] in respect of leprosy and a Gospel priest in respect of guilt, because the former only exercised something that was a sign commemorative of the cleansing of leprosy, and nothing that was a prognostic sign efficacious in respect of a cleansing following; but the latter [sc. the Gospel priest] exercises an act that is an efficacious prognostic sign of a cleansing following in the ultimate instant, nor yet is he lying, because the absolution of the one [absolved] is understood for that instant for which he is absolved by God and by the Church.

100. If you say ‘therefore a priest destroys the stain and eternal penalty of death, which is proper to God’, – I say that he does both, if however there are two there, about which it was said elsewhere [d.16 nn.44-65]; but he does not do them except instrumentally, not indeed by attaining that effect, neither by his own virtue nor that of another, but by attaining something prior, which is the disposition necessitating for that effect, necessitating – I say – from divine pact; and such an agent, causing a disposition necessary for the term, is called an ‘instrumental agent’, just as is about what alters and generates [n.98]; but it is proper to God principally to cleanse and to remit that debt, even by attaining that effect; but neither of these belongs to the priest.

101. The authorities therefore, which the Master adduces for himself [nn.89-91], do affirmatively say that [the priest] does this, and it is true indeed that the Gospel priest shows this [penitent] cleansed and loosed for the instant for which his absolution is understood. But not this only, rather thus he shows that that showing is a disposition previous and necessary for that which is shown: for this is the excellence of the sacraments of the New Law, that the receiving of them is a disposition sufficient for grace; but of the legal ones themselves [sc. of the Mosaic Law] not even the reception

was an efficacious disposition for bodily cleansing of leprosy or of this sort of uncleanness.

102. And it would be similar if we were to speak of a legal [sc. Mosaic] priest purifying someone, through some sprinklings from some irregularity contracted in the Law from contact with leprosy or the like: for then that priest would exercise a certain act that would be an efficacious sign of reconciliation from this sort of irregularity, and of cleansing from that pollution, in whose act or term of cleansing the effect signified would follow, namely that this [person] would be worthy to communicate with others of the Synagogue.

b. Against the Second Conclusion

103. Against that which is said secondly [nn.92, 94], it can be argued thus: to none is the power committed of judging in a cause whose judgment will never be ratified because of any diligence able to be used by him, but only by chance or through special divine miracle; but through any diligence at all, capable of being used by a priest, he is not able himself to reach that indivisible [point] of penalty of which God judges this sinner to be worthy. If therefore he does reach it, this will be by chance or through special miracle, – nor will it be ratified, for you [n.94], unless he does reach it; therefore, he does not have the authority of judging.

104. It is confirmed, because it is not likely that God has given the Church a power of judging such that he himself has wanted to ratify the Church's judgment, and yet that it is impossible for it [the Church] so to judge rightly that it not be ratified except by chance or through special miracle.

105. Again, none is constituted arbiter between parties under this condition that he precisely judge for the will of one party, and this especially when he cannot know determinately the will of that party; but in a judgment of penitence the parts are God and the sinner, between whom the priest is arbiter; therefore, [the priest] is not bound to judging precisely that penalty which God would inflict on him [the sinner], especially since, concerning the will of God as to this, it cannot be made clear to him precisely as he is a member of the Church.

106. Again, if the priest impose a penitence a little bit greater than may correspond to his sins, it is not probable but that the penitent is bound to fulfill it; therefore, although [he impose] a little bit less than the due penalty, it does seem to suffice, for if any [penitence] were not to suffice less than that precise amount which divine justice dictates, then there would be no need to fulfill any [penitence] beyond that precise point of divine justice.

3. Scotus' own Response

107. I say therefore that just as in other cases of exchange commutative justice has some latitude, such that it does not have respect to an indivisible in exchanges, but to the mean of right reason, so punitive justice, which is a certain commutative [justice] of penalty for guilt, does not necessarily have respect to an indivisible degree of penalty corresponding to this guilt, but there is some latitude, below which a lesser penalty does not suffice and beyond which a greater penalty must not be imposed, and outside that

whole latitude the key – binding below or beyond it – errs, and then not undeservedly what is loosed on earth is not loosed in heaven, that is, not ratified; but within that latitude it does not err. And therefore judgment is ratified to the extent that whatever is imposed within that latitude, this it is necessary to fulfill, – and so if it not be fulfilled here, what remains will be exacted in purgatory; and if less be imposed and fulfilled, nothing more will be exacted in purgatory.

108. Now this middle in that latitude is able to be known to man through the Law of God with the aid of natural reason; and therefore, obligation to this broad middle is to what is possible for man without special miracle, and without chance and fortune.

109. But the penalty imposed by a non-erring key, is the penitent bound to fulfill it?

I say that yes, if he will to submit himself to this priest both as to absolution of guilt and as to taking up or paying the corresponding temporal penalty, because then he is obligated to the precept of the Church, to which he has voluntarily submitted himself.

110. But if he only wish to submit himself to this [priest] as to change of eternal penalty into temporal, and not as to appraisal of the temporal penalty, but only as to that and the appraisal of that he wills to submit himself to the hand of God either here or in purgatory, it would not be expedient to repulse such a one without absolution: for perhaps he would depart desperate.

111. Nor does he seem, because of this will, to be in mortal sin, if he be contrite about the sin and wish to be punished – with a condign penalty for it – by him whose it is justly to inflict it, if he not wish it to be inflicted on him by this priest, nor himself wish to take it so that he be the minister of the very inflicting.

112. Nor can it be said that this [person] is disobedient to the Church, because he can submit himself to the decision of the Church as to that penitential judgment to which he is bound to submit himself, but he does not will to submit himself to the one following. And it is plain that that [judgment following] is not included necessarily in the first one, because the priest – the first being however much uniform – may greatly vary the one following. Hence also frequently, because of the will of him confessing to undergo a great penalty, he gives some moderate penalty, telling him that he must pay the rest in purgatory; and although that little [penalty] be manifestly disproportionate to the guilt outside that latitude, not because of this does such a one not receive the sacrament of penitence.

113. In the same way it seems that [a priest] can impose altogether no penalty on him, because of his resistance to taking it up, warning him that he must pay that whole penalty in purgatory. And Augustine hints at this [Ps.-Augustine, *On True and False Penitence* ch.10 n.25], that if on such a [person] scarcely inclinable some displeasing penitence be imposed, it is to be feared that he will thence take occasion for falling back into mortal sin, because for throwing that penitence away, wherein he will sin mortally after he has refused to submit himself to the priest in taking it up.

114. But let it be that the key of science err, not however the key of power, surely the judgment is not ratified in heaven?

I reply: the key of science errs when those things are not well inquired into nor examined that pertain to this judging, as suppose if some fatuous circumstances are inquired into that are neither aggravating nor alleviating but please the prurient ears of the confessor, – and the attrition of the one confessing is not inquired about, but he only

hears him as if he were narrating one narration. In the first [case] indeed, although something be done that should not have been done, if however nothing be omitted that would have to be done, as that – along with circumstances being required that should not be required – those are required that would have to be required, a right judgment can follow; but in the second, with the requisite displeasure of him confessing omitted, a right judgment cannot follow except by chance.

115. In brief, therefore, I say that if the key of science err by pursuing things not necessary to that case or illicit, the confessor sins; but if he dismiss nothing of things necessary for cognizance of the case, he can judge rightly. But if the key of science err by omitting something that is necessary for cognizance of the case, he [the priest] both sins and cannot rightly judge save by chance, and especially about the attrition of him confessing.

116. But if the penitent show himself sorry although however he is not, he is pretending and departing from true penitence and with a new sin; nor does the key of science err, but the penitent himself errs to his own peril; and then the judgment of the priest is ratified in heaven, for he did that which was his, because – as man – he could not see the heart except through external signs; but it is not ratified as to him taking it up, because he is not capable of this [sc. receiving absolution] in the way he shows himself capable.

117. But let it be that, with something necessary omitted by chance, [the confessor] brings in a right sentence, – I say that it will be ratified as to him receiving it, if he not be in pretense, such that it will be sufficient for him to fulfill that penalty; but it will not be ratified on the part of the confessor without him himself sinning by erring; and in this way it is necessary to distinguish that sometimes a judgment is ratified on both parts, both of the priest and of the recipient, and sometimes on the part of the latter and not the former, and sometimes on the part of the former and not the latter.

B. To the Principal Arguments of the First Part

118. To the first principal argument [n.4]: I concede each member of the distinction.

119. And when it is said, against the first, that then he [the priest] could remit the whole of the penalty due, – it does not follow, because something is the mean there determined according to right reason, by standing on which he remits.

120. And when it is said that at least by several absolutions he would remit [sc. the whole penalty], this touches on a good difficulty, whether repeated confession of the same sins remits by the power of the keys more and more of the penalty. It seems probable that so, because a second absolution is of the same idea as the first; therefore it can have the same virtue in respect of any part of the penalty to be remitted; and consequently through the doing of several distinct absolutions, since that guilt is partible, the whole could be remitted, since ‘everything finite, through the removal of finite parts taken some number of times, is totally consumed’ [*Authorities of Aristotle* 2.25, Aristotle *Physics* 1.4.187b25-26]. What better therefore than always to confess, until after the hundredth or the thousandth confession the whole penalty due to any sins whatever committed would be remitted?

121. It seems more probable that the second absolution by virtue of the keys remit no part of the penalty, for to take flight here to parts of the same quantity, or of the same proportion, is nothing, because there is not a reason why the second absolution could not take away a part of the same quantity, if it could any; nor is it a wonder if it can none, because the same judgment – once passed without error – God ratifies in heaven, which is irrevocable; therefore, it is reasonable that it so be ratified that it be uniterable, – not I say that it be illicit or impossible to be repeated, but yet with this fruit, which it now has, it is not repeatable.

122. This we see in the case of definitive sentences in the litigious forum, by which the accused are absolved when they are found innocent, nor is the inquisition repeated so that there be a process in the same case; nor, if it were repeated, would through that second sentence this [accused] be absolved as through the first: for he who is set free is not further absolved, because he is not set free unless bound.

To the second part of the division [nn.4, 118], I concede that a penalty inflicted by the priest, which does not exceed that whole latitude of justice, the one confessing is bound to pay, and it is enough.

123. But you will say: whence will the one confessing know if it exceed that latitude or not?

I say either by the Divine Law, if he is an expert in it per se, – or if not, he can inquire after it from another confessor in whose prudence he has more confidence; or if he not want to submit himself to another confessor, nor through his own industry is sufficient for this, that he may judge about this penalty whether it be merited by the fault or not, let him keep the penalty imposed on him, especially if it seems to him to exceed the merited penalty; but if it seem to him deficient, it is safer to go to another prudent confessor than to expose himself to purgatory.

124. To the second argument [n.5]: I concede that the use of the keys does extend itself to remitting guilt and the debt of eternal penalty, but instrumentally.

C. To the Principal Arguments for the Opposite

125. Through this it is plain to the first argument for the opposite [n.6].⁷⁶

To the second [n.7] I say that just as baptism of water first confers grace on him not having it and increases grace for him first having it, and frequently in adults baptism of desire precedes baptism of water (if however it were not to precede, as in children, the first grace would be conferred through baptism of water), so frequently here, for commonly adults are justified through attrition, as through merit by congruity, before they confess, according to those authorities of Augustine and Cassiodorus [n.7], and then, in taking up the sacrament, grace is increased in them. But let it be that they did not have attrition sufficient by way of merit for justification, and consequently, existing in sin and yet in some way having attrition, they confess in the last instant, they do receive grace by virtue of the sacrament. Those authorities, therefore, are speaking of those justified in the first way, but not by this do they exclude justification in the second way, as is plain through a likeness about baptism in the second way.

⁷⁶ Namely that the keys extend to remitting temporal penalty, and instrumentally to remitting eternal penalty.

Twentieth Distinction

Single Question

Whether Penitence in Extremis Avail for Salvation

1. "It is necessary to know also etc." [Lombard, *Sent.* IV d.20 ch.1 n.1].
2. The twentieth distinction, about which I ask whether penitence *in extremis* avails for salvation.
3. That not:
Augustine in a certain sermon (and it is put in the text) [Ps.-Augustine, *Sermon* 393, 'On Penitence', in Lombard, *Sent.* IV d.20 ch.1 n.2, as taken from Gratian, *Decretum* p.2 cause 33 q.3 d.7 ch.2], speaking of someone thus penitent, says: "We do not presume that he departs hence well."
4. The same ([Ps.-Augustine, *On True and False Penitence* ch.17 n.33], and it is in Lombard's text [nn.4-5] and in [Gratian] 'On Penitence', d.7 ch.6): "It is most dangerous and near to destruction to put off the remedy of penitence until death." From this authority it is argued thus: he mortally sins who exposes himself to the danger of eternal death; but such [person], protracting penitence up to death, is of this sort; therefore etc. It is confirmed through that of Augustine in *Sermon on the Innocents* [Ps.-Augustine, *Sermon* 220 n.2], "By this reproach is the sinner struck, that dying he is forgetful of himself who, while he was living, was forgetful of God."
5. Again, on *Ecclesiasticus* 17.27, "Alive and healthy you will confess," there is had this of Augustine [Ps.-Augustine, *Sermon* 393, *ibid. supra* n.3], "Do penance while you are healthy; if you have so done, you have done it at the time in which you could have sinned. If you wish to be penitent when you cannot sin, sins have dismissed you, not you them." From this as follows: no penitence suffices for salvation unless it be voluntary; but a penitent *in extremis* does not dismiss his sins, but they him (according to Augustine); therefore etc.
6. Again, nothing is to be ordained by a legislator that is an occasion for transgressing the law, and especially for the many (this is plain, because then the legislator would do per se what would be for the destruction of his law); but 'that a late penitence avails' [for salvation] is an occasion for continuing sin through the whole of life: for who would not continually sin through the whole of life, if a brief penitence would save him in the end? Therefore etc.
7. Again, to none is mortal sin dismissed if not through some temporal penalty corresponding to the sin; but such a one penitent *in extremis* pays no penalty, or at any rate not sufficient nor corresponding to the sin.
8. If it be said that the temporal penalty due he will pay in purgatory, – on the contrary: dying in mortal sin he will at once be damned; therefore, dying in grace he will at once be saved, and consequently no penalty will he pay after this life
9. On the contrary:
Augustine [Ps.-Augustine] *On True and False Penitence* ch.17 n.33 (and Gratian, *On Penitence* ch.5, and it is in Lombard *ibid.* n.6; *supra* n.4): "Penitence, if it come in the extreme moment of life, saves and frees." Which he [Lombard] proves, at once adding

[from Hugh of St. Victor *On the Sacraments of the Christian Faith*, II p.14 ch.5], “Very late was the penitence of the thief, but not late was his [Christ’s] indulgence,” about which thief it is had in *Luke* 23.42-43; again through *Ezekiel* 18.21-22; 33.14-16: “in what hour the sinner laments” etc.⁷⁷

I. To the Question

A. Two Conclusions

10. In this question there are two conclusions sufficiently certain.

The first is this: ‘true penitence, whether interior alone or exterior with receiving the sacrament of penitence, suffices for the salvation of anyone *in extremis*’.

11. The second conclusion is this, that ‘the penitence that seems to be had *in extremis* is scarcely true penitence sufficient for salvation, because it is difficult then to have true penitence’.

B. Proof of the Conclusions

1. The First Conclusion is Proved

12. The first [conclusion] is plain through Augustine (and it is put in the text [Ps.-Augustine, *On True...*, n.4 *supra*): “Since God is always powerful, also in death he avails to help whom it please; since therefore fruitful penitence is the work not of man but of God, he can inspire it whenever his mercy wills.”

13. This is also plain through reason, because whether interior penitence alone by way of merit by congruity, if by anyone *in extremis* it be had, dispose to justification, or the sacrament of penitence operate by way of sacrament, – if by anyone *in extremis* this or that be had, the same idea of receiving grace is had as also in another penitent; and consequently grace will be received, and so salvation.

2. The Second Conclusion is Proved

14. Proof of the second conclusion:

First, because then the use of free choice is impeded, or the use of free reason and will, out of inherent pain or fear; but I do not say that anyone is *in extremis* who is burdened by a sickness curable according to common law (as by a tertian fever or the like), nor who suddenly dies, of whose death no cause yet appears, but who from evident causes already in place is judged very near to death according to inferior causes operating for the most part (as in an infirmity when it is already reaching a degree desperate in the judgment of doctors, – or in other dangers, as drowning, wounding, and the like, when at once death threatens); in these, I say, either there is very great pain in the sense part or very great fear. And each vehement suffering is of a nature to impede free use of reason and will, because according to Augustine 83 *Questions* q.36 n.1, passions caused by things sorrowful move more than passions caused by things delightful. But a vehement passion of delight sometimes impedes totally, or almost, the use of reason, as is said in

⁷⁷ Ps.-Augustine, *On True* etc. *ibid.*, Lombard, *ibid. supra* n.4: “I believe that he who said, ‘in what hour the sinner laments and is converted, his life will live’, said that the one ‘converted’, not ‘turned [‘-verted’] merely, will live; he is ‘turned’ I think who grieves over a crime, but he is ‘converted’ who grieves over every variety of it” [d.14 n.128 *supra*]

[Augustine] *City of God* XIV ch.16; and an act of displeasure about sin, for this that it be sufficient for true penitence (whether intrinsic only or for worthy reception of the sacrament of penitence), requires free use of reason and of will [cf. *Ord.* III d.15 n.62].

15. If you say that the pain or fear, which is present within, does not impede totally the intellect or will, – I concede it; but it does much impede [them], and consequently a weak and imperfect use of intellect and will can then be had, which scarcely suffices for the displeasure sufficient and requisite for true penitence.

16. This argument [n.14] does Augustine (in the text) touch on [v. n.9 *supra*]: “So great a torment sometimes binds the members and the pain oppresses the sense, that scarcely is a man able to think anything else.”

17. Secondly: for this, that displeasure be ordered, it is necessary that it be duly circumstanced, and especially with the circumstance of the end and of the principal active principle, namely that it be voluntary and because of God; but it is difficult then to have an act thus circumstanced: first because he, who up to then has been impenitent, does not seem then to be wresting from himself a new displeasure except by fear of imminent punishment (for it is presumed that if he were remote from punishment as before, he would not wrest from himself such displeasure, just as not before either); next because something at any rate simply involuntary seems to be cause of this displeasure, namely that near expectation of death; and that is involuntary. And what does not happen except on the supposition of something involuntary is not simply voluntary (just as someone does not altogether voluntarily cast merchandise into the sea if he only casts it on the supposition of an endangerment that he does not want), – at any rate what is not save in this way voluntary is not much accepted by another, nor does it much seem done because of love of him.

18. This reason [n.17] Augustine touches on (in the text [Ps.-Augustine, *On True and False Penitence*, Lombard, *supra* n.4]), “It is necessary – he says – not to fear death much, but to love; for [God] seeks liberty of judgment so that he can delete [sins] committed, not necessity, – charity, not fear; let him therefore not so much fear the penalty who is penitent, but be anxious for glory.”⁷⁸

19. Third reason, because a bad habit continued up to then [sc. the moment of death] much draws back from act of penitence.

20. And this reason does [Ps.-]Augustine touch on (in the text [*ibid.* n.18]), “It is necessary to fear about him repenting late, since his children – whom he has illicitly loved – are present, his wife and the world are calling [him] to themselves; a late penitence is wont to deceive many:” understand that ‘these delightful things are present in themselves or in phantasms vehemently impressed’, – and whether thus or so, from the vehemence of continued habit they much incline to themselves things to be inordinately loved, and consequently they cause great difficulty for having great displeasure of them.

21. The fourth reason: the more someone is less a lord of his own act, the more is an intenser displeasure required for this that there be a disposition sufficient for deletion of guilt; but this person [sc. on the point of death] is less a lord, because in no way lord of the exterior act for sinning. There is required therefore according to strict justice an

⁷⁸ More accurately: “for [God] seeks liberty of choice so as to be able to delete sins committed, not necessity... Not therefore in fear alone does man live. He then who repents late ought not only to fear God as Judge, but also to love him as Just; let [God] not be feared for punishment, but loved for glory.”

intenser motion for his justification than for the justification of [someone] healthy, although however he can scarcely have [a motion] equally intense.

22. And this reason [Ps.-]Augustine touches on in the text [*ibid.*, nn.3, 5 *supra*], “Do penitence while you are healthy; if you so do, you are secure, because you have done penitence at the time at which you could have sinned. If you wish to do penitence when already you cannot sin, sins are dismissing you, not you them;” at least you do not as freely dismiss them as the healthy [person] does, – and therefore to the extent that liberty is lacking in you, to that extent according to rigor is an intenser motion required in you, which scarcely or never will you be able to have. Therefore does Augustine say that “a great thing it is for him, if there is anyone, in whom God then inspires true penitence,” because scarcely, or not at all, is there anyone who may then have a disposition by congruity so that it be inspired into him.

C. Two Corollaries

23. From these [conclusions] follow two corollaries:

One, that the healthy [person] must be persuaded that while healthy he repent, exciting in himself fear how dangerous it is to await a late penitence, because of the reasons aforesaid [nn.14, 17, 19, 21].

24. The other corollary, that the infirm – already brought to this article [of death] – must be persuaded to work according to his ability for an ordered penitence, so that namely, notwithstanding his pain or fear, he may use reason as much as he can, and strive to have voluntary displeasure because of the due end, that is, because of God; and that he strive against the evil inclination of habit and of present delights, and labor for as much displeasure as he will be able to have, though brief; and, lest he be thrown into despair, the divine mercy must be extolled, proposing to himself the example of that thief whose penitence was late but not late the indulgence [n.9].

II. To the Initial Arguments

25. To the first argument [n.3] I say that presumption is according to the things that happen for the most part, and it is more apparent to right reason that – for the most part – it seems difficult or impossible for such a one to repent well, because of the reasons stated before [nn.14-22]; however, this presumption does not conclude of necessity, because although for the least part and with difficulty, yet it is possible for the opposite to happen. And therefore Augustine says [n.3, *ibid.*]: “I do not say that he will be saved, but neither do I say that he will be damned,” because about neither can man be certain.

26. To the second [n.4]: I concede that he who knowingly exposes himself to the peril of his salvation sins mortally; and so this [person], if in any elicited act he determine himself never to repent except *in extremis*, by that elicited act he exposes himself to such danger, and sins mortally; but even about that sin, if he has thus sinned, it is possible for him to repent *in extremis*.

27. To the third [n.5]: I say that as long as someone has the use of free choice, he can sin with an interior sin (although not an exterior one), at least by taking pleasure in sins already before committed, and so he can dismiss the sin then by displeasure about it,

– though it is necessary that he does not sin with an exterior sin; but this too, to the extent it can for then be voluntary for him that he then have the will. But if he could sin with exterior sin, he should flee this altogether, and then he would have not only displeasure but also another penitence – an exterior one – about [sins] committed before, at least in desire, if he were to survive.

28. To the fourth [n.6] I say that a legislator should not pass over the things that are in themselves fitting in the law ordained, although someone may take from them occasion for doing wrong, otherwise God ought never to have instituted penitence in any law, because someone can from this take occasion for being delinquent, which he would not take if he could not afterwards be penitent. Now as to the law simply ordained for this state of fallen nature, it is required that penitence can be fruitful, – and the reason by which it can [be so] in any instant of health is equal reason by which [it can be so] *in extremis*, rather it is more necessary for the many imperfect that then it can avail for them. I say therefore that this is not an occasion given by the law, but only taken by the imperfect; but according to itself it is an occasion for keeping the law because of love of the Legislator, who is of so great mercy toward the wretched that never does he close to them the bosom of his mercy.

29. And this response can be confirmed, because when from something directly there comes a greater good than indirectly, as if from occasion taken, there comes a bad, then that [greater good] is to be done and in no way passed over because of such occasion. But it is a greater good that certain [persons] – bad up to the end – be saved by penitence than is bad the sin is done from occasion of this, because through this penitence many finally reach the term of divine predestination; but through that occasion none fall from that [end], and if they sometimes sin, not however with a sin by which they may finally be damned.

30. To the fifth [n.7]: I concede that this person must by some penalty be punished for sin. But that does not have to be imposed on him here, because he cannot fulfill it here; nor does it have to be imposed on him that for so much time he be in purgatory, because this priest does not have authority for inflicting that penalty. But a penalty is to be proposed to him corresponding for his sins, in this sort of way: ‘if you were healthy, this sort of penitence would have to be imposed on you, – which, if you recover, you are to study to fulfill; but now you are in the hand of God, confide in his mercy, because although he punish you, yet he will mercifully punish you’. Or in a case where it is not possible for much talk to be protracted, it is not necessary to certify any penalty for him, but only to instruct him about the merciful justice of God.

31. To that which is objected against the response [n.8], I say that that is not alike: for he who is dying in mortal sin has nothing holding him back from deserved penalty; but this one dying in charity, yet a debtor for sins committed penitence for which he has not done, does have something holding him back from glory, because none, while he is debtor for any penalty, can be glorified, because glory, just as it does not allow any penalty along with itself, so not any debt for penalty either, because neither [for a penalty] to be paid at the same time nor later.

Twenty First Distinction

Question One

Whether after this Life any Sin can be Dismissed

1. "It is also wont to be asked whether after etc." [Lombard, *Sent.* IV d.21 ch.1 n.1].
2. About this twenty first distinction I first ask this question: whether after this life any sin can be dismissed.
3. That not:
Because none dying just can afterwards sin; therefore neither he dying in sin can afterwards rise up. The consequence is plain: first by a likeness, because to be able to sin and to rise up from sin seem alike for any state; second by the greater, because it is easier to fall than to rise up; third, because to rise up from sin does not seem to belong except to him who can merit, – but he who cannot in any state fall cannot merit.
4. Again, no mortal sin after this life can be remitted; therefore not venial either. The consequence is plain, because they are of the same idea, since immaterial things do not differ except according to more and less.
5. Again, Damascene, *Orthodox Faith* ch.18: "What for angels the fall, this for men death is;" but an angel after the fall is altogether unchangeable from that into which he fell; therefore man too from that in which he dies is unchangeable after death.
6. Again, by the least penalty can venial sin be dismissed, provided however it be voluntary, as by sprinkling with blessed water and the like; now the penalty of death is the greatest, because death is 'the ultimate of things terrible', *Ethics* 3.9.1115a26; therefore through that, if it be accepted voluntarily by this one about to die, can every venial fault be deleted; therefore after death for none does it remain to be deleted.
7. If you say that death is inflicted for original sin, and therefore it cannot be the penalty due to another sin, nor consequently deletive nor remissive of venial sin, – on the contrary: original sin is dismissed in baptism, which is against this specially ordained; death therefore is not in this [baptized person] a penalty due for original [sin]; therefore as before [n.6].
8. To the opposite is the Master in the text [*Sent.* IV d.21 ch.1]. And he proves it through that of *Matthew* 12.31, *Luke* 12.10, *Mark* 3.29-30: "He who has sinned against the Holy Spirit, it will not be remitted to him neither in this age nor the future [one]." And the Master adds: "From this it is given to be understood, as the holy doctors hand on, that certain sins will in the future be dismissed."

I. To the Question

A. About the Penalty Due for Sin Dismissed in this Life the Conclusion is Certain

9. In this question, one conclusion is certain, namely that 'for sin dismissed in this life, the penalty due for it can be paid after this life'.
10. Which is proved by reason, because none with debt of penalty is beatified: for either the penalties must be paid with glory, or after glory; but in neither way, because neither can penalty stand with glory nor succeed to glory; therefore if someone at some time is debtor for a penalty, it is necessary that he first pay it before he be glorified. But he who has worthily repented *in extremis*, which is possible (as was said in the preceding distinction [d.20 nn.12-13, 24]), has not paid a worthy penalty for the sin about which he was penitent; therefore he will pay that after this life.

11. For this there are also authorities, which the Master adduces in the text [Lombard, *Sent.* IV d.21 ch.2]:

One of Augustine *City of God* ch.26 n.4, where he treats of *I Corinthians* 3.12, about those who build wood, hay, stubble. He says: “After the death (he says) of this body, until the day of damnation and remuneration be come to, if in this interval of time the spirits of the dead, who have built wood, hay, stubble, are said to suffer a fire of transitory tribulation burning up venial sins, I do not contradict it.” And there follows, “Heaven will that fire be than whatever man can suffer in this life” [*Exposition of the Psalms* ps.37 n.3].

12. The same [Ps.-]Augustine, *On True and False Penitence* (and it is the *Canon* ‘On Penitence’, in Gratian, *Decretum* p.2 cause 33 q.3 d.7 ch.6), speaking of a late penitent: “If he live (he says) with life and not die (understand of the life of grace), we do not promise that he escape all penalty, for he must first be purged with the fire of purgation who to the other age has put off the fruit of conversion; and this fire, although it not be eternal, in however a marvelous way is grievous; for it excels every penalty that anyone has ever suffered in this life.”

13. And this opinion the Master states in *Sent.* IV d.20 ch.2 n.1, “If (he says) they have departed before the fulfilment of their penitence, they will feel the purgatorial fire and will be more heavily punished than if here they had completed the penitence.” And no wonder, because the more a penalty is less voluntary, the more it is less satisfactory.

14. And the whole of this opinion about purgatory is founded on the word of the Apostle in *I Corinthians* 3.13, saying thus: “he himself will be saved, but so as by fire” (he is speaking of [someone] imperfect dying).

B. About the Penalty for Sin here not Dismissed, and about the Sin itself here not Dismissed

15. But the other [point] is not as certain, namely about sin here not dismissed, whether the penalty due for it can be paid in the future and thus be remitted; secondly whether such a sin here not dismissed can there be dismissed.

1. About Mortal Sin

16. About the first [n.15]: it is held as certain that not about mortal sin, because for it not dismissed the penalty due is the penalty of damnation, which will not be remitted.

2. About Venial Sin

17. About venial sin it is necessary to see what penalty may correspond to it according to divine justice.

a. Opinion of Others

18. And it is said [Alexander of Hales, *ST* II-II n.285 q.1] that per se to it there corresponds an eternal penalty, per accidens however a temporal one.

19. The first is proved, because if someone be damned for mortal sin and with venial sin, for that venial sin he will always be punished, otherwise in hell there could be redemption of some sin; but he will not be punished by God for that eternally, unless justly there were an eternal punishment owed to it.

20. The second is proved, because venial sin stands with charity, through which a man is ordained to the Kingdom [of Heaven]; and consequently, by reason of that, to venial sin there is owed a temporal penalty.

b. Refutation of the Opinion

α. Against the first Proof

21. Against the first [n.19] in three ways:

First, because with charity there does not stand the debt of eternal penalty; but with charity there does stand venial sin, not only not deleted after the act, but also actually committed (it is plain according to everyone); therefore etc.

22. Proof of the major [n.21], because through charity someone is worthy of eternal life; if therefore with this there stands the debt for eternal penalty, therefore at the same time someone is worthy of eternal life and eternal penalty; but this is impossible, because none can be debtor of eternal penalty for that with which he is ordained to glory, because then could stand together glory and some penalty

23. The major is also proved in another way, because after the act of mortal sin nothing remains of the mortal sin but the debt of penalty, as was said in d.14 q.1 nn.28-34; therefore, if the debt of eternal penalty could stand with grace, a mortal sin not remitted could stand with grace in the way in which it remains after the act, and then the same [person] would be friend and enemy.

24. Again, second: the essential penalty of the damned is not the penalty of sense, but the penalty of loss; but that is necessarily concomitant with any penalty, because no penalty can stand with glory; therefore the debt for any eternal penalty includes the debt for the eternal penalty of loss, and consequently the essential penalty of damnation; but that does not correspond to venial [sin].

25. Again, third: venial and mortal sin are impropportionable in idea of malice or offense, because infinite venial [sins] – if they existed – would not be equal to one mortal [sin] in idea of offense, because neither would all those turn away from the ultimate end as a single mortal [sin does]; therefore the penalty, according to justice corresponding to mortal sin, impropportionably and to infinity exceeds the penalty due to venial [sin]. But it does not impropportionably and to infinity exceed according to intensity, because any infinite penalty according to intensity finitely exceeds or is exceeded by another; therefore this will be according to extension.⁷⁹ Therefore eternal penalty is not due to venial sin.

26. And this conclusion I concede.

27. To the reason for the opposite [n.19] it is said in one way [Bonaventure, Aquinas, Richard of Middleton] that to venial sin per accidens – when it is conjoined with mortal – eternal penalty is due, but not by reason of itself.

⁷⁹ Sc. the pains due as penalty for sin are not infinite in intensity (any actual pain will be determinate in how intense it is), so if the pains due to mortal sin exceed infinitely those due to venial sin, the infinity cannot be in intensity; so it must be in extension, that is, in the former lasting forever and the latter not.

28. But this I do not understand, because God always punishes less than is wholly deserving. And let it be that according to rigor he would simply punish up to what was wholly deserving, it would be altogether unjust to inflict an eternal penalty for that to which according to itself a temporal penalty is due: for however much it may be conjoined with a second, this does not make this one to exceed to infinity the genus of the guilt; therefore neither does there justly correspond to it a penalty exceeding to infinity.

29. I say therefore that for venial sin, whether punishing it here or in hell or elsewhere, there is not due but a temporal penalty, neither per se nor per accidens, because according to itself it is the sort of offense that according to itself is sufficiently punished by a temporal penalty.

30. Nor is it unacceptable that this penalty due to venial [sin] has a limit in hell, because also he truly penitent first and fulfilling part of the penitence imposed, and before the whole [has been] fulfilled falling back into mortal [sin], and in that mortal [sin] dying, for fulfilling the remaining part of the penitence he will pay the penalty in hell, – but not but a temporal one, because from whence in the remission of prior sins the debt of eternal penalty was commuted into a debt of temporal penalty, he is never debtor for those sins save for temporal penalty, and consequently, with the total penalty paid, he will be free from them.

31. Nor yet in hell will there be a redemption for that, namely for the sin for which he is damned, because for that the debt of eternal penalty was never commuted into a debt of temporal penalty; and therefore always that debt remains, nor ever can that penalty be paid whole.

β. Against the Second Proof

32. About the second conclusion [n.20]:

It can be said in one way as follows, that nothing else is remission of venial sin than payment of the temporal penalty due for it.

33. It is proved, because after the transient act the fault – which remains – is nothing but guilt for the penalty due; but that venial guilt is not but guilt for temporal penalty, from the article preceding [n.29], – and consequently, with the temporal penalty paid in purgatory for this venial sin, out of this very fact the venial fault is remitted.

34. But not so about mortal sin, because the penalty due for it cannot be totally paid unless first the eternal be commuted into the temporal; and this commutation is called ‘remission’ of mortal guilt. But this remission does not happen except through an ordered voluntary displeasure, which sort is not had after death.

Thus is one way plain, how after death mortal sin cannot be remitted, but only the penalty due for mortal sin previously dismissed.

35. But after death venial sin can be dismissed, previously committed and not dismissed, because the total penalty due for it can be paid, and therein it will be remitted.

36. But this way does not please, because the saints seem to distinguish between the remission of guilt of whatever sort and of the penalty, and especially between remission of guilt and payment of the penalty due for that guilt.

37. It can be said in another way that venial sin in this life can be remitted not only through penalty interior or exterior, because that is not necessary for this, but through some act more accepted by God than venial sin may displease him, – and this

whether referred by the doer himself to remitting this venial sin, or not referred by him but by God accepting it in order to that.

38. To the matter at hand: the works of this [man] who dies in charity, although after death they not be referred by him for dismissing the venial sin – in which he died –, and [although] too he not have any meritorious new act by which venial [sin] may be deleted, yet those works before done can be referred by God to remission of this venial [sin] after death.

39. And this, in this way: an impendible cause, while it is impeded, does not posit the effect, – but while it is not impeded, it does posit it; but the merits of this [person] dying in charity were sufficient cause for deletion of this [person's] venial sins, whether referred by himself, or by God accepting those works in order to this; but they are impeded while this [person] lives, if he always in act remains in venial sin; but after death they are not impeded because then he does not continue the act of venial sin; therefore through those his venial sins will be destroyed after this life.

C. Two Corollaries

40. From this follow two [things]: first, that in the instant of death venial [sins] are remitted, because then the act of venial sin does not remain, and consequently then the impediment ceases; the other, that the venial sin of one dying in charity is remitted in this life, unless he continue the act of venial sin up to death or to the instant of death.

41. This second seems probable, unless you say that God has ordained that the good merits of this [person] will be reserved in divine acceptation up to the moment of death, when of course he ceases to be wayfarer, and consequently then [God] returns the good corresponding to these merits; but not so for any instant prior, when he was wayfarer.

42. This is probable in other [cases] because since any merit merits (as I believe) an increase of grace, because some determinate degree of glory, for which is required as preceding disposition some degree of grace, and [since] not always does God after any meritorious act increase grace proportionate to merit, it seems that the increase due to remiss merits he reserves until the instant of death.

43. And in the same way about this deletion of venial [sins], which is a sort of non-principal reward of these merits, just as [is] also an increase of charity in such or such degree.

44. And this is reasonable, because in that instant [of death] he first comes to be in another state, and that the reward of merits is rendered to him, [this] the state of wayfarer has been preventing or something concomitant to a state of this sort. Nor is it necessary here to reckon that this reservation for the moment of death is reasonable because then a man is most in need on account of the greatest trials imminent: for this is not true, because in the instant of death the soul is separated from the body, and consequently is not on the way, but in the term, nor consequently then exposed to temptations.

45. If neither of these ways [n.40] pleases (neither the first, namely that it is the same thing for venial sin to be remitted and for the penalty to be paid due to it, – nor the second, namely because through the merits in life had and reserved in divine acceptation, [venial sin] may be destroyed in the instant of death [n.40]), – let another be looked for, which it is difficult to find, for that there is some good movement, by which, as by a

disposition or a merit congruous or condign, venial sin may be destroyed in the soul after death, does not seem consonant with theological doctrine, which posits that state immune from these things.

II. To the Principal Arguments

46. To the arguments.

To the first [n.3]: I deny that consequence, understanding ‘to rise up’ for ‘to be freed from sin’.

47. To the first proof [n.3], I say that it is not alike, because ‘to sin’ is to act freely even for the state of the way; but ‘to rise up’, that is, to become immune from sin, does not require to act freely even on the way, because, according to the first opinion [nn.18-20] it is only to pay the penalty, and this is to suffer it; or according to the second opinion [nn.21-23], it is only through merits previously had on the way and for then accepted that guilt is now dismissed.

48. To the second proof of the consequence [n.3] I concede that it is easier to fall than to rise up, insofar as ‘to rise up’ states an act ordered simply in the power of the one rising up; but thus is ‘to rise up’ not taken in this remission of venial sin [n.47].

49. To the third proof I say that it takes something false, namely that ‘to rise up’ is through a meritorious act that is then present, but it is through a meritorious act that was present before on the way, according to the second opinion; or through no meritorious act, but only through suffering a condign penalty for that sin, according to the first opinion.

50. To the second [n.4]: the consequence is not valid. And the reason was stated in the first opinion, and this according to that opinion. But according to the second [opinion], it would have to be said that merits done in this life cannot be accepted for the moment of death, so that through them mortal sin is deleted, because God has disposed mortal sin not to be deleted except through voluntary reception of the sacrament, or through some disposition as if meritorious by congruity, then or up to then inherent when the sin is deleted; not so is it about him who departs in mortal [sin].

51. To the proof [n.4] I say that although mortal and venial [sin] are of the same idea in genus of nature or perhaps in malice of morals, as the genus of virtue is distinguished from the gratuitous and from sin (for it is not the same to be virtuous and vicious morally, and just and sinner theologically; indeed, sometimes the more vicious is more just, and the more virtuous is more a sinner, as was said elsewhere [d.14 nn.18-19]), but yet these are not of the same genus or idea in idea of divine offense, and therefore neither are they uniformly remitted.

52. To the third [n.5]: the likeness is as to this, that just as an angel falling is in the term, and is not on the way, so also a man in death; but it is not necessary that the likeness is as to stable permanence in anything whatever, but in that which is principal in him who is already attaining the term, of which sort is spiritual life through grace or spiritual death through mortal sin; and if he dies in the life of grace, he will always live – but he who [dies] in mortal sin, thus will he remain.

53. But about venial sin it is not necessary that there is such stability, because that is not something according to which the good or bad state of way or term may per se be attended to, – or it [venial sin] can stand with a good state and with a bad state, both of

the way and of the term; but when it [venial sin] is with a good state of the term, it is necessary that it be deleted before the ultimate term be fully had.

54. To the fourth [n.6] it could well be conceded that death voluntarily accepted is a penalty sufficient for the penalty of any venial sin at all, and perhaps for a great part of the penalty due for mortal sins dismissed. Nor is it a problem that the penalty is necessary, because someone can voluntarily accept the necessary; and thus with this is that consonant which was said in the second opinion – that venial sin may be deleted in the instant of death – with what was said in the first opinion, because if through the payment alone of the penalty it be remitted, in death that penalty is paid, and so venial sin is remitted.

Question Two

Whether a Confessor is in Any Case whatever Bound to Hide a Sin Uncovered to him in Confession

55. Second I ask whether a confessor is in any case whatever bound to hide a sin uncovered to him in confession.

56. It seems that not:

Because it is licit for anyone to renounce his right; therefore he confessing, since it is his right that his sin is hidden, it is licit for him to renounce this right by giving license to the confessor, so that he not be bound to hide it.

57. Again, Bernard *On Precept and Dispensation* ch.2 n.5, “What has been instituted because of charity ought not to militate against charity;” but the concealing of a sin confessed would in some case militate against charity; therefore etc. Proof of the minor: whenever a confessed sin would be against the common good, as suppose a charge of heresy or betrayal of the republic, and especially if it were perceived from confession that this not only was done but was to be done, it seems to be contrary to charity to condemn the common good because of some good of a private person.

58. Again, posit: some persons have agreed to kill a priest in such woodland, which priest is a traveler with them; one [person] before the entering of the woodland repents and confesses to the same priest; that priest, the others not repenting, is not bound to expose himself to death without cause; therefore neither to enter the woodland. But, by not entering it, he reveals to the other associates in fact the confession of that confessed associate (for he would not be turning away from their society unless this one had confessed); therefore in this deed and similar ones it is licit to reveal a confession [Richard of Middleton, *Sent.* IV d.21 princ. 4 q.2 arg.5].

59. Again, a priest has *de facto* absolved some simoniac bishop, whom he cannot absolve *de iure*; this priest is bound to make confession especially about this sin, and it thus circumstanced, which is mortal, and these circumstances aggravate [the sin]; but by thus confessing he reveals the sin of that simoniac bishop; therefore etc.

60. Again, it is licit to reveal that which is not a sin nor a circumstance of sin; but such is the person with whom he confessing has sinned, – posit that this or that [woman], since this is not an aggravating circumstance.

61. Again, an abbot, having some monk in a place belonging to his monastery, knows him through confession to have sinned in that place and to have there suspect society, through whom often he is enticed there for sinning: it seems that he [the abbot]

can consult the salvation of his soul; therefore he can remove him from this care or from this office, so that he not have this sort of occasion for sinning. But by removing him, in fact he reveals the confession, because he does such a deed that he would not do if this [person] had not confessed to him, through which also others can come to knowledge of that sin, at least in general.

62. Again, *Extra*, ‘On Sentence of Excommunication’, “Since not by man” [Gregory IX, *Decretals* V tit.30 ch.14]: “From communion with him, who – for laying his hands on a cleric – has fallen under edict of excommunication, you must abstain, unless perhaps to you alone that were to lie open, in which case privately alone you will avoid him;” and there follows: “so that at least confused with the blushing of shame, he may be compelled to satisfy for his hidden excess.” From this is had, as it seems, that if in secret or through confession I know that this [person] has fallen into sentence of excommunication, I must avoid him privately, so that he may be confused; therefore, on account of confession it is licit to inflict confusion on someone, – therefore also by parity of reason to reveal his sin.

63. On the contrary:

‘On Penitence’ in distinction 6 ch.2 (and it is in the text [Lombard *Sent.* IV d.21 ch.9 n.1; Gratian, *Decretum* p.2 cause 33 q.3]), “A priest before everything should beware not to tell anyone about the things that are confessed to him, for if he has done this, let him be deposed and in every day of his life go ignominious in his pilgrimage.”

64. Again, *Extra* ‘On Penitences and Remissions’, Gregory IX, *Decretals* V tit.38 ch.12, , “Let [a priest] altogether beware lest by word or sign, or in any other way you please, he betray a sinner;” and there follows: “If he has presumed to reveal a sin uncovered to him, we have decreed that not only must he be deposed from priestly office, but thrust down to doing the strictest penitence in the strictest monastery.”

I. To the Question

A. Statement of Five Conclusions

65. In this question let this be the first conclusion that ‘to conceal a sin uncovered in confession a priest is bound by the law of nature’; the second, that ‘to that he is bound by the positive divine law’; the third, that ‘to that he is bound by the positive law of the Church’; the fourth, [as to] ‘when’ and ‘how’ he is bound and about other circumstances pertinent; fifth, about other things secret or under a secret uncovered to another.

B. Proof of the Conclusions

1. About the First Conclusion

a. Proof of the First Conclusion through Others

66. The first conclusion [n.65] is proved thus [Richard of Middleton, *Sent.* IV d.21 princ.4 q.1c]:

“The same person can truly affirm something, speaking in the person of another, which he would truly deny speaking in his own person (proof: the angel, speaking to Moses in the person of God, truly said, ‘I am the Lord your God etc.’, *Exodus* 20.2, – which he would truly have denied speaking in his own person); therefore by the like, a man, representing the person of God in the forum of confession, truly can affirm

something that outside that forum he can deny truly when he speaks in his own person; therefore outside that forum saying that he had heard or knows those things, he is lying, because they have not come to his notice except insofar he was representing the person of God. But to avoid a lie is of the law of nature, and especially a pernicious lie; therefore etc.”

b. Confutation of the Aforesaid Proof

67. Against this reason it can be argued:

First thus, because it is of the same [person] and as of the same in person to take cognizance in a case and to give sentence in it (this is manifest, because for this does this [person] know and as this, so that he may rightly give sentence); but a priest not in the person of God gives sentence in absolving him confessing, but in his own person; therefore also he thus hears and takes cognizance. – Proof of the minor: he does not absolve principally, but only ministerially; but to absolve ministerially does not belong to him except in his own person: for if in the person of God he were to speak in absolving [someone] confessing, he could truly say without preceding prayer (which is “May the Lord absolve you”), ‘I absolve you principally and I infuse grace in you’, just as the angel truly said in the person of God, “I brought you out of the land of Egypt” [*Exodus* 20.2].

68. Again, no more does a priest hear or absolve in the forum of confession in the person of God than he confects the Eucharist in the person of God, because this act is excellent just as that one and a sacramental act in which divine virtue operates as here, indeed he more seems to act in the person of God or in the person of Christ there than here: for there he proffers the words of Christ “my body” and in the person of Christ, about which he prefaces, “Who on the day before” etc., so that the whole “Take” etc. “this is” etc., he says himself reciting the words of Christ; not so in the matter at hand. Hence, he does not premise here “Christ, wishing to absolve the sinner, said thus, ‘I absolve you’,” but the ‘I’ stands here for the person of the minister himself. – From this it is plain that more not less he confects in the person of Christ than he absolves or hears confession, – but he confects in his own person, and what he knows as confecting he knows in his own person; hence he does not lie after mass saying, “I know that I consecrated today.” Therefore, also here [sc. in confession].

69. Again, according to this same way [n.68] and according to truth, as will later be proved [n.97], the sins uncovered in confession it is licit to state in general and in particular not related to the person confessing.

70. This is also proved through that *Extra* ‘About penitences and remissions’ [Gregory IX, *Decretals* V tit.38 ch.9], where Innocent III responds to a certain cardinal legate who wrote to him a case that he had heard in confession, and sought advice: the Pope did not refute him about that revelation in general even through writing, but replies how such a person confessing should be counseled.

71. This is also plain from the common use of confessors: for whether in common speech or in preaching they sometimes say, “Such a case occurred,” “Some person in such or such a way sinned”; therefore that proposition is had that a confessor can licitly outside confession state a sin confessed to him, such however as in no way related to the person confessing from whence it may be possible to come to knowledge of him.

72. But if the aforesaid reason [of Richard, n.66] were valid, this would not be licit, because he [the confessor] would be lying. Proof, because he not knowing a particular except for a determinate singular, if he not know that singular, does not know the particular; but this [confessor] does not know that some person has done such sort of sin, save for this person confessed to him and this sin confessed to him; therefore if he were lying about this [person] and this [sin] because not knowing them [sc. outside confession], similarly about another [person] and another [sin].⁸⁰

73. I concede, therefore, these reasons [nn.67-72], because revelation is not against the law of nature because of this, that the revealer may be lying.⁸¹ And so that first reason I do not hold [n.66].

74. I reply therefore to it [n.66], that it is not the same thing to speak in the person of another and to speak with his authority or as his minister: for commonly, he speaking in the person of someone simply puts forward [lit.: *pre-tends*] his person, – as it commonly is among those jokingly imitating others: for when he is imitating that stutterer or the like in such act, and properly speaking as the former would speak, he is speaking or doing such deed in the person of the former; and therefore as soon as he stops from doing as the former would do and from speaking as the former would speak, it is said to him ‘you are lying’ or ‘you are failing’, although he is then acting or speaking in his own voice. In this way it is about the locutions of angels in the person of God [n.66].

75. Not thus does a priest hear confession or absolve in the person of God, but he is only minister of God in that act and as a minister he acts; therefore in his own person.

76. I concede therefore that if he were to hear in the person of God and to speak in the person of God, he could truly say something that he could not say in his own person, for in the person of God he would truly say this, ‘I am God’, ‘I created the world’, and the like; but in his own person speaking thus, he would be lying. But the priest in confession neither hears nor speaks in the person of God, but in his own person, although with the authority of God and as his minister. In the same way in other sacraments: hence as minister of God he baptizes and consecrates, and yet as man or in his own person he knows that he has baptized, and without a lie he can say that he has baptized.

c. Scotus’ own Reasons for the First Conclusion

77. I hold therefore the first conclusion [n.65].

78. I add on however four other reasons: of which the first is taken from the idea of charity, the second from the idea of fidelity, the third from the idea of truth, the fourth from the idea of unity or mutual utility.

79. The first is of this sort: the law of nature about fraternal charity is expressed in *Matthew* 7.12, “All things that you want that men should do to you, this do you also to them; for this is the law and the prophets,” and *Luke* 6.31, “As you want men to do to you, do you also to them.” In like manner must that proposition be understood of natural law

⁸⁰ Richard claims [n.66] that a confessor who says outside confession what he knows in confession would be lying, since he does not know it outside confession. Scotus counters, as it seems, that this claim entails that confessors would be lying if outside confession they speak, as they do [n.71], of such and such sin and sinner without mentioning singular instances. For confessors only know such general cases because they know the singular instances; so if they do not know the singular instances outside confession, neither do they know the general cases outside confession, and they would be lying if they said they did.

⁸¹ The Latin text misprints ‘mentiarur’ for ‘mentiatu’.

about fraternal charity: “what you want for yourself,” that is, what you ought according to right reason to want; and this is understood in that proposition of *Matthew* 22.39, “Love your neighbor as yourself.” But anyone at all ought according to right reason to love his own reputation, therefore also the concealing of his own confessed sin, and consequently the confessor should love the same and will it for the one confessed himself, – but revelation would take from the confessed his reputation. Therefore etc.

80. The minor is proved:

Through Scripture, *Ecclesiasticus* 41.15, “Have care of your good name,” and it renders a reason about this, “For this will be more lasting for you than a thousand great and precious treasures.” It proves it also through something else, adding: “There is a number of days for a good life; but a good name will last forever.” And *Proverbs* 22.1, “Better is a good name than much riches.”

81. Again, it is proved through reason: for anyone at all according to right reason ought to will for himself civil life; but this is taken away by removal of reputation, because in this does anyone live with civil life, that he is fit for the legitimate acts belonging to him in that civil state; but with reputation lost one is deprived of fitness for such acts, because one has lost the status of undamaged dignity, that is, fitness for the acts that one would otherwise be worthy of.

82. The second part of the minor, namely that ‘revelation of confessed sin takes from the confessed this sort of reputation’ [n.79], is proved, because by what reason it can be revealed to one, also to a second, and so to everyone; but in such revelation it is manifest that the status of unharmed dignity, which consists in his reputation among fellow citizens, is taken from this [person].

83. The second reason: anyone at all is bound by the law of nature to keep faith with his neighbor, which he would and ought to will to keep with himself; but he who commits to another a very great secret wants and should want it to be kept as secret; therefore another, to whom he has committed it, is bound to keep that for him. – This reason is touched on in *Proverbs* 11.13. “He who walks deceitfully reveals secrets; but he who is faithful hides the thing committed by a friend.”

84. The third reason: anyone at all is bound by the law of nature to keep a lawful promise; but he who receives a secret, especially this one uncovered in confession, even if not explicitly yet implicitly promises he will keep it, because without such a promise at least implicitly understood, that sort of secret would not be committed to him; therefore etc. – This reason can be taken from that word, “Speak ye truth everyone with his neighbor” [*Zechariah* 8.16, *Ephesians* 4.25].

85. The fourth reason: in this does any community have a unity proportionate to the unity of the mystical body of Christ, because there is an order there of superior and inferior, – and a superior is bound to have influence on an inferior, and an inferior [is bound] to sub-minister to a superior, according to that parable of St. Paul about the mystical body of Christ in diverse places [*Romans* 12.4-5, *I Corinthians* 6.15-20, 12.4-7, *Colossians* 1.18]; but in civil life an inferior is less sufficient to himself and less knowing, – and in the Church a sinner is unknowing, but the superior is a hierarch, who also is able to advise and reconcile; therefore, it is of the law of nature that none may exclude from an inferior recourse to a superior in necessities, nor the influence of a superior on an inferior, because this is the common utility of the members for each other. But the revealing of a secret excludes such recourse of an inferior to a superior in advice of soul,

and consequently the influence of a superior on an inferior, because none would have recourse if regularly that – about which he seeks advice or remedy – did not regularly have to be kept secret; therefore by the same law of nature by which anyone is bound to keeping the unity of the mystical body of Christ, and to [keeping] the common utility for others as members in the body, he is bound to hide this secret.

2. About the Second Conclusion

86. The second conclusion [n.65], namely that [the priest] is bound of the positive divine Law, is proved:

First thus: any Christian whatever is bound not to give occasion to another whereby he may be called away from the Law of Christ; but the Law of Christ is about making confession, as was shown in d.17 [nn.48-57]; therefore anyone whatever is from the Law of Christ bound not to draw someone away from making confession. But he revealing a confession, occasion having been given, draws others back from confession; therefore etc.

87. If you say that although this priest may reveal [a confession], yet another will be hider of the secret, – this is nothing, because this [priest], as far as is of his own part, gives occasion to another to beware in the same way of individual confessors.⁸²

88. Again second thus: Christ established the judgment of penitence to be ultimate on earth as to that crime confessed. Which is plain from that word of *Matthew* 16.19, “Whatever you loose on earth will be loosed also in heaven,” that is finally and ultimately approved; and *John* 20.23, “Whose sins you remit etc.” (supply: in divine judgment they are approved finally remitted). Therefore, he sins against the law of Christ who takes something discussed in this forum and there finally ended to another forum; but he who reveals [a confession], as far as is in himself, does what can be taken to another forum, namely a public one; therefore etc.

89. Third thus: he giving occasion for sinning mortally in carrying out a precept of Christ sins mortally, because what was needing to be duly carried out he makes, as far as is in himself, to be unduly carried out; but he revealing a confession gives occasion for unduly carrying out the precept of Christ about confessing, because [for doing it] mendaciously: for he gives occasion that someone praise himself in confession, and that another, whom he hates, he blame, so that thus he may by the confessor be unworthily promoted and another be punished; therefore etc.

3. About the Third Conclusion

90. The third conclusion [n.65], namely that such concealing is of the positive right of the Church, is plain from the things alleged for the opposite [nn.63-64], among which the second [n.64] was better and more reasonable: for it is not expedient that because of some accusation someone be made a vagabond, provided however it is possible in some way for his common or solitary sojourn among men to be tolerated, because a vagabond would be more dismissed to his evil will, and so both in himself and in others would more sin and do harm than if he were delivered over to a strict custody.

⁸² That is, someone who hears a priest reveal a secret of another’s confession will now himself avoid confession for fear that his own secrets will be revealed by any priest he confesses to.

4. About the Fourth Conclusion

91. About the fourth conclusion [n.78] it is necessary to see the ‘who’, ‘for whom’ and ‘when’.

About the ‘who’ I say that not only the confessor, but also he to whom the confessor reveals it, although illicitly, is bound to conceal it. The proof, because he transferring something to another *de facto*, which he cannot licitly *de iure* transfer, does not give to that other the right of using nor the right of transferring it to another, because from whence he does not have the right, he cannot to another transfer the right, because ‘no one gives what he does not have’ [Aristotle, *Sophistical Refutations*, 2.5.178b1-7]; but a confessor revealing [something] does not have the right of transferring this to another; therefore if *de facto* he transfer it, the other does not have the right of further transferring it.

92. I say the same about him who hears the confession of [someone] confessing, being other than the confessor; for if he hears by chance, he does not sin, yet he is bound to silence; but if deceitfully, he sins mortally, and along with this is bound to silence.

93. These two conditions about ‘who’ [nn.91-92] are proved by the reasons before set down for the first and second conclusion [nn.78-89].

94. But ‘when’ [sc. is a priest bound to conceal a confession, n.62]? I say always and for always, because it is a negative precept.⁸³ And from this it follows that not more after the death of him confessed than with him alive, because the reasons posited for the first and second conclusion equally conclude about this, as about a negative precept, for then and then [sc. before and after death].

95. But about the ‘to whom’ [sc. one may not reveal a confession] it is said [William of Auxerre] that to anyone except a superior.

But the premised reasons [nn.91-94] conclude about a superior just as about an inferior, except in a case when certainly the inferior cannot absolve but receives [a confession] so as to refer it to a superior who can absolve, and then he is not himself the confessor, but it must be reckoned that the one confessing to him as to an inferior is telling it to him as to an interpreter only; and then the whole stands within a single act of confession, wherein he confessing and the superior – who alone then is the confessor – are the one needing to be judged and the judge; and the intermediary (who hears and reports) is only interpreter, yet he is bound to silence as to everyone other than this one for whom he is interpreter.

96. If you say that through this response is given to a certain argument previously made about that chapter ‘Of office’ [Gregory IX, *Decretals* etc., n.70], because there an inferior narrates to a superior a sin confessed to him, and consequently that chapter does not prove that it is licit for anyone universally to state sins heard outside the forum of confession, – this is nothing, because that cardinal did not write to the Pope so that the Pope might absolve, but he wrote requesting advice about what he himself should do, as is plain through the response of the Pope, who does not immediately absolve that woman

⁸³ Negative precepts are binding always and at all times because there is never a time when one should not be obeying a negative precept (such as the precept not to tell lies). Positive precepts are always binding but not at all times because a given time need not be a time when a positive precept applies. So, the positive precept to follow the rules of driving is always binding but not at all times, as when one is not driving.

of this which he supposed an alien [illegitimate] birth for her, but replies to him how a discrete priest ought to advise that woman. And in like manner in such a doubt could advice be requested not only from a superior but from anyone else prudent, who to be sure would know how to give advice.

97. Hence that which is said there, against the first reason [n.69], is generally true, namely that the sin of someone confessing not referred nor made determinate to the person confessing can be stated by the confessor, and usefully, indeed necessarily, when he [the confessor] is not as skilled as to know himself how to advise, and then he usefully can and necessarily should speak to someone prudent who has knowledge to advise him.

98. But can a Pope not command that it be revealed to him?

I reply: someone would say that a Pope never has power over a right of nature.

99. About the 'what' I say that [a priest hearing confession is bound to conceal] not only the principal sin of him confessing and the circumstances of the sin, because circumstances cannot well be revealed without revelation of the thing done, but also a second person with whom the sin is done.

100. Which is plain through the reasons posited for the first and second conclusion [nn.79-89], because even the one confessing wishes to save the reputation of the person with whom he sinned —, that is, he ought to want it just as [he wants] his own; indeed more so, because that person was conjoined with him in crime: for so much more is he bound to that [person] for restitution of the good which through that [person] he lost, and for the guarding of that good which can be guarded, notwithstanding that evil committed.⁸⁴

101. Fidelity too and truth and unity or community [n.78] are plain here as before [nn.79-85].

102. Similarly, the three reasons for the second conclusion [are plain, nn.86-89], because non-concealment draws away from confession; it also takes away to another forum what is aired in this forum, and is an occasion for lying in this forum, as was said before [n.88].

5. About the Fifth Conclusion

103. About the fifth conclusion it is said [Richard of Middleton, *Sent.* IV d.21 princ.5 q.4] that to the keeping of every secret one is bound by the law of nature, because of the reasons for the first conclusion [nn.79-85]; not only when he himself confessing makes it express that he wants to commit that as a secret, but also whenever, from the manner of committing, it is apparent that he wants to commit it as secret.

104. Now the reasons for the second conclusion [nn.86-89] do not equally evidently conclude it save the third [n.89], because occasion would be given for lying in committing some secrets to someone.

105. As to this article [sc. this fifth conclusion] I say that ecclesiastical penalties are not inflicted the same about any secret at all as about this one. If however someone were publicly to reveal some other secret, another penalty is imposed on him, namely infamy: for the imposer of a false crime or of anything that he cannot prove, is held for a

⁸⁴ The Latin in this paragraph is delicately ambiguous. For the demonstratives, while feminine grammatically (because 'person' is grammatically feminine), could also be referring to a person feminine biologically (so that the liaison being talked of could be heterosexual). But the grammar covers over that ambiguity and Scotus does nothing to uncover it.

‘calumniator’ *Extra* ‘On calumniators’ [Gregory IX, *Decretals* V tit.2 chs.1-2]; such is he who reveals any secret crime that he cannot prove.

II. To the Principal Arguments

106. To the arguments.

To the first [n.56] I say that ‘a confessed sin ought to be concealed’ is not only a right of him confessing, but a right of the community, because from the opposite – namely from revelation – there would follow a continual perturbation in the community, because everywhere anyone would reckon another abominable, and it is not licit for this [person] to renounce the right of the community, although [it is licit for him to renounce] his own.

107. In another way it could be said: let it also be that it were only a right of this [person confessing] and a right granted in his favor, it would not be licit for him to renounce it as to this, that the confessor would be free for revealing it; because a confessor is bound by a multiple right, of nature namely and positive [right], the revocation of none of which is in the power of him confessing.

108. What therefore will the confessor do, with the one confessed willing for his sin to be made known?

I say that he confessing can afterwards state his sin outside confession, and if as secret, still the permission following does not absolve the confessor from the law of nature so that he not be held to conceal it; but if he [the one confessing] say it so that it not be held secret, and especially before some person, or before some certain persons, for whom it is perhaps licit because of some good end that can follow from the revelation made to them or to him, then the confessor can say that as said to him publicly outside all secret.

109. But can he then say “I heard this in confession”?

I reply: it might be said [Thomas Aquinas, *Sent.* IV d.21 q.3 a.3] that these words alone, “I heard this sin in the confession of that person,” include mortal sin, because they include revelation of this as known, in the way it is not licit for it to be revealed. Hence he to whom after confession it is revealed outside everything secret should be wary in mode of speaking and telling, lest he narrate this as if said to him in a way in which it is not licit to be revealed.

110. Against this: it is licit for him to say this thing – narrated outside confession – to whom he will, and it is not a special narration through this, that he says this was confessed to him; therefore to say this is licit for him.

111. To the second [n.57] I say that there can be no case in which silence may militate against charity, rather the opposite would militate against common charity, as was shown by the four reasons for the first conclusion [nn.79-85].

112. And when you give an instance about the common good [n.57], I say that of *Deuteronomy* 16.20 “justly shall you do what is just;” therefore charitably shall you do what is of charity; but not charitably does he do who against the law of nature in the aforesaid ways [nn.79-85] does not conceal some evil committed or to be committed; wherefore that verse of the jurists is to be rejected: “Heresy is a crime that not even confession conceals”, not but that the meter is good, but the opinion is false.

113. To the third [n.58] it can be said that that priest can have multiple occasion for not entering the woodland, other than that malice of the thieves uncovered to him, – at least many another he can think out and say in their presence “I wish to do this and that,” “to that and that place I wish to turn aside before I proceed further;” and if from such alleged occasion he seem to turn aside, neither in word nor in deed does he reveal the confession.

114. But if he cannot from any occasion turn aside without it appearing to those others that because of a confession he was turning aside, and in this he would reveal the confession, a certain one says [Richard of Middleton, *ibid.* n.58] that he is bound to enter [the woodland] – and if he expose himself to death, this is for a right cause, so that namely he may keep the Law of God about the seal of confession; and consequently, if he dies, he is a martyr.

115. But in another way it can be said that ‘facts’ can be equivocal signs, because by diverse persons in diverse ways can they be conceived, namely for this or for that fact; therefore [the fact of not entering the woodland] ought not to be reckoned revelatory of the confession unless of its own nature it may betray the sin confessed; but to turn aside from a woodland does not so lead, because if they had before said nothing together about that killing, never through this, that this one [the priest] turns aside would they recognize that that [other] had confessed about the will of killing him. If however to turn aside were of its own nature a sign leading to knowledge of such confessed sin, it would lead any at all to this, and these equally if they had not spoken together just as if they had spoken together.

116. Generally therefore it can be said that a sign that is of itself indifferent to this, which is that such a sin has been confessed or not confessed, although there may be for some a sign more determinate from something supposed, is not of itself a sign revelative of a confession, nor consequently simply illicit for a confessor.

117. To the fourth [n.59] I say that a confessor, indiscreetly ministering the sacrament of penitence, is bound not immediately to confess concerning his indiscrete deed, namely when his confessor will be able at once to arrive at knowledge of the person about whom he has indiscreetly exercised the use of the keys; also this, he is at least bound not in particular to express the fault about which and the manner in which he has indiscreetly exercised it, but either precisely in the universal, “by my fault I unduly and indiscreetly ministered the sacrament of penitence:” or if his conscience urge him about making confession about this in particular, as the argument says [n.59], because it is a sin special and mortal and the circumstances specially aggravating, he is bound to await an opportunity for confessing to someone who, from such confession of sin and circumstances, cannot arrive at a knowledge of the person confessed by him.

118. But if such a confessor can never be had but that – from the explication of the sin and the circumstances – he may be able to arrive at the fault and the person who confessed to this [priest], he [this priest] is in a case of impossibility as to confessing to man, because he is more bound to the precept of not betraying a sin confessed to him than to confessing explicitly his own fault, because to the first he is bound in many ways from the law of nature, as the reasons for the first conclusion prove [nn.79-85], and in many ways from divine positive law, as the reasons for the second conclusion prove [nn.86-89];

but to the second [sc. confessing his own fault] at most from the divine positive law, as was said in d.17 [nn.42-57]; therefore let him confess⁸⁵ to God.

119. From this it follows that anyone at all ministering the sacrament of penitence must most of all beware lest he minister indiscriminately, precisely in that case where from his indiscretion he will not be able to be explicitly penitent without this that he betray the confession of another [who has] confessed to him.

120. To the fifth [n.60]: let it be that the second person sometimes not aggravate [the sin], as it does not aggravate fornication that it be Alice or Bertha, other things equal (as not married, not a close relative, and the rest of this sort), and then it is fatuous to confess [sc. by name] the second person, and one might doubt whether to be explicit in this way be a mortal sin (whether in other respects, or then with the second person expressed in the way in which she necessarily had to be expressed), – always under the seal of confession the second person falls, as was said in the fourth article [nn.99-100].

121. And then in the first case that major is to be denied “whatever is not a sin, nor a circumstance” etc. [n.60]: because for this, that it might be true, there would have to be added “nor anything by which it would be possible to attain the person or knowledge of the person confessing,” or in the major it would be necessary for more to be added, namely “nor anything of the law of nature or the divine law needing to be held for secret;” and the minor is manifestly false about the second person, as is plain from the fourth article [nn.99-100].

122. To the sixth [n.61] I say that if in a college there is a common custom that without notice anyone outside the monastery, having a curacy or without a curacy, protracting a stay may be recalled at the pleasure of the president, or even not in every case at will, but sometimes for another honest cause (so that now he rests in the cloister, now labors with Martha⁸⁶ in exterior ministry, and now this one now that one, as far as it will have seemed useful to the president), – I say then that a monk having confessed about a crime committed in some place outside the monastery, where he is staying, the abbot can recall to the monastery, because in this in no way does he betray a sin confessed to him, although someone might say that a confessor in no way can dispose himself to him confessed by reason of a confession – as to any act at all outside that forum – otherwise than if he had heard absolutely nothing. But if there is a custom in the college that a monk is not transferred thus from a place outside to the cloister save by reason of some failing or insufficiency in the curacy of that place, it does not seem then licit for the abbot to recall the confessed [monk] to the monastery.

123. If you say ‘he is not applying nor procuring a remedy for the salvation of his sheep’, – I reply: let him give counsel to him in the forum of penitence in a better way whereby he will have known, so that he dismiss that place dangerous to him. But if he has refused, let [the abbot] not attempt to be God, but the hidden defects, for him according to justice incorrigible, let him dismiss to the correction of God.

124. To the last one [n.62] I say that that chapter is not speaking expressly of him who knows through confession that someone is excommunicated, nor even [of him who knows] by way of a secret committed to him, but privately, that is he thus knows what the

⁸⁵ The Latin text here misprints ‘confineatur’ for ‘confiteatur’.

⁸⁶ Translator: ‘Martha’ is here used in reference to the story in *Luke* 10:38-42 of Martha and Mary, so that ‘Martha’ would signify one who ‘labors’ outside the cloister, in contrast to ‘Mary’ who would signify one who remains ‘listening to Jesus’ in the cloister.

community does not know or he believes the community does not know, and thus privately knowing he must privately avoid. And no wonder, because he is not debtor to that other of that as a secret.

125. But if he were to know through the forum of confession alone, what should he do?

I reply, as to the third argument [nn.113-116], that if he can in another way avoid him than from an avoidance by betraying his excommunication, he must avoid him; but if not, not only should he not avoid him, rather it is not licit [for him] to avoid him, because avoidance of one excommunicated is of positive ecclesiastical right only; not to betray him is he bound by the law of nature and by positive right divine and ecclesiastical. But when precepts seem contrary, that which is superior more obliges, and therefore is more firmly to be kept; nor by keeping that and passing over the other does he sin, because no one from divine law and ecclesiastical law is perplexed.⁸⁷

Twenty Second Distinction

Single Question

Whether Sins through Penitence Dismissed Return in the Recidivant the Same in Number

1. “And with many authorities” etc. [Lombard, *Sent.* IV d.22 ch.1 n.1].

2. Twenty second distinction. About this distinction I ask a single question: whether sins through penitence dismissed return in the recidivant the same in number.

3. It seems that so:

Augustine *Against the Donatists* 1 ch.12 n.20 [Lombard, *Sent.* IV d.22 ch.1 n.7], “That dismissed sins return, where fraternal charity is not, the Lord in the Gospel very openly teaches in that servant from whom his lord took back the dismissed debt, because that [servant] refused to dismiss a debt to his own fellow servant,” *Matthew* 18.32-34. – And on this authority of Christ are founded all the statements of the doctors saying that sins return, of whom many authorities are put in the text [Lombard, *ibid.*, nn.2-7].

4. Again, *James* 2.10, “He who offends in one thing is made guilty of all.”

5. Again, he contrite about sin, if afterwards he despises to confess, either the same sin returns, and thus the proposed conclusion is had; or not, and thus it will be dismissed without the second and third part of penitence [d.16 q.1, nn.9-15], – which is unacceptable.

6. Again, a shadow can return the same in number, because a privation is not numbered except from the numeration of the subject or from the numeration of the habit to which it is opposed; but a shadow, following the light, has the same subject as the preceding shadow, and is the privation of the same light in number, because the same light in number would remain if the shadow were not present; therefore in the same way a sin, which is a certain spiritual shadow in the mind, can return the same in number.

7. On the contrary:

⁸⁷ Translator: natural law precedes divine law and ecclesiastical law, since divine is revealed on the basis of natural and ecclesiastical is ordained by the Church with authority from divine. In case of conflict, then, there is no perplexity about which to obey, because natural takes precedence over divine and divine over ecclesiastical.

The successive does not return the same in number; sin is of this sort; therefore etc. Proof of the major, because then contradictories could be at the same time true; for let in this instant one contradictory be true, – if this instant afterwards returns the same in number in that recidivant, it will be possible for the other contradictory to be true.

8. Again, sin is not in anyone except through some act of the sinner; but that act does not return the same in number in a recidivant.

I. To the Question

9. In this question, first it must be seen if it be possible for the same sin to return, the same in number, of the absolute power of God; second if of the ordained power of God it can in any way return the same in number; third, how in fact it can be said to return in a recidivant.

A. Whether it be Possible for a Sin the Same in Number of the Absolute Power of God to Return

1. Opinion of Others

10. About the first it is said that not [Richard of Middleton, *Sent.* IV d.22 princ.1 q.1], because “nothing can return the same in number except through divine power; but sin as to guilt cannot return the same in number through the power of God, because, according to Augustine *83 Questions* 83 q.3, ‘With God as author no one becomes worse’.”

2. Rejection of the Opinion

11. Against this: sin, as was said in d.14 q.1 nn.17, 30, 34, can as to the matter at hand be understood in two ways, in speaking namely of actual sin: in one way, the actual disordering itself, – in another way, the obligation for a penalty following that act. The first is called ‘the fault in act’, the second ‘the guilt following from that fault’. Now that obliquity, which is properly of a nature to be in an act, does not remain properly after the act: first because a privation, of a nature to be in a proper and determinate subject, does not remain properly without that subject, – second because then opposites could be together. For if some disordering, proper to the fault of fraternal hatred, were to remain after the act and afterwards there were to follow enjoyment of the same brother, there would at the same time then be opposite faults, because immoderate hatred and immoderate enjoyment of the same person. From this therefore is that true which was said there [*ibid.* n.34], that after the transient act of sin, nothing besides habitual injustice – that is, lack of grace – remains in the soul except the obligation proper to the penalty corresponding to the actual sin.

12. From this it follows that the aforesaid reason [n.10] does not conclude the matter at issue, because if it be speaking of the disordering or wrongness that is in the actual fault, it is doubtful whether it conclude that that cannot return; but about that it is not being asked in the matter at issue, but about the obligation to a penalty.

13. Now the proof adduced through Augustine [n.10] is worth nothing here, because although with God as author a man does not become worse with the evil of a

fault, yet he can be bad with the evil of a penalty, and much more obligated to the penalty, since none is justly obligated to a penalty except through an act of God's will.

14. Again, God can obligate this [person] for [time] *b* to the same penalty to which [he can] for [time] *a*; therefore, also this [other] can be obligated to the same [penalty], and consequently have the same guilt (and I call *a* and *b* instants between which there succeeds an intermediate time, in which he is not thus obligated). The antecedent is proved, because my will too can will this, namely to order this [person] first to a penalty, and secondly to will not to order [him] to a penalty under this condition, namely if he not again offend, – and if he do again offend, to will to order him, from then, to the same penalty.

15. If you say that my will in this is not just, and consequently the like cannot belong to the divine will – on the contrary: 12 q.2, “Bishop” [Gratian, *Decretum* p.2 cause 12 q.2 ch.58], “he who has been set free is justly subjected, because of ingratitude, again to the penalty of servitude;” therefore similarly in the matter at hand.

16. If it be said that this reason does not prove that the same obligation in number returns to the same penalty in number, although an obligation to the same penalty in number returns (for these are diverse: ‘obligation to the same penalty’ and ‘the same obligation to the same penalty’; and it is confirmed, because God's volition to inflict a penalty on this person for *a* and for *b* is not the same volition in idea, although it be the same in thing: for there is a different divine volition in idea according to diversity of objects), – on the contrary: if he not be penitent in the intermediate time, the obligation would remain not only to the penalty, but also the same obligation; but whatever God can do concerning a creature while some continuation remains which is nothing of what is willed, he can do with that removed, because that is not anything of the essence of that willed thing; therefore etc.

3. Scotus' own Response

17. So therefore it can be said, as to this article, that whether in the recidivant or the non-recidivant, because the divine act does not depend on the extrinsic sin of that recidivant, God can of his absolute power bring back an obligation of that [recidivant] to the same penalty as before, and even to the same obligation; and so, in the same way in which a sin remains after the act, because there does not remain but the obligation to penalty, it is possible of the absolute power of God for a sin the same in number to return not only in the recidivant, but in the non-recidivant.

B. Whether of the Ordained Power of God the Same Sin in Number can in any way Return

1. Response

18. About the second article [n.9] I say that God has disposed the sins of the penitent after penitence to be covered over, that is – according to Augustine expounding *Psalm* 31.1, “Blessed are they whose iniquities are forgiven and whose sins are covered” etc. [*Expositions of Psalms* ps.31, exposition 2 n.9] – no more to be seen for vengeance; and according to *Nahum* 1.9, “God will not pass judgment on it twice.” And therefore, of his ordained power, the same obligation cannot return, not even to the same penalty, after

it has been extinguished. And this is what is had in ‘On Penitence’ d.4f [Gratian, *Decretum* p.2 cause 33 q.3 d.4 ch.24]: “The divine clemency does not suffer dismissed sins to return anymore for vengeance.”

2. Objection and its Solution

19. On the contrary:

Good works made dead through sin, afterwards in the one rising up revive, as [Ps.]Augustine says [*On True and False Penance* ch.14 n.29], and it is put in the text [Lombard, *Sent.* IV d.15 ch.6 n.3], “It is a pious thing to believe that, when he has by the grace of God destroyed in a man the prior evils, he will also reward the goods, and when he has destroyed what he does not find his own, he loves the good that in him he has planted.”

20. Again, in like manner are evils related to punishment as goods to reward; but goods previously done come alive again for reward; therefore, evils too return for punishment.

21. It could be said [sc. in reply to n.19], in one way, that this is the superabundant divine mercy, that goods always live in the acceptance of it, goods – I say – meritorious, and always for them a reward would have to be retributed, unless there were an indisposition of the receiver because of a new fault; but evils are totally extinguished, such that neither in themselves nor in the divine understanding or will do they remain in order to vengeance. And therefore Augustine, in reply to a certain objection of infidels proving that not always does God will to dismiss sins (“for they say that then God is an inciter of evil and that those always please him to whom he always provides grace”), replies [*On True and False Penance* ch.5 n.11]: “It is agreed that sins much displease him who is always at the ready to destroy them: for if he were to love them, not thus would he always destroy them;” and it is in ‘On penitence’ d.3 [Gratian, *Decretum* p.2 cause 33 q. 3; Lombard, *Sent.* IV d.14 ch.5 n.2].

22. And, according to this way, there would for the purpose be a good example from the jurists, because to someone some right remains to whom action does not remain or does not belong, because of some impediment. So, for one having good merits in divine acceptance, deadened however through mortal sin, there remains the whole right that corresponds to those merits for eternal life, but there does not remain action as long as he is an enemy; and if he be perpetually an enemy, that action ceases perpetually. But with that enmity, contracted through a new mortal sin, ceasing, a new right does not return, but there belongs to him action according to the old right; but in evil remitted neither does the right remain nor action, because neither does God have the right of vindication against him: for penitence has so perfectly covered this [person’s] sin and remitted it that neither does action remain to him [God] for taking vindication.

23. Although this may be well said in commendation of the excellent mercy of God, it can yet in some way be reduced to justice, in this way: sin is not remitted unless at least the debt for eternal penalty is commuted into debt for temporal penalty, which commutation when done, never regularly is that guilt remitted unless that temporal penalty be paid in itself or in an equivalent penalty, – and consequently, with mortal sin in itself first remitted and its penalty paid, afterwards nothing of right remains through which from this [person] any penalty must be exacted for that sin. But after some merit

worthy of eternal life, never is this dignity for eternal good commuted according to justice into any temporal good; therefore, never does that right expire until the eternal good be paid. But that is not paid to the wayfarer while he is wayfarer; always therefore that right remains, yet extinct through mortal sin, because then there does not belong to him the execution of his right.

24. It is not therefore similar about the remuneration of deadened merits and about the return of remitted sins, not only because of divine mercy (which to be sure is true), but also because of this justice commuting there the eternal to the temporal; but not so here.⁸⁸

25. Through the same it is plain to the second argument [n.20], because not similarly are evils disposed to punishment and goods to remuneration, as far as this that evils can be punished temporally and sufficiently, if the eternal penalty be commuted into temporal; but good merits cannot be rewarded sufficiently through such commutation, nor consequently unless the very eternal reward in itself be conferred, which never happens to a wayfarer; and therefore always the right remains safe for him for the glory which he has acquired through those merits.

3. Objection against the Last Statement and its Solution

26. Against this [n.25]: then everyone rising again from mortal sin would rise again in greater grace than was that from which he fell, because he would rise again in all those goods, which he had before, now vivified, – and besides this, [vivified] in this act of penitence through which he rises again and which he super-adds to those past ones, and so in greater grace. Which is unacceptable: first because not everyone falling always more gravely falls than he had fallen before, nor therefore rising again does he rise again more graced than he was before, – second because the first grace can be greater and lesser, and consequently least; but through penitence the first grace is acquired; therefore, it is possible that sometimes the grace recovered through penitence is the least.

27. To this I say that it is not the same to have more merits in divine acceptance, reserved in order to the reward to be rendered for them, and to have greater grace intensively. For universally, to any merit at all there corresponds and is due not only some accidental reward, but essential, – it is plain, because if someone were to have this alone [sc. first grace, n.26], without any other merit, he would be beatified, not precisely in that degree in which because of grace alone he would be beatified without merits, as [is] a child baptized: for the glory of anyone at all, having his own merit, exceeds the glory of such a one. Therefore, any merit whatever, following other merits already had, requires its own essential degree of glory corresponding to it; nor yet through any merit at all is grace at once increased, nor is he having more merits always in greater grace.

28. Although therefore grace alone suffice for some glory, yet to merits there corresponds some determinate degree of glory at any rate, although to greater grace without merits there correspond a greater glory than to a lesser grace; however in anyone the same at all there is put an adjoined merit of grace, although thereby grace not at once

⁸⁸ Translator: that is, while fully remitted sins never return and are never punished in hell, deadened merits are never rewarded in hell, not because the right to reward ceases to be, but because it ceases to be ‘alive’, for the damned themselves cease to be ‘alive’ for receiving it – not physically to be sure, but spiritually.

be intensified, yet there does correspond to it a degree of glory beyond that degree which corresponds precisely to that grace.

29. Through this I say to the argument [n.26] that he rising again [sc. from sin] has more merits in the acceptation of God than when he fell, and consequently, on that part, he is ordained to a greater glory; but it is not necessary for him to rise again in greater grace, because – according to his disposition in detesting sin committed intensely or weakly – there is given then to him a greater or lesser grace.

4. A Further Objection and its Solution

30. But on the contrary [sc. to n.29]:

Then he would carry back an advantage from his fall, because he rises again worthier, in acceptation, of reward.

31. Besides, the response given [n.29] seems to include things repugnant, because if he is worthy of greater glory when he rises again than when he fell, and he fell from great grace through which he was worthy of great glory, therefore he does not rise again in little grace, because that single merit, which by rising again he adds on, would not add as much of glory as the deficiency of the second grace or its lesserness in respect of the first [grace] would take away of glory; therefore etc.⁸⁹

32. To the first [n.30] I say that he does not have an advantage but a great disadvantage, not only because he has sinned but, to the matter at hand, because the whole time – in which he remained in sin – is lost to him, in which time he could have multiplied merits, if then he had remained in grace.

33. To the second [n.31] I say that by prescinding that in glory which corresponds to merits, and let that be called *b*, from that which corresponds to grace, and let that be called *a*, perhaps *a* does exceed *b*; and when this [person] rises again, because all his prior merits live in God's acceptation, there returns to him the right and dignity for the whole of *b*, but the right to *a* does not return to him if the second grace be lesser than the first; therefore the merits live again, but the prior grace does not live again.

34. And this is sufficiently consonant with justice, because the first grace was only a gift of God, but the merits were in some way the works of man; and therefore they are always saved for him in divine acceptation, – but grace not, so that he may always equally because of it be ordered to some reward because he had it, but only if he now has it.

35. This way, by holding that the essential degree of glory corresponds to merit [n.34], is consonant with Scripture, which in many places asserts this sentence of divine justice, that “he will render to each man according to his works” [*Psalms* 61.12, *Romans* 2.6]. But nowhere in Scripture is it had that he will render to each according to his habit, – and it is consonant with the observance of divine Law because, according to it, it is useful continuously, as far as it is possible, to exercise meritorious works, albeit remiss to

⁸⁹ It was argued in n.29 that someone who rises from sin can rise with greater merits and for a greater glory than when he fell, even though the grace he receives in rising is less than the grace he first had when he fell. The objection is that if he had great grace before, the merit he gains in rising will not add as much glory as was taken away by the loss of the first grace. So if he rises to greater glory now, the difference cannot be just in the merits he gains but rather in the grace he is given, and that grace cannot be little but must be more than he had before, if he rises now to a greater glory than before.

such an extent that through them not at once is grace increased, because there corresponds to individuals in God's acceptance a determinate degree of glory.⁹⁰

36. Nor is it to such degree expedient to preserve grace as it is to do a weak work, through which grace is not increased, because although he thus weakly acting does not have greater grace through his work than he sleeping, in whom grace is preserved without such work, yet he does not labor in vain, nor in nothing does he exceed him who slept, rather through this that he did, he is now worthy of some eternal good, which the former is not worthy of.

5. Two Corollaries

37. From these follow two corollaries:

One is that someone, worthy of greater glory (speaking of that in glory which corresponds to merits, and about him worthy not proximately but remotely, namely according to right, but suspended), is damned; and another, worthy of much lesser glory, is in this way saved. But this is for this reason, because the other is worthy proximately, because now having a right not suspended; he is worthy also for that other [element] in glory corresponding to grace, for which he damned is not worthy, and to none is given what corresponds to merits without what corresponds to grace, although not conversely.

38. If also that corresponding to merit is of the same idea as that corresponding to grace, and through any merit at all this [sc. what corresponds to merit] is increased in divine acceptance, therefore to finite merits there corresponds as much of glory as this corresponding to grace. Since, therefore, he having that [sc. grace] in determinate degree would be saved, and he having all these [merits], but deadened ones, would be damned, — therefore he worthy, but with remote and suspended dignity (and worthy in this way of greater glory by far), will be damned; and he worthy with proximate dignity of lesser glory by far, will be saved. And no wonder that to an enemy, while he is enemy, any past goods whatever are not sufficient for obtaining reward.

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⁹⁰ That is (as n.36 makes immediately clear) the works, though weak, are accepted by God for glory if not immediately for increase of grace.

39. The second corollary is that the merits, to which a great degree of glory corresponds, while they are dead, cannot merit the least grace – otherwise he who had fallen from many merits would already have merited to rise from his fall through the first grace that, because of those merits, was to be conferred on him. And yet I do not believe that the dead merits have altogether no effect in divine acceptation for giving first grace to him who has lapsed; because although, in strict justice, this enemy of God is not worthy with worth accessible to any grace and glory, yet the excellent mercy of God, because of that person's preceding though now dead merits, more quickly gives him grace for rising up again.

40. Hence, just as I believe that a more perfect man falls, because of his greater ingratitude, more gravely, so I believe that, other things being equal, he rises again more quickly because of the kindness of God, who in some way accepts his past merits for this purpose. Hence, I heard one time of a man, before very perfect and afterwards fallen very deep, who, although he would, because of his evil deeds, have to be adjudged for death, was most mercifully visited, and suddenly the most perfect penitence was breathed into him. This should well attract anyone to act meritoriously as much as he can always, because whether he is going to remain or whether he is going to fall, [his past merits] will not be totally forgotten before God.

C. How in Fact the Same Sin in Number can be Said to Return in the Recidivist

1. Response

41. About the third main article [n.9] I say that sin dismissed returns as a circumstance worsening the sin by which the sinner fell back.

42. And this in two ways:

First, because the more someone receives from another a benefit that is more undue to him, the more is he bound to that other by the law of gratitude – even if the benefit received be less undue, and consequently more if the benefit received be equally undue. But to someone existing in sin God owes nothing save a penalty; therefore, if God confer grace on him, this will be a gift most gratuitously and liberally conferred, and especially if the grace is equal to the grace of the innocent. Therefore, by the law of gratitude he is, because of this freely conferred gift, especially obligated to God – and consequently, when offending afterwards against him, he sins, because of the ingratitude, more gravely.

43. Second, because the more someone is bound to something by more obligations, the more, if he transgresses, does he sin more gravely. But a penitent, as often as he is worthily penitent, obligates himself, at least in desire, to not committing sin in the future, because without such purpose the penitence is not worthy; and besides this, he is constrained to not committing sin by the same law as that by which the innocent is constrained. Therefore, if he sins afterwards, he transgresses a double law obligating him to not committing transgression, namely both the general one [sc. not to sin] and this special one about keeping a promise [sc. the promise made in penitence], which obligates most of all as to a promise made to God, and as to something that pertains to the honor of God.

2. Objections and their Solution

44. On the contrary:

A sin is not made worse by that by which, when it does not exist, nay when its opposite exists, the sin is as equally or more grave. If this person had not been penitent before, nay had always been innocent, and if now he sin, he would sin more gravely than he sins now; therefore etc. [sc. therefore a penitent does not (contrary to n.43) sin more because he sins after penitence]. Proof of the minor, because he who falls from a state of innocence sins more gravely than he who falls from a state of penitence, both because he for whom God has preserved innocence receives a greater benefit than he to whom God conceded penitence after sin, and because the innocent has less occasion for falling.

45. Again, when one falls from penitence one does not have to sin necessarily with two sins at the same time; therefore it is possible to sin with a single sin only; but by that one sin one could, by falling before from innocence, have sinned as equally gravely – as is plain by comparing it to any intensity of malice that belongs to sin;⁹¹ therefore etc.

46. [To the first] – As to the first [n.44]: I concede that to preserve innocence is a simply greater divine benefit than to allow penitence after sin. Hence God conferred a greater benefit on his Mother than on Mary Magdalene. Hence it is a singular glory and ornament in the blessed never to have fallen into sin.

⁹¹ A sin from a state of penitence could be as evil as a sin from a state of innocence as regard the intensity of the malice it involves. Therefore again (contrary to n.43) a sin from a state of penance need not be worse than a sin from a state of innocence.

47. And then to the argument: I deny the major, because it is possible for some sin to have now one circumstance making it worse and now another, and the one that makes it worse there can be graver than the one that makes it worse here; and these two circumstances can be repugnant to each other. And so here, the fact that penitence precedes makes sin worse, because it bestows ingratitude on it.

48. Likewise, to fall from innocence, because of the ingratitude, makes sin worse, and innocence and penitence are in a way repugnant; but to fall simply from innocence makes sin worse more.

49. But on the contrary is the verse of *Luke* 7.42-43: when about two debtors, one of whom the creditor forgave more to and the other less to, Christ asked Simon the question who would love the creditor more, Simon replied, "I suppose he to whom he gave more." And the Lord approved this and said, "You have judged rightly." But God gives nothing to the innocent in this way, and to the sinner he gives many things; therefore, a sinner is more bound to God, wherefore he is more ungrateful simply when he falls back.

50. I reply: 'to give' can be understood absolutely, as it is an act of will freely communicating something, or as in 'to condone' or 'to remit', the way it is taken when it is said 'he for-gave sins'. In the first way it is true that he to whom more is given is more bound to the giver, and in this way I say that God gave a greater gift to the innocent than to him for whom he remitted sin. In the second way, God gives more to the penitent than to the innocent, because the innocent does not have what may in this way be 'for-given' him. And if the major then is taken, namely that 'he is bound to love more who has been given, that is, remitted more', it is true that, when comparing the two, less is given to one of them and more to the other, and this if the only benefit given were only what is meant by 'to remit'.

51. But there is no one to whom God for-gives few things (because he has committed few things) without some other gift being given to the same person, a gift greater than 'to for-give' (that is, to remit) more things, namely to preserve him from other things into which he could or would have fallen if he had not been preserved by God.

52. This agrees with the gloss of Augustine on *Luke* 7.47 [*Sermons on Scripture*, Sermo 99 ch.6 n.6], "things committed and things not committed are for-given," because "there is no one who commits something without someone else being able, unless he were preserved, to commit the same thing." Therefore he for whom they are dismissed is bound to love more, supply, 'by reason of the remission'. But the other is bound to love for another reason, that he did not have things that needed to be dismissed, which was through divine preservation. And this reason requires a simply greater gratitude.

53. An example of this: if someone from his liberality concedes to someone all his property to use at will, but to another concedes some things as a loan and later, when he must repay them, remits them for him – who will love him more? I say that the first will, because he received a greater benefit, and yet more is remitted to the other. But the fact that the first has nothing needing to be dismissed for him, this is by the favor of him who freely conceded to him all his property.

54. Hence the proposition that 'he for whom more is dismissed loves more the forgiver' is only simply true of the forgiver by whose favor it is not the case that the one is not bound to as many things as the other is.

55. [To the second]: As to the second [n.45] I say that it is possible for a recidivist to sin with many sins, or as it were with many sins, if he deliberately act against the common law and against the law of gratitude and against the law of promises. But commonly the sin is not done in this way, because a sinner commonly desires only delight (though in disordered fashion), and he does not will that so many prohibitions be annexed to the delight. And to every sin is in this way conjoined disobedience and contempt and hatred of God and ingratitude and the like – not that the sinner have then an elicited act pertaining to each one of these, but he does implicitly insofar as he wills something to which all these are concomitant. I concede, therefore, that it is possible for a recidivist to sin with a single sin.

56. And when you infer ‘therefore he could have sinned equally gravely with that one sin when he fell from innocence’ – I concede it as far as concerns this part of the circumstance, namely of ingratitude and multiple obligation; yet he would have more gravely sinned then as concerns another circumstance, that he is more ungrateful in falling from innocence than in falling from penitence.

57. But on the contrary: suppose that he was penitent ten times, and on each occasion about ten mortal sins; after the tenth penitence he falls away sinning with as much lust as he sinned with in the first sin; then this sin will be one hundred times more grave than the first sin, because he is bound, by reason of each dismissed sin, not to fall, and so by reason of any of them there is a special ingratitude in falling; and he is bound not to sin by reason of any penitence, in which he promised not to sin.

58. I reply: no new fault is thus grave by some circumstance respecting a preceding penitence, because the circumstance may equal the gravity of the sin in itself or in its malice, and not perhaps in a hundredth part. Yet I concede that this circumstance of ingratitude and promise makes the sin worse – and the graver the more the good first conferred on him was not due (which is regularly the case of him who had more gravely sinned), and the more he promised many times (which is regularly the case of him who repented many times).

3. A First Doubt and its Solution

59. But what is simply graver: to fall looking back to a greater benefit, or to something bestowed more undue, or to more promises about not falling?

60. I reply: absolutely is the precept of the law of nature pertaining to gratitude more binding than is a new obligation contracted through one’s own promise, unless perhaps the principle or precept ‘keep promises’ is more obligating than the precept ‘be grateful to a benefactor according to his rank in giving benefit’.

4. A Second Doubt and its Solution

61. There still remains a doubt in this article: whether it is necessary in particular to confess preceding sins as aggravating circumstances?

62. I reply that although this be licit and perhaps useful, yet it does not seem necessary to confess them in particular, because insofar as they make things worse, they can be sufficiently expressed in confession without expressing the sins in particular previously dismissed, namely, by saying: ‘I have repented elsewhere of great and many

sins and believe God has remitted them for me; and for that reason was I in now sinning more ungrateful’.

II. To the Initial Arguments

63. To the initial arguments:

As to the first [n.3], it is plain that the parable principally tends toward this, that the same penitence is demanded of the servant who did not want to dismiss his fellow servant’s debts as would have been exacted of him because of his main debt. For what is said there to him [*Matthew* 18.30, 34], send him to prison until he pay “the whole debt,” I understand relative to the issue at hand, that he would only pay the whole debt in paying the debt of damnation for it, by being sent to the prison of the damned; and so, to the issue at hand, he who falls back again is adjudged for the same penalty of damnation that he would have had because of his prior and previously dismissed sins – and a penalty equal as to duration because it is ‘until he pay back etc.’ But it does not follow that he would have an equal penalty as to intensity.

64. And so, one should say to all the authorities of the saints [n.3] founded on this parable of the Savior, that ‘sins return’, that is, that the obligation to damnation returns, and a graver obligation because of the re-sending of the dismissed sins.

65. To the second [n.4]: in this way is the authority of Blessed James to be understood, namely as to damnation, which is the general penalty for all mortal sins, “he is made guilty of all.” Or in another way (and it returns to the same) it is understood as to the turning away from the ultimate end, which turning away is common to every mortal sin. But ‘he is made guilty of all’ is not to be understood as to the special gravity of individual sins and not in any way as to grave sins the same in number or species.

66. To the third [n.5]:

In one way can it be said that if he who was contrite before despises confession later, he sins with a new mortal sin in that contempt; and yet the fault that was dismissed through contrition does not return, either as to the malice or as to the guilt. But there only always remains the temporal penalty due to it, though the penalty of damnation be due to a new mortal sin.

67. In another way it could be said that, when complete penitence is obtained (understand ‘complete’ as to the three parts of penitence, namely contrition, confession, and satisfaction [d.16 nn.18-24]), then the penalty of damnation is commuted into temporal penalty; but not so as to a sin for which contrition is had without the other two parts of penitence.

68. But the first response [n.66] is more acceptable, because sin is simply deleted in contrition, so that only the obligation to temporal penalty remains there; but if afterwards contempt of confession or of satisfaction follows, it is a new mortal sin, and made worse because of the earlier fault that in contrition was dismissed.

69. To the fourth [n.6] I say that the same shadow in number cannot return, at any rate by nature; because there cannot be the same negation, as neither the same affirmation, when an interruption is posited on this side and on that.

70. As to the proof [n.6], I say that unity of subject and of opposed habit is not sufficient for unity of privation, but unity of its continuation in the subject is required, in the way in which it can have being in a subject. This is shown by a likeness, that for unity

of negation unity of affirmation does not suffice, for ‘non-Socrates’, which is the negation of one affirmation in number, can be not only many in number but be in many things diverse in genus and species, and be as many ‘beings’ as there are entities that are not Socrates. So too a privation can be a privation of the same form and yet not be the same. A privation can also be multiplied in the same receptive subject if there is an interruption, just as also the habit (of which the privation is the privation) would be multiplied if it were with interruption in the subject. For to repair something numerically the same, whether positive or privative or negative (as will be said in the material about resurrection [*Ord.* IV d.43 q.3 n.22, q.5 nn.4-6]), belongs to infinite power alone, namely God.

Twenty Third Distinction

Single Question

Whether Extreme Unction is a Sacrament of the New Law

1. “Besides what has been said before” [Lombard, *Sent.* IV d.23 ch.1 n.1].
2. Twenty third distinction. About this distinction I ask this question, which includes the whole matter of the distinction: whether extreme unction is a sacrament of the New Law.
3. That it is not:
All sacraments of the New Law are instituted by Christ, as was proved in *Ord.* IV d.1 nn.18-25. But this one seems to have been instituted by St. James in his canonical letter 5.14-15, “Is anyone sick among you? Let him bring in the priests and they will pray over him etc.”
4. Again, one sacrament has one matter and one form; but this sacrament, according as it is ministered by the Church, has many matters, because many anointings, and many forms, because many prayers conjoined to the anointings.
5. To the opposite is the Master in the text [Lombard, *Sent.* IV d.23 ch.3 n.1].

I. To the Question

6. Here there are two things to look at: first whether it is possible for there to be a sacrament of the New Law that is an efficacious sign of final remission of venial sins, and that it is fitting, and that it has been done; second, that extreme unction is such a sacrament and about the total idea of extreme unction.

A. About the Possibility, Fittingness, and Reality of this Sacrament

7. First as follows: it is possible for God to remit venial sins finally; therefore it is possible for him to institute an efficacious sign of this remission. The consequence is plain, because it is possible for man to institute a practical efficacious sign of any work of his; therefore much more forcefully is this possible for God; and thus is he able to institute any sensible sign whatever, whose institution does not include a contradiction, as a practical efficacious sign of this effect.

8. This is also fitting, namely that someone about to depart this life be finally absolved of venial sins, because when not remitted they would be an impediment to attaining glory, and they could fail to be remitted up to the point of departure, because a sinner is as it were continually sinning with such sins.

9. That this was also done is proved by the words of *James* 5.15, "If he is in sin, they will be remitted him." He does not mean it about mortal sins because these are only remitted in baptism or penitence; therefore about venial sins.

10. Let the first conclusion be, therefore that, with respect to final remission of venial sins, it is fitting to be and it can be and it is a sacrament of the New Law.

B. About Extreme Unction and its Total Idea

11. About the second main conclusion [n.6], one must say that the sacrament is called 'extreme unction'.

12. Of which the following idea [or account] can be assigned: 'Extreme unction is the anointing of an ill, penitent man, on determinate parts of the body, with oil consecrated by a bishop, ministered by a priest who speaks at the same time certain words with due intention, efficaciously signifying by divine institution the final curing of venial sins'.

13. This idea appears good because it is not in itself false, from *Metaphysics* 5.29.1024b29-30, for no part of it is repugnant to another.

14. In explanation of the parts, then, first is set down what unction is, whose fittingness is that this sensible sign is congruent with the effect, namely interior anointing in the curing of man.

15. There is added 'of an ill man'. Therefore, it should not be conferred on a healthy man, nor on someone exposed in just any way to danger of death, because not on him who is threatened by death from danger of extrinsic violence (as of weapons, of drowning, and the like), nor on him who is ill in any way whatever but dangerously ill, so that exit from the state of wayfarer to the final destination probably threatens him.

16 As to the words 'of a penitent man' which is added, the thing is plain, because no one is worthily capable of this sacrament unless he is in grace. For this sacrament is not a remedy to acquire grace, because only baptism and penitence are sacraments for that purpose. And by this are excluded those who do not have the use of reason, as children, and who do not have matter for penitence, at any rate who do not have penitence about venial sins (as the perfectly innocent). Also, because those who do not have the use of reason cannot be penitent, the mad are excluded and the demented – and this unless they, by an express preceding will, be presumed to want it.

17. As to the addition of 'on determinate parts', these parts are the organs of the powers by whose acts venial sin is frequently committed, as the organs of the five senses and the powers of motion. And this is sometimes in respect of the same sense and generative power, as the organs of the seeing power (two eyes), the organs of the hearing power (two ears), the organs of the smelling power (nostrils), the organs of the touching power (hands). And in the aforesaid, as the organs are double, so are the anointings double. The organ of taste is the tongue, on which an anointing is not done (for avoiding abomination), but exteriorly on the mouth. For the organ of the generative power, unction is done at the loins, according to the remark of Gregory [*Homilies on the Gospels*, 1

hom.13 n.1] on *Luke* 12.35, “Let your loins be girded about etc.,” who says, “For men [the vice of] luxury is in the loins.” Because of the organ of progressive motion, which is the chief motive power, there is a double unction on the two feet as the organs ordained for that motion. The other motion by which sin is frequently done is the motion of the tongue, according to *James* 3.2-4, 15, “He who does not offend in word is a perfect man,” and many other things he says there about the tongue. And against this is the anointing of the mouth so that it is a remedy against a double venial sin, just as the tongue cooperates in two works of nature (*On the Soul* 2.8.420b16-18), namely taste and speech. There are therefore eleven partial anointings; but those that are double are as it were single anointings, so that there are seven main anointings, namely on the five organs of sense, the sixth on the main organ of the power of progressive motion, the seventh on the main organ of the generative power.

18. There follows [in the definition] ‘with oil’. And it is not necessary that there is anything made of oil and balsam there, as there is in the matter of confirmation. Because confirmation is for the confirmation of the faith, and so in the one confirmed is required not only purity of conscience, signified by oil, but the odor of a good name, signified by balsam; but for him who is having to exit from the way of pilgrimage to the finish point, a pure conscience is enough. Now episcopal consecration is necessary so that the matter be suitable, because commonly in sacraments consisting in use only baptism does not require a specially consecrated matter, because Christ, by the touch of his most pure flesh (when he wanted to be baptized by John), consecrated all water, that is, dedicated it for this use [*Ord.* IV d.7 n.20].

19. As to what follows, ‘ministered by a priest’, it expresses the appropriate minister – not only who may licitly do it but who alone ministers this sacrament. Because if another attempt it he does nothing – just as if a non-priest were to attempt to confect [the Eucharist], he would do nothing. And the determination of this minister is got from *James* 5.14, “Let him bring in the priests.”

20. As to what follows, “who speaks at the same time certain words with due intention,” it belongs to the form of this sacrament and its simultaneity with the matter and the intention of the minister. The simultaneity and intention were sufficiently explained above, in the material on baptism [*Ord.* IV d.6 nn.102-132]. And this sixfold form for the seven main unctions is: “Through this holy anointing and the Lord’s most pious mercy, may he spare you whatever delinquency you have done by vice of the nostrils, the tongue, the touch, or the like.”

21. The idea set down is complete, because it contains the receptive subject, because it contains the ill penitent man, and this on the determinate parts before expressed; and the remote matter, namely the oil consecrated by the bishop, or the immediate anointing itself done with the oil; and this as to the principal seven organs and, counting the partial ones, eleven. Also, it contains the form, because it contains certain words, that is the seven prayers spoken by the priest with the seven main anointings. It contains the minister too, because it contains the priest.

22. And these points are collected from *James* 5.14 (as has been said) and *Mark* 6.13

II. To the Initial Arguments

23. To the arguments.

To the first [n.3] I say that this sacrament was instituted by Christ, as was plain above in the aforesaid distinction and question [n.3, with reference]. And James was only the promulgator or herald of this sacrament instituted by Christ.

24. To the second [n.4] I say that this sacrament is one by unity of integrity but not one by unity of indivisibility, just as neither is its effect indivisibly one (because it is not remission of one venial sin) but one by unity of plenary remission of all venial sins, so that, with them all remitted, nothing remains holding him back from reception of beatitude.

Twenty Fourth Distinction

Single Question

Whether there are Seven Orders in the Church in the Way in which Order or Ordination is Posited to be a Sacrament

1. “And now to the consideration...” [Lombard, *Sent.* IV d.24 ch.1 n.1].

2. About the twenty fourth distinction I ask one question only: whether there are seven Orders in the Church, in the way in which Order or Ordination is posited to be a sacrament.

3. That there are not:

Because then in the Church there would be thirteen sacraments, because in addition to the sacrament of Order there are another six.

4. Again, any Order has a character proper to it; therefore, seven characters correspond to those seven Orders. The consequent is false, because either they would be of the same species, which is false (because several accidents of the same species cannot be together at once in the same subject, from *Metaphysics* 5.10.1018a1-b8), or they would be of a different species, and this seems unacceptable (because there is an essential greater and lesser nobility in species; an essential excellence in these characters would not seem capable of being assigned).

5. Again, in the primitive Church there seem to have been only two Orders, namely the priesthood and the diaconate, since we do not indeed in *Acts* read that there were then other Orders in the Church. Therefore, there are not now either, because the Church has not added further any Order after the time of the Apostles; for in this sacrament, as in the others, one must find an instituting of it by Christ.

6. Again, Dionysius, *Ecclesiastical Hierarchy* ch.5, has set down only three Orders: episcopacy, priesthood, and diaconate.

7. Again, Isidore *Etymologies* 7.12 sets down episcopacy to be an Order, and it is none of these seven; therefore there are more than seven.

8. The same is held about episcopacy in Gratian *Decretum* p.1 d.21 ch.1.

9. Again, ‘first tonsure’ seems to be a sacrament, because it is a sign of a sacred thing [*Ord.* IV d.1 n.178; Augustine’s definition], and because those who have the first tonsure enjoy clerical privilege, which seems to be proper to Order.

10. To the opposite is the Master in the text [Lombard, *Sent.* IV d.24 chs. 1-2].

I. To the Question

11. About this distinction there are four things to look at: first, what is an Order, according as we are now speaking of Order; second how many orders there in the Church in this way of speaking; third, if Order is a sacrament; and fourth how it is one.

A. What an Order is According as we are Now Speaking of Order

1. Opinion of Others

a. Statement of the Opinion

12. About the first point it is said [Bonaventure, *Sent.* IV d.24 p.1 a.2 q.2] that the sacrament of Order is “a spiritual power for carrying out some act in the ecclesiastical hierarchy;” and consequently, Orders in the Church would have to be distinguished according to order of diversity for such acts.

b. Rejection of the Opinion

13. On the contrary:

From this description it follows that episcopacy is an Order, which is against them.⁹² For it appears that episcopacy is a spiritual order for some special act in the Church, as for act of confirming and conferring Holy Orders – and not just a power for carrying out these acts fittingly, but for carrying them out simply, because a non-bishop, if he attempt to do these acts, does not, as it seem, do anything.

14. Second, it follows that under the priestly order there is not any Order in the Church, which is against everyone. Proof of the consequence: for spiritual power, speaking of power simply, is not had by a deacon or a sub-deacon, because although he could do something fittingly that a layman would not do fittingly, yet if a layman were to attempt to do it, he would simply do it.

15. Third, it follows that priesthood is two Orders, because a double spiritual power belongs to a priest, namely of confecting the body of Christ and of absolving the penitent, which are not one power because one seems to have existed before the other; for in the Cena the Lord conferred the first power, and the second only after the resurrection, *John* 20.22-23.

2. Scotus' own Opinion

a. About Order Taken Generally

16. One needs to understand, then, that order is in one way taken as Augustine describes it in *City of God* 19.13 n.1, that “order is the fitting disposition of equal and unequal things bestowing on each of them their place.” We commonly take order in this way when we say that there is an order of beings in the universe; and thus does Aristotle speak, *Metaphysics* 12.10.1075a16, “all things are in some ordered,” and he explains how.

⁹² Bonaventure held, along with others, that the episcopacy was not an order but an ‘eminence or dignity of order’, *ibid.* p.2 a.2 q.3 [n.12].

Also in this way is order in well-disposed polities taken, where the fitting disposition of equal and unequal persons in the polity is called the order of that polity, by which it is said to be ordered.

17. But in another way is the preeminent rank in such polity called order. And thus is a person in an eminent rank said to have order, in the way that ‘having a rank’ is said quasi-antonomastically, because those who are in a lower rank are not said to have a rank thus.

18. In this way there is fittingly in the Church, which is an ordered polity, an order according to this double acceptation. For according to the first acceptation is the whole Church ordered with the fitting disposition of equal and unequal persons each in their place. In the second way is a person who has an eminent rank in the Church said to have order. And although these two significations posit each other mutually (because when there is order in the first way in a polity there is eminent rank there and so order in the second way), yet this signification and that are not the same, as is plain enough. The way, then, that we are speaking here of order, order is taken here for the second signification, not for the first.

19. Further, an eminent rank in the Church is said to be in order to an eminent ecclesiastical act; not, to be sure, in this way, that rank is a power for carrying out the act (as the earlier rejected opinion said [n.12]), but that it be a rank disposing one fittingly or simply to carrying out that act in due way, so that order thus could, as we are here speaking of order, be called a preeminent rank in the Church disposing one to some preeminent act. And because the acts especially preeminent in the Church are acts respecting the sacraments, therefore can it more especially be said that order is a rank disposing one to some sacramental act.

b. About Order Taken Specifically

20. From this, as it were, general idea could inquiry be made into the more special idea of order, as we are here speaking of order; but on this point there is a certain controversy.

21. For those [Bonaventure, Ps.-Isidorian Decretals, Ps.-Alcuin, Lombard, Albert the Great, Thomas Aquinas, Richard of Middleton] who posit that the priesthood is the simply first order, denying that episcopacy is an order, would, from the fact that the priesthood is a rank disposing one to the consecrating of the Eucharist as to the more excellent act agreeing to that rank (and the idea of all the inferior ranks ought to be in their order to the first rank) – these say that the fitting description of order would be that it is ‘a preeminent rank in the Church, disposing one by congruity to some act pertaining to the consecration or dispensation of the Eucharist’.

22. Others [Godfrey of Vendôme, William of Auxerre], who say that episcopacy is an order, because some rank belongs to it in the Church that does not belong to the priest, do not restrict the idea of order to the fact that it disposes one to an eminent act pertaining to the Eucharist, but in general that it is an eminent rank in the Church disposing one to carrying out some sacramental act. And in this way the power that episcopacy adds over priesthood has regard to some sacramental act, namely to confirm and to confer orders, which acts are proper to bishops.

B. How Many Orders there are in the Church in the Way that Order or Ordination is
Posited to be a Sacrament

1. First Position of Others, Understood in Two ways

23. About the second article [n.11], those who rely on the words of Dionysius and Isidore (cited for the first side [nn.6-7]), and the canonists [e.g. Gratian, *Decretum* p.1 d.21 ch.1], say that the episcopacy is properly an order.

24. In favor of this seems to be the argument that, since a certain special power belongs to a bishop insofar as he is a bishop, it is either one of order, and then the conclusion is gained, or it is one of jurisdiction, and then it could be taken away by a superior – which seems unacceptable, because a consecration much lesser than a bishop's cannot be taken away without the one who was once consecrated remaining always consecrated. The proof is from the Gloss on Gregory IX *Decretals* III tit. 4 ch.9 [“Sacramental anointing is perpetual and cannot be lost, though the exercising of it may sometimes be suspended”].

25. This approach [n.23], comparing the episcopacy to the priesthood, could be held in a double way.

26. In one way as follows, because ‘rank’ can be called eminent either because of the universality of the acts that it has regard to, or because of the nobility of the act that it has regard to. And this distinction appears in other polities where many acts belong to someone and fewer to someone else, but a nobler one can belong to the latter (as a judge can pronounce sentence, which is a nobler act than many others that belong to a lower person). But he who has universality for acts has also the nobler act, because in the universality for acts is included the nobler act. And therefrom does it seem that the rank which includes and regards the universality of acts is simply superior to the one which regards precisely the noblest act. And thus would the episcopacy be called a simply superior and nobler order, because it has an order to all ecclesiastical acts, but the priesthood does not have an order to them all, though it does have an order to the noblest of them.

27. And then the argument of a certain doctor [Richard of Middleton, *Sent.* IV d.24 princ.5 q.2] against this conclusion [n.26], which is that “the one order does not depend on the other as concerns necessity for the sacrament, but if a non-priest were to be ordained a bishop, nothing would happen etc.,” proves rather the opposite, for by how much the order of the episcopacy more includes the priesthood and other lower ranks, by that much is it simply more perfect, because it more essentially regards the acts of the ranks it includes.

28. Holding to this conclusion [n.23], namely that the episcopacy is properly an order and different from the priesthood, it could yet be said that it would not be nobler, because although, by its including the priesthood and episcopacy, it is a more eminent rank (since it is for more acts than by the other rank alone), yet what the episcopacy precisely adds above the priesthood is not as excellent as is the priesthood. For acts as noble as belong through the priesthood to the priesthood do not belong to the episcopacy through what, above the priesthood, is added to it.

29. Nor would those [who hold this view] regard it as unacceptable that an imperfect order presuppose (and necessarily presuppose) that it receive a more perfect order when the more imperfect one is added to ecclesiastical acts some universality – a

universality that the one that is more perfect does not include, but only includes order to a more perfect act.

2. Another Position of Others

30. Others [William of Militon, *Questions on Sacraments*, tr.4 q.74; Thomas Aquinas, *Sent.* IV d.24 a.3 a.2; Richard of Middleton, *Sent.* IV d.24 princ.5 a.2] contradict the conclusion that these two ways hold to [nn.26-29], because they deny that episcopacy is an order properly speaking; and so neither do they posit it to be an order superior to the priesthood (as the first way says [nn.26-27]), nor inferior to it (as the second way says [nn.28-29]).

31. Nor do they say that a character is there imprinted.

32. But whether a character can be deleted by the Pope when he deposes a bishop, or cannot be deleted because of the consecration with which it is conferred, they dispute among themselves [*Ord.* IV d.6 nn.201, 233-237].

33. But the dispute seems empty when denying episcopacy to be an order; for any jurisdiction in the Church can by a superior either be suspended (so that if he attempt to do anything during the time of suspension, he does nothing), or totally taken away for all time.

3. Scotus' own Position

34. Whatever, at any rate, may be the case as to this controversy about episcopacy, the simply noblest act in the Church is the consecration of the Eucharist, and so the supreme or noblest rank (because of the nobility of the act for which it disposes) is the priesthood. And consequently, taking the description of order in this way, according to the description put in the first article [n.22] and to the distinction of order in the Church, there are only seven orders. Of these the first is the rank that disposes for consecration of the Eucharist, and it is the priesthood; the second rank, that disposes for the dispensation of the Eucharist (at least of the blood), is the diaconate; the third, that disposes for the offering of the Eucharistic matter to be consecrated, is the subdiaconate.

35. And the reason why these three are called orders is sufficiently plain, because they immediately dispose someone for an act or ministry about the Eucharist, or about presenting the matter of it.

36. Further, some ranks dispose for acts that are remotely related to the Eucharist: either for suitable disposition in the people, for adoring or receiving the Eucharist, or for removing impediment or unsuitable disposition. In the first way, a suitable disposition (pertaining to affection) is devotion, and for this devotion the acolyte attends by lighting the waxen candles. Another disposition, pertaining to understanding, is knowledge, and for this does the lector act. If the ranks dispose in the second way, namely by removing impediment or preventing the unworthy from coming near – then either unworthy men and to this pertains the office of gatekeeper, or demons and to this pertains the office of exorcist.

37. From these points it is plain that the first act of the deacon is not to read the Gospel, nor of the subdeacon to read the Epistle, but these are remote and less perfect

acts; and the most perfect acts of them and proper to those orders are the acts that the one has immediately as to dispensing the Eucharist and the other as to offering its matter.

C. Whether Order is a Sacrament

38. About the third article [n.11] I say that, speaking properly of sacrament, order is not a sacrament, because every sacrament is a sensible sign, and order, as was said, is a certain spiritual rank. However, taking sacrament for an invisible sign, the way something is said to be ‘thing and sacrament’, it can in this way be called a sacrament, because it is a sign of the fitting execution of an act due to that rank, and also a sign of the act fitting that rank.

39. What then is the seventh sacrament? I say that it is ordination.

40. Whose description can be this: ‘Ordination is the instituting of someone in a preeminent rank of the Church, to which belongs some ministry as regard display of the Eucharist, carried out by a suitable minister speaking certain words and with due intention at the same time, representing with some visible sign the ranks of it, signifying by divine institution the preeminent grace whereby the ordained person may worthily carry out some ministry’.

41. And according to this universal idea of ordination can the special ideas of ordinations be proportionately taken, as for example the ordination of someone to the priesthood: ‘The instituting of him in a simply preeminent rank of the Church, disposing him who has it for consecrating the sacrament of the Eucharist, done by a bishop, speaking certain words with due intention’.

42. And if as to the parts of the universal description [n.40], and proportionally as to any particular description, you ask who the suitable minister is, I reply and say that the bishop and he alone is the minister in Holy Orders; but in the other non-sacred Orders, sometimes by commission some are ministers who have the privilege, as abbots.

43. But what words or what form?

I say that the words or the form that bishops have in episcopal books.

44. But in the priesthood it seems probable that there are two partial forms there, in one of which the power of confecting the Eucharist is conferred, in the other the power of absolving the penitent in penitential confession. And with these are conjoined two proper matters, that is, two visible signs: the matter of the first form is the handing over of the chalice and the paten with hosts: “Receive the power of celebrating etc.,” and of the second form the imposition of the bishop’s hands on the head, “Receive the Holy Spirit,” so that thus the bishop acts agreeably with the supreme bishop, Christ, who, as was said [n.15], conferred on the Apostles the power of confecting before that of absolving.

45. From these points is plain how there are seven ordinations, which are institutings in the case of orders; and the seven are said to be contained under the sacrament of order, or more properly under the sacrament of ordination, insofar as it is one sacrament.

D. How the Sacrament of Order is One

46. But now as to the fourth article [n.11], how the sacrament of order is one, I say that it is one by unity of proximate genus, as the moral virtues are said to be three according to genus: justice, fortitude, temperance. And in the first division of moral virtue these occur first; however, each of them is divided specifically into many, as was said in *Ord.* III d.34 nn.54-80.

47. But there is another unity between the orders, because there is a unity of order; for it is fitting to receive a lower order first before a higher one, nor yet is this order simply necessary such that, if it is omitted, nothing happens, as is plain in Gregory IX, *Decretals* V tit.29 ch.1, 'About a cleric promoted by bounds', where one gets that 'what has been done is not to be repeated but what was passed over is to be cautiously supplied'. And consequently, it is not the case that, if a lower order has not been conferred first, nothing is done in the conferring of a higher order. But this unity of order is not that by which order or ordination is one sacrament, but is rather a prior unity, namely unity of genus [Scotus more fully in *Rep.* IV A d.24 q.1 n.14].

II. To the Initial Arguments

48. To the first main argument [n.3] I say that, in the primary division of sacraments into seven, order or ordination there is only one member, although it could be further divided into certain special ones contained under it. For that first division is not into the most specific species but into certain things contained more nearly under it.

49. As to the second [n.4] I concede that there are several characters, and it is more probable that they are of different species, as appears from the acts for which these ranks make disposition; and these ranks are either characters or have proper characters corresponding to them. And when argument [n.4] is made about the specific excellence, it can be conceded that they have such excellence in the same way that characters are beings. If they were also posited to be of the same species, the refutation (that then 'they would exist together') would not be probative. For that proposition is not true even of real relations; and as was said above, *Ord.* IV d.6 nn.333-334, it is not necessary to posit that a character is an absolute form.

50. To the third I say that in the primitive Church there were few believers, and therefore a few ministers were sufficient for dispensing the Eucharist to them, and so there was then no need for ministers to be instituted in the several ranks. But afterwards the faith increased and devotion to daily communion accompanied it; and then it was necessary to have many ministers for the individual ministries pertaining to the Eucharist. And then the Church instituted many ministers in the several ranks.

51. Nor yet were those orders newly instituted; indeed, the Master says in the text [*Sent.* IV d.24 ch.1 nn.2-11] that Christ exercised the acts of the several orders in himself, and also that they were anciently prefigured in the Mosaic Law (in certain ranks corresponding to them). But the orders anciently instituted were, after the number of the faithful was multiplied, then conferred on ministers, which orders did not need before to be conferred on certain persons, because the ministry of them before was not necessary.

52. The reason why now in the Church there are not determinate ministers in the several orders is because, although now the multitude of the faithful has multiplied, yet the happiness of devotion has changed; hence many scarcely want to communicate once in a year. And therefore there is not need now for there to be so many ministers involved

in dispensing the Eucharist. And that is why the four non-holy orders are conferred together, so that no one is deputed to minister in the rank of the lower orders as if that order was proper to him and another order to another.

53. As to Isidore and Dionysius and the *Decretum* [nn.6-8], the thing is plain from what was said in the second article [n.30], for those who deny that episcopacy is an order expound that they [Isidore, Dionysius] take sacrament for a sacramental.

54. As to the final argument [n.9], I deny that the first tonsure is an order. And when you say it is a ‘sign of a sacred thing’, I say that it is not a practical sign effective of the sacramental thing, that is, of grace, in the way that a sacrament must be understood to be a sign of a sacred thing, as was said in *Ord.* IV d.1 nn.179, 201, 206. As to what is added there about clerical privilege, it is not valid because converted layman in Religion [sc. lay members of religious orders] enjoy clerical privilege, and the legislator could have given that privilege to a prince or to anyone simply a layman. The proposition therefore that the privilege is proper to the ordained is false.

Twenty Fifth Distinction

Question One

Whether Canonical Penalty Impedes Reception and Conferring of Orders

1. “It is wont to be asked if heretics etc.” [Lombard, Sent. IV d.25 ch.1 n.1].
2. About this twenty fifth distinction I ask two questions about those who receive orders: the first is whether canonical penalty impedes reception and conferring of orders.
3. That it does not:

If someone excommunicated or irregular attempt to confect, he does confect; therefore, by similarity, if an excommunicated or irregular bishop attempt to ordain or to do what the Church does, he does ordain; and if the recipient, being excommunicated or irregular, intend to be ordained, he is ordained. The consequence is plain by argument from similarity, because there seems to be similarity on this side and on that [sc. on the side of the ordaining bishop and of the ordained recipient]; and also by the argument *a minori*, because what does not prevent the execution of a nobler act does not seem to impede the execution of a less noble act.

4. Again, someone excommunicated or irregular is not so excluded from partaking of the other sacraments that he not receive them if he intend to receive them; therefore neither in the case of receiving orders. The consequence is plain by the argument from likeness. The antecedent is plain because someone irregular can receive the sacrament of penitence, otherwise salvation would be cut off from him.

5. Again, no canonical penalty excludes one more from some ecclesiastical rank or act than heresy does; but heresy does not so exclude, as is plain from Gratian, *Decretum* p.2 cause 1 q.1 ch.97.

6. To the opposite:

Gratian *ibid.* chs.108-110, “We altogether condemn simoniacs;” and later, “We decree that such receiving or conferring is invalid;” and, “Those who have knowingly permitted themselves to be consecrated, rather execrated, by simoniacs – we decree their consecration to be altogether invalid.”

7. Again, the Church can give the power of conferring orders (as is plain of consecrating a bishop); therefore the Church can take it away. Therefore the Church can inflict some tacit penalty on a bishop on account of which he would not be able to confer orders.

8. Again, the Church makes it illegitimate for certain persons to contract marriage, so that, if they attempt it, they do nothing. Therefore much more can the Church make a bishop illegitimate as to a spiritual act, such that if he attempt it he do nothing. The consequence is plain, because those things that are of positive right are said to be more subject to the Church than the things that are of natural and divine right; but any ordination of the Church through these dignities of the episcopacy and the like seems to belong to the positive right of the Church – at any rate it does not so much seem to be of the law of nature and the divine law as matrimony does.

I. To the Question

9. In this question one must first look at the canonical penalties that the question is asking about; second one must look at how, according to the canons, they exclude one from conferring or receiving orders.

A. About Canonical Penalties

1. About Canonical Penalty as it is here Understood

10. About the first [n.9]:

A canonical penalty, as we understand it in the matter at hand, is a penalty inflicted according to the canons, prohibiting or restraining the one punished from any ecclesiastical act that would otherwise be permitted to him (this last clause is added because for a layman it is no penalty that he not be able to confect the Eucharist, because this does not belong to him but to an ordained priest).

11. Now I said ‘according to the canons’ because whether a penalty be inflicted by a canon or by a judge and not by a canon, yet in order for it to be just it must be inflicted according to a canon.

12. And I said ‘prohibiting or restraining’ because the penalty we are now speaking of is understood either to constrain as a prohibition only or, if in any way to do more (which is discussed in the second article [nn.55-56]), that way is contained under ‘restrain’ or ‘constrain’.

2. About the Six Canonical Penalties

13. Now there are in specifically six canonical penalties of this sort, namely: deposition or degradation, infamy, irregularity, excommunication, interdict, suspension. About these in order: both about individual ones in themselves (and how they are incurred and by what remedy they are remitted), and by comparing them to each other as to seriousness and permanence.

a. About the First Penalty or about Deposition

14. The first, namely deposition, is the greatest, because it is the total removal from the clerical state. And if degradation be removal from every clerical rank, then deposition and degradation are the same thing. But if degradation is deposition only from a determinate rank, with however some other rank kept (as from the rank of the priesthood with some clerical rank remaining), then degradation is a penalty that is partial with respect to deposition.

15. But how is the one deposed removed from clerical state and rank? I reply: not because the character of order is taken from him, nor consequently the orders he received; but the license to execute the act of any order is taken from him, and he is also deprived of everything that belongs to the ordained. Hence such a one is handed over to secular care so that, as concerns ecclesiastical acts and the protection of ecclesiastical persons and as to forum, he is totally excluded from the number of ecclesiastical persons.

16. How is this penalty inflicted? I say that never by the law, but it has to be inflicted precisely by a judge. And the form according to which it has to be inflicted is contained in Boniface VIII *Decretals Book Six*, V tit. 9 ch.2. Now the causes for which it is inflicted are enormous sins, as heresy, schism, revealing confession. About the first is Gregory IX *Decretals* V tit.7 ch.9, about the second Boniface VIII *ibid.*, tit.3 ch.1, about the third Gregory *ibid.*, tit.38 ch.12.

17. How is it remitted? I say only through complete restoration by him who is able to restore, who is posited to be the Pope alone, although someone legitimately deposed is not read to have been restored afterwards.

b. About the Second Penalty or about Infamy

18. The second penalty is infamy, which is the state of injured dignity concerning life and morals, as reputation is the state of uninjured dignity concerning life and morals.

19. And this injury is incurred in diverse ways.

Here one needs to know that being infamous and being defamed are not the same thing. He is defamed who is publicly accused of some crime. But someone is not infamous because of such imputation of crime, but either because of a public crime publicly committed (as that if he has committed perjury or publicly committed any other crime because of which the law determines someone to be infamous), or because he is judged infamous by a judge before whom his crime is proved, such that everyone infamous has been publicly noted of a crime that the law punishes with the penalty of infamy. But sometimes one is not convicted of this in a court, and then one is infamous only by law and not by a judge; sometimes one is convicted and punished with such penalty by a judge, and then one is infamous in both ways, both by law and by judge.

20. From this the second point, how infamy is contracted, is clear. For the first infamy is contracted by the imposition of a crime that makes infamous; the second is incurred by law or judge punishing such crime with such penalty.

21. But what is the cause because of which infamy is incurred in the second way? Gratian, *Decretum* p.2 cause 6 q.1 ch.2: "We say that all those are infamous whom the secular laws call infamous." Therefore, those secular laws that punish the crime of infamy are canonical laws, and those laws are contained in the *Digest of Justinian*, III tit.2, 'Of those who are noted for infamy'.

22. What is the remedy against this penalty? I say that against infamy in the first way, when someone is defamed [n.19], there is a canonical cleansing, from Gregory IX *Decretals* tit.34 ch.8, 'On Canonical Cleansing'. For the cleansing totally takes away the first infamy. Against infamy in the second or third way (which are as it were the same, though from diverse sources, law and judge) there is no remedy save complete restitution by him who can so restore it, *ibid.* tit.20 ch.54, 'On Witnesses', 'Testimony' ["He is turned away from testimony who has been convicted of or confessed a crime...; if he has not done penitence, let him be turned away even in a civil case"].

23. This penalty is graver, as to civil life, than deposition, unless deposition include it, because it is a prohibition against any legitimate act, even after penitence has been done, for such a person is base, Boniface VIII *Decretals Book Six* V tit. 42, "To the infamous the gates of dignity should not be open."

c. About the Third Penalty or about Irregularity

24. The third penalty is irregularity, and this is unfitness for receiving and carrying out the acts of Orders.

25. This is incurred frequently by law, though it can sometimes be inflicted by a judge according to the laws. And it is incurred by law from certain crimes and from certain non-crimes and from certain that can sometimes be crimes and sometimes non-crimes.

α. Irregularity arising from Crimes

26. From crimes there are four that pertain to orders or to their acts. One of these is simony, another is theft in an order, a third is ministry in an order one has not received, a fourth is stubbornness in not keeping ecclesiastical penalties.

27. Simony can be either in an order or in a benefice.

But if it is in an order and knowingly, namely such that the one ordained know that he was ordained simoniacally, only the Pope gives dispensation, Gregory IX, *Decretals* V tit.3 ch.27, as was argued for the opposite [n.6]. For from the fact that the legislator does not altogether invalidate their consecration, it belongs to the Pope alone to relax [the penalty]. But if the one ordained is ignorant with invincible ignorance, as that his father paid the price for his being ordained, he is not made irregular unless, after it has been made clear to him, he carry out an act of the order so received. Hence after the fact about the order thus received is clear to him, he is suspended from act of the order until he is set free from such suspension.

28. But a simoniac in a benefice is not as seriously punished. However from when it is clear to him that he obtained the benefice simoniacally he is bound to resign it, and for the whole time he holds it unjustly he is bound to restitution of everything that he took part of. This is proved in diverse chapters by Gregory IX, *Decretals* V tit.3 ch.24, 26, 44.

29. About theft in receiving an order, draw distinctions: because either he is prohibited by the excommunication that someone may not come to the order save from that episcopacy and who has first been legitimately examined and received; or because there is no such excommunication or prohibition. And in both cases he who inserts

himself furtively is irregular, but in the first case he cannot be dispensed save by the Pope; in the second he can be dispensed by the bishop. The proof is from Gregory IX, *Decretals* V tit.30 chs.1-2, 'Of those who receive order furtively'.

30. About the third crime, that irregularity follows on it, is proved in Gregory IX, *Decretals* V tit.28 chs.1-2.

31. About the fourth there is *ibid.* tit.27 ch1.1-9, through the whole of it. And understand this with the greater excommunication, because as is contained there, ch.10, "although in a minor excommunication the celebrant sin gravely, yet he incurs the mark of no irregularity" – understand, even after he knew he was excommunicated.

For if he had invincible ignorance he would not be bound to keep away from the acts of order; nor would he, by exercising them, incur irregularity, as is contained in the gloss on Gregory IX, *Decretals* V tit.27 ch.9, namely if someone has excommunicated another by letter and wanted him to be excommunicated from the time of sealing the letter, he is not bound to hold himself to be excommunicated until the letter reaches him.

But if there not be invincible ignorance, nor incertitude in any way, as that by report or public rumor the penalty of excommunication has come to him, he is irregular, although he is to be treated more mildly. The proof is Gregory IX, *Decretals* I tit.7 ch.2, tit.27 ch.5. So too if the penalty of interdict not be kept, as is contained in *ibid.* tit.31 ch.18, 'About the excesses of prelates and subordinates', yet the chapter could be given a good exposition; irregularity also follows him who does not keep the suspension, as is contained in Boniface VIII *Decretals Book Six* V tit.11 ch.1, tit.14 ch.4.

β. Irregularity arising from Non-Crimes

32. Irregularity also follows three non-crimes, as servitude, Gregory IX, *Decretals* I tit.18 chs.1-8, 'About not ordaining servants', the whole of it. Now the reason is that a servant is the possession of the lord, and therefore ought not to be taken from him against his will; and when he is ordained he is unfit for certain servile acts. But if he has in fact been ordained, while the lord does not know and is again not consenting, the servant ought to be returned to him; however the lord should not apply him to acts that are not becoming his order, but he must serve the lord in acts befitting his status.

33. Irregularity also follows illegitimacy, Gregory IX, *Decretals* I tit.17 chs.1-2. And the reason is plain, because the illegitimate are presumed to be imitators of their father's incontinence; they are also presumed to be ill compliant and badly educated. However, dispensation can easily enough be made for them; hence Benedict XI [d.1304] made dispensation easily enough for one such who without dispensation was ordained and was ministering in orders; I myself, for example, have seen the Bull of dispensation.⁹³

34. It also follows the third non-crime, namely an unsightly or major mutilation or infirmity, as is contained in Gratian, *Decretum*, p.1 d.55 ch.13, 'About not Ordaining the Disfigured in Body', about someone with a gouged eye, and Gregory IX, *Decretals* III tit.6 chs.1-6, 'About a Debilitated Cleric'. But if the mutilation is not disfiguring, and he himself was not at fault in the mutilation, he is not excluded, as is contained in Gratian, *Decretum*, p.1 d.55 chs.7-9, 'If anyone by doctors' and the two following chapters. But if

⁹³ A possible reference to a dispensation given by Benedict XI in 1303, but the identification of the relevant Bull is not certain.

he was at fault, as if he mutilated himself, as is contained *ibid.*, ‘If anyone has cut off’, dispensation is scarcely made for such a one. Hence Nicholas IV [d.1292] with great difficulty dispensed someone such, although he was a religious. The like must be said of an egregious or non-egregious illness.

γ. Irregularity from Two Other Sources, at Times with and at Times without Fault

35. Two others follow, that can sometimes be with fault, sometimes without fault, namely homicide and bigamy.

36. Under homicide is contained egregious active mutilation of another. And on this matter is Gregory IX, *Decretals* V tit.12 chs.1-9, ‘On Voluntary and Involuntary Homicide’, and Gratian, *Decretum*, p.1 d.55 ch.13, d.50 ch.4, ‘I wonder’, and this because of the horror of shed blood. Hence even David did the Lord not permit to build a house for his name, by the much blood shed, *II Kings* [*II Samuel*] 7.1-17.

37. But distinguish here between voluntary and involuntary. Voluntary homicide is deleted only through baptism, and then there is fitting reason [sc. to allow ordination] because the reason [sc. not to allow it] is deleted, since a man now become new through baptism is not further to be held as an object of horror. But if the homicide is simply involuntary, as when another runs on a person’s sword, he is guilty in nothing; but if involuntary in a certain respect, as that he could not escape death unless he killed, he is irregular, Gratian, *Decretum*, p.1 d.50 chs.52-54.

38. But if it is accidental, and he was focused on something licit and used due care, he incurs no penalty; when the second of these conditions is not met, he does incur penalty.

39. As to bigamy, which does simply introduce irregularity, as will be said below in the material on marriage [*infra* d.33 nn.34-39], it is contained in Gregory IX, *Decretals* I tit.21 chs.1-7.

d. About the Fourth Penalty or about Excommunication

40. The fourth penalty is excommunication, about which there is what was said in distinction 19, the fifth article of the solution [dd.18-19 nn.67-80], and this as concerns the greater excommunication,^a which is excommunication simply – for indeed the lesser excommunication is only excommunication in a certain respect, because it excludes from the communion of the faithful in a certain respect, namely in the sacraments.

a. [*Interpolation*] The greater excommunication is exclusion of someone from the communion of the faithful – not indeed the bodily exclusion that happens in sequestration or incarceration or exclusion of that sort from others, but by excluding him through prohibiting him communicating with others and others with him.

41. Plain too is it from where it is incurred, because sometimes from the law sometimes from a judge. And indeed, it is sometimes possible to state the number from the law; nay, it was a small number when the *Decretals* were first compiled under Gregory IX [1234AD; from the *Prolegomena* to the *Collection of Decretals*]. But today who is sufficient to number them? And though the numbers are growing to infinity, with

the growing movements of heads, it is not necessary to fill up whole pages about the matter.

42. However I say this, that it should not be inflicted by law or judge save for mortal sin, and not for any mortal sin but a grave one, a sin that stubbornness also accompanies; for as long as someone is ready to make satisfaction for fault and hears the Church, why is he to be regarded as a heathen or a publican? – since, according to Christ [*Matthew* 18.15-17], this penalty is inflicted as the ultimate one on him who does not wish to listen to the Church, who is finally stubborn.

43. Now it was stated above [dd.18-19 nn.66-68] who the minister of law is in inflicting this penalty; and, as for excommunicating simply, no one is suitable as minister save he to whom all the faithful are subject, and therefore no one else save as delegated with his authority.

44. How is excommunication relaxed?

I reply with an absolution given by him who did the excommunicating, if it is excommunication by a judge or by his superior.

45. But if it is by law, through absolution of him who established the law – and not this alone, as many say [Bonaventure, Thomas Aquinas, Richard of Middleton], but through absolution by any priest when the legislator not reserve the absolution for himself. And they prove it [Richard of Middleton] through Gregory IX *Decretals* V tit. 29 ch.29.

46. But this proof is of little force, because the inference ‘he does not reserve it, therefore he conceded it’ does not hold when speaking of form of consequence according to laws, because ‘able to absolve’ falls under the rule “what is not conceded seems to be prohibited” [a juridical axiom or ‘brocard’ cited, among others, by Henry of Ghent], because to absolve from a sentence of excommunication inflicted by a superior does not belong to anyone unless it have been conceded to him.

47. And comparing this penalty to the preceding penalty [sc. the third, irregularity], this one is simply more serious as to intensity, because it excludes from any communion that is otherwise permitted, while the preceding one excludes from those that pertain to orders; but this one is reckoned lighter because it is more easily remitted.

48. But it is to the opposite effect: for this one is more easily remitted for the reason that it is the most serious and excludes from more things. And these two penalties, namely of irregularity and excommunication, can be both public and private, and insofar as they can be private they are less serious than either of the preceding ones [sc. the first and second penalties of deposition and infamy], which two preceding ones are always public.

e. About the Fifth Penalty or about Interdict

49. The fifth penalty is interdict, which is restriction from exercising certain ecclesiastical acts, or from assisting in certain such acts. And although this penalty sometimes could be inflicted on a place and not on a person, sometimes on a person and not on a place, sometimes on both (and as it is inflicted so must it be kept), yet, as it is a penalty distinct from the rest, it is more frequently inflicted on a place and not on persons not yet in the place, as namely that in such a place it is not licit solemnly to celebrate divine service, or for others to take part.

50. And this penalty of interdict is sometimes contracted by law, sometimes by a judge. An example by law occurs about those who receive usurers from outside, Boniface VIII *Decretals Book Six V* tit.5 ch.1, “Abyss of usurers,” and for innumerable reasons. More usually, because of disobedience common to the people of a land, it is relaxed by him who imposed the interdict; sometimes it is relaxed in certain cases by law, as is plain in Boniface VIII *Decretals Book Six V* tit.11 ch.24, “Kindly Mother Church.”

f. About the Sixth Penalty or about Suspension

51. The sixth penalty is suspension, which is prohibition from an act otherwise suitable, and this for a time. And herein is this penalty specifically distinguished from the rest.

52. The penalty is also manifold: for one is suspension from office, one from a benefice, and one from entering a church; and the last is sometimes incurred by the law itself, Boniface VIII *Decretals Book Six V* tit.14 ch.1 and tit.11 ch.1.

53. And there is also suspension in receiving orders from a bishop who has renounced such place and dignity, for he who does not have the execution of orders does not confer the execution of orders; and so if he confer orders, and yet he who receives them does not have execution of them, he is therefore suspended, Gratian, *Decretum*, p.2 cause 1 q.7 ch.24, Gloss on Gregory IX, *Decretals I* tit.13 ch.1, ‘About those ordained by a bishop who has renounced the episcopacy’ [“He is suspended who receives orders from him who is suspended”]. Similarly about someone who is knowingly ordained simoniacally, as was said above [nn.27-28].

54. But it is removed by relaxation of such suspension done by him who put it in place, or by his superior.

B. How Canonical Penalties Exclude from Conferring or Receiving Orders

55. About the second main article [n.9] it is certain that the penalties do not impede in fact from conferring or receiving orders, as is proved by Augustine [*Against the Letter of Parmenianus II* ch.13 n.28] in Gratian, *Decretum*, p.2 cause 1 q.1 ch.97. And the reason is that along with those penalties can stand the idea of minister and of receiver, and the intention, and the other necessary things on this side and on that. But the penalties prohibit it in law, so that the contrary is illicitly attempted; however, if it is attempted, what is intended is done. Now the reason for this is that on the Church has been conferred the power of ordaining ministers for herself, as can be gathered from the words of blessed Paul to Timothy, where he describes what sort of persons should be ordained deacons [*I Timothy* 3.8-10].

56. But about the first penalty, namely degradation (especially if it has concerned a bishop), it is doubtful whether it exclude him in fact from conferring orders; but the pro and con are contained in the preceding question, the second article [d.24 nn.23-35].

II. To the Initial Arguments

A. To the Arguments of the First Part

57. As to the first argument [n.3], it can be conceded as to the first five penalties; but if, as to the sixth penalty, it be held that a deposed bishop is simply not a bishop, then as to that case the likeness in consequence is simply to be denied, because the character of priest is not taken away, nor consequently priesthood as it is episcopacy.

58. As to the next [n.4], intention does not suffice if there is not a suitable minister, a minister of the sort who is not deposed according to this opinion [nn.14-15].

59. As to the third [n.5], the case is not similar, because penitence is a general sacrament and therefore no one is excluded from it, either in fact or in law. The other sacraments, which include something of excellence, can well be denied to someone because of a transgression exacting it. As to the point about heresy [n.5], the point is true; it does not exclude in fact, but it does exclude in law if also such a one has not been condemned. But if he has been cut off and condemned by the Church he does not confer orders, provided episcopacy is not an order and could simply be taken away – as they would have to reply who hold episcopacy not be an order but a certain dignity added to orders, which dignity has regard rather to jurisdiction [d.24 n.30].

B. To the Arguments for the Opposite

60. As to the first argument for the opposite [n.6], I concede that the ordination of a simoniac is invalid as to execution, but he does receive order, and therefore he only needs it that his suspension be relaxed.

61. As to the second [n.7], the consequence does not hold, because it is given to a minister of the Church to be minister in conferring, not in taking away.

62. As to the third [n.8], it will be touched on below what the way is that the Church can make persons illegitimate and can thus make them unfitted so that they not be suitable for contracting marriage [*Ord.* IV d.37, q.1]. But here, from the fact that a character is conferred, there is no like power in taking it away.

63. And when the argument is made that that [marriage] is more according to the law of nature than this [ordination through a bishop], it is true in that a contracted marriage is ratified, but not that every person, notwithstanding any impediment, can contract the marriage. For it is more of the law of nature that what God impresses on nature, which is not repugnant to sin (either formally or to it as demeritorious cause), perpetually remain in the soul than that any man or any woman be fit to contract marriage. And therefore any unfitness of persons for this act [of marriage] is not as contrary to the law of nature as is a character impressed on someone being destroyed.

Question Two

Whether Female Sex or Childhood Impede the Reception of Orders

64. Second I ask whether female sex or childhood impede the reception of orders.

65. That they do not:

Galatians 3.28: For in Christ Jesus “there is neither slave nor free, neither female nor male;” therefore, there is no difference between male and female in the Law of Christ, as neither between slave nor free; therefore, a sacrament of the evangelical Law that a male can receive the female can as well, just as it is what slave and free can receive.

66. Again in Gratian, *Decretum*, p.1 d.32 ch.18 “Priest,” mention is made of a priestess,⁹⁴ and *ibid.* p.2 cause 27 q.1 ch.23, “A deaconess should not be ordained before the age of forty.”

67. Also about childhood the argument that it does not impede [orders] is that it does not impede reception of other sacraments, as baptism and confirmation. And the point about confirmation seems most strongly to the purpose because that sacrament is given for the worthy confessing of the faith of Christ; this act cannot belong to anyone save to an adult, just as the act of orders cannot either; therefore etc.

68. To the opposite: *ibid.* p.1 d.23 ch.25, “That women or nuns sacred to God were handling the sacred vessels or sacred garments, carrying incense round the altar, was reported to the Apostolic See – and that all these things are full of reproof and censure is not doubted by anyone thinking rightly.” All ministry of a woman is full of censure.

69. Likewise, *1 Corinthians* 11.6, “It is shameful for a woman to be shaven;” therefore also to receive orders, because tonsure accompanies orders, as a signifying sign.

70. Again, Gregory IX, *Decretals* III tit.1 chs.4-5, ‘About the life and honesty of clerics’, and Gratian, *Decretum*, p.1 d.23 ch.22; it is found there that clerics may not grow long hair but be tonsured.

71. Likewise about childhood there is found in Gratian, *Decretum*, p.1 d.77 ch.1, “Let not a subdeacon be ordained younger than 20 years old.”

I. To the Question

72. Here I say briefly that to be excluded from reception of orders, or not to be able to receive orders, can be understood in three ways: either not to be able duly and honorably, or not to be able licitly (because it is against a precept), or not to be able in any way, even in fact.

73. In the first way a child and he who does not have ‘years of discretion’ cannot receive orders, because he cannot receive with due reverence such rank as is conferred in ordination.

74. In the second way a child cannot receive Holy Orders, though he could in the second way receive lower Orders. The proof of the first is that to the reception of Holy Orders is annexed a vow of continence, as is contained in Gratian, *ibid.*, d.28 ch.5; but a child and one who does not have ‘years of discretion’ does not have ability for that vow, either tacitly or expressly. The proof of the second is that no prohibition is found holding children back from receiving non-sacred Orders.

75. About the third ‘not being able’ [n.72] I say that ‘not being able’ is not found in a child, and this with respect to any Holy Orders; because the power to carry out some act, or the rank⁹⁵ by which someone is able to carry out that act, can precede the act in duration or the power proximate to the act. Order is only a rank disposing one to being minister in a determinate ecclesiastical rank, as was said in the preceding distinction [d.24 n.19]. Therefore, it can belong to anyone before he is in proximate power (when the

⁹⁴ “A certain priest was ruling the church committed to him with great fear of the Lord and, from the time of having accepted orders, was loving his priestess as a sister...”

⁹⁵ Deleting the parentheses round ‘or the rank’ in the edited Latin text.

impediments are removed) for exercising the act; and consent is not there required for the impression of a character, as neither is consent required in minor orders.

76. However, this ‘not being able’ does exist in a woman. And this is not to be held as if it was something determined precisely by the Church, but it is obtained from Christ. For the Church would not have presumed, without her own fault, to have deprived the whole female sex of an act which could licitly belong to that sex, which would have been ordained to the salvation of the woman and of others in the Church through her – because this would seem to be a matter of very great injustice not only in a whole sex but in a few persons; and if now ecclesiastical order could by the divine law licitly belong to women, it could be for the salvation of them and of others through them.

And what the Apostle says to Timothy [*1 Timothy* 2.12], “I do not permit a woman to teach in the Church,” meaning public teaching in the Church, is not a statement of the Apostle as laying down a statute. Rather I think that Christ did not permit it either. An evident argument for this is taken from the fact that neither did he put his Mother in any rank of order in the Church, with whom however no other woman was able or will be able to be equal in sanctity. Now there is a reason of some sort in agreement with this, and the Apostle indicates it in *1 Corinthians* 14.34-35,⁹⁶ for nature does not permit the woman, at least after the Fall, to hold an eminent rank within the human species, which indeed was said to her as punishment for her sin, *Genesis* 3.16 [“You will be under the power of the man;” cf. *1 Timothy* 2.12-15].

77. Against this: where there is the same agent and a passive subject of the same species, the same effect is there; but a bishop is the same agent, and let it be posited that his intention is the same way here and there; man and woman, and the soul of man and woman, are passive subjects of the same species; therefore if, when the bishop does something, the soul of a man receive a character, it follows that when the bishop does the same thing concerning a woman, she will receive the same.

78. I reply:

The major is true of an agent inducing a form and is a natural agent; but if the agent act voluntarily and contingently, it is not true that it do the same thing, but it is able not to act. And if it not do the inducing but only does some act whereat another agent does the inducing and induces it voluntarily in the passive subject it proposes to induce in, the major is false. And so it is in the issue at hand. And this is a good argument that the minister does no necessary act on which the effect of the sacrament necessarily follows but only contingently, for the most part, by divine pact.

II. To the Initial Arguments

79. To the first argument [n.65] I say that, as concerns possessing grace and attaining glory, there is no distinction in the law of Christ between female and male, because she can have as much grace and attain as much glory as he can; but, as concerns possessing an excellent rank, it is well fitting that there is a distinction between man and woman in the law of Christ, because this is consonant with the law of nature.

⁹⁶ “Let your women keep silent in the churches, for they are not permitted to speak; but they are to be submissive, as the law also says...”

80. To the second [n.66], perhaps in Greece, where priests licitly use a marriage contracted before [ordination], the wife of a priest can be called a priestess. But among us Latins, where there is not only conjugal chastity but chastity simply, priestess has been taken away. But some woman can be called a good matron, a widow, or perfect among other women, or perhaps in a college she who is superior over all the others, as an abbess among nuns. But by this she does not have a more excellent rank of order; nor indeed preeminence with respect to a man. The like can be said to the point about a deaconess, that she to whom, by ordination of abbess or the college, it belongs to read the homily at Matins can be said to be a deaconess; but that is not an act of any order.

81. To the next [n.67] it can be said as Gratian says in *Decretum*, p.1 d.4 ch.3: “In the case of the manners of those who use a contrary practice, several laws have been abrogated,” as he afterwards there proves through many examples, and especially when contrary manners rest on a new reason. So here. In the primitive Church children were not at once instructed in the things that pertain to divine cult and office; on the contrary, the fully adult were ignorant enough in such things. But now children are instructed and exercised at once in such things, and therefore someone of thirteen years is more sufficiently instructed now in such acts than perhaps was then a rustic of twenty-five years. And so it is not surprising that decrees about keeping to age limits have been abrogated.

82. And let it be that children should by right be assigned to due reception [of orders] in every way (which I do not believe), yet neither is it simply necessary to observe it by necessity of that precept, nor is it simply necessary by necessity of fact. Not but what if (setting this aside) order is conferred, it is truly received and a determinate rank of ministering in the Church is conferred – he being the author who, in this time, “from the mouth of babes and sucklings has perfected praise” [*Psalm* 8.3, *Matthew* 21.16]. To whom be honor and praise for ages of ages. Amen.

Twenty Sixth Distinction

Single Question

Whether Matrimony was Established Immediately by God

1. “Since the other sacraments etc.” [Lombard, *Sent.* IV d.26 ch.1 n.1].
2. About this twenty sixth distinction I ask whether matrimony was established immediately by God.
3. That it was not:

In *Genesis* 2.23-24 Adam says, “This now is bone of my bones,” and there follows, “For which cause a man will leave father and mother and will cleave to his wife,” where it is commonly held [Hugh of St. Victor, Lombard, Thomas Aquinas, Richard of Middleton] that matrimony was instituted. And this does the Gloss state there [Gloss on *I Corinthians* 7.1-7, Nicholas of Lyra], and the Savior alleges it in the Gospel [*Matthew* 19.4-6]. Therefore, it was not immediately instituted by God.

4. Again, no inferior can change anything about something immediately instituted by God; but the Church changes something about matrimony, because certain persons who would otherwise legitimately contract marriage the Church delegitimizes.

5. The opposite is said by Christ to the Pharisees, *Matthew* 19.4-6, “Have you not read that he who made man from the beginning made them male and female?” And he said, “For which cause a man will leave father and mother and will cleave to his wife;” and at once adds, “What God has joined together, let not man separate.”

I. To the Question

A. Things Worthy of Note that Need to be Set Down First

1. Five Main Conclusions

6. For the solution of the questions to be treated of concerning matrimony, there are here certain things deserving of note that need to be set down first.

7. And let this be the first main conclusion: it is an honorable thing that male and female are mutually conjoined or obligated to each other in an indissoluble bond, for procreating offspring to be duly educated.

8. Second conclusion: it is an honorable thing that male and female mutually hand over to each other in their perpetuity the power of their own bodies for procreating offspring to be duly educated.

9. Third conclusion: it is fitting that this mutual giving was instituted and approved by God, and so was it done.

10. Fourth conclusion: it is fitting that to this contract of mutual giving some sacrament was annexed, and so was it done.

11. The fifth conclusion is: in matrimony many distinct things (and which things) come together.

2. Proof of the Main Conclusions

a. Double Proof of the First Main Conclusion

α. First Proof

12. For proof of the first conclusion [n.7] let this be the first prior conclusion: that man want to procreate offspring in the human species is an act capable of being circumstanced with the right circumstances. And the proof is that the act is not per se evil such that it be incapable of being rightly circumstanced (such as is ‘to give what is another’s’).

13. This is plain:

First because it is not more contrary to right reason or inclination of nature that man preserves his species than that any other animals save their own; indeed, it is the more according to inclination the more this species is more perfect; but this species cannot as a rule be preserved save through offspring.

Next second because, although man was to be immortal yet it was to belong to him, according to the right inclination of nature, to communicate his species in the way in which it was to be possible for him, that is, by propagating.

Next third, from matters of belief, because a precept is not given about anything illicit, but in *Genesis* 1.28 before the Fall, and in *Genesis* 9.7 to Noah and his sons after the Fall, a precept is given about propagation: “Increase and multiply.”

Next fourth because, according to right reason resting on faith, it is not evil but honorable to act, according to divine predestination, for the repair of angelic ruin and of

the heavenly city Jerusalem; but the elect, predestined for the repair of that ruin, are not commonly produced save by propagation; therefore etc.

14. So therefore does it appear that the act is not of itself evil; therefore, it is either of itself good or is capable of being well circumstanced.

15. But that it is not of itself sufficiently good with moral goodness the proof is that no 'to will' is of itself good from the fact that it focuses on an object morally good, unless it focus on an object that is in itself something to will, that is, that is simply the ultimate good. This 'to will' is to love God, where it cannot be against right reason, rather it is necessarily according to right reason, that such act tend to such object. But this is because this object is the ultimate end to be willed according to itself by anyone ordered to an end in the way of being able to love that end. For a man can rightly or not rightly make a distinction about everything that is for the end, because he can do so either by ordering it to God and thus use it, or by not ordering it and so enjoy it, which is a great sin.

16. But the good on which focuses this act (which is procreation or wanting to procreate offspring) is plainly not the ultimate end but only something ordered or orderable to the ultimate end; therefore such an act is not of itself sufficiently good morally; therefore it is capable of being well circumstanced [sc. so as to be morally good].

17. Again, both facts, namely that this act is not of itself good and not morally bad, can be proved by one argument: because only that act is of itself bad whose object it is repugnant to that the act is good, or whose object is repugnant to the goodness of the act, or which act is repugnant to the agent according to natural right reason; and, by arguing through the opposite, only that act is of itself good whose object necessarily agrees with the agent's act according to right reason; therefore, this act is neither of itself good nor of itself bad. For no act is good of its kind, or from its object alone, save loving God, which act has its goodness from the object alone; nor is any act bad of its kind, or from its object alone, save hating God. Hence neither of these acts is it necessary to specify or to circumstance; nor is either capable of being circumstanced. For God cannot be too much loved (understanding this of the love of friendship) nor can anyone hate God well.

18. This therefore is the first conclusion, that to will to procreate offspring is an act capable of being circumstanced with the right circumstances [= the first preceding conclusion, n.12].

β. Second Proof

19. The second conclusion [sc. the second prior conclusion, n.12] is that the first circumstance required for the moral goodness of this act is the circumstance of the end, as is universally the case in morals. And there is this circumstance in the proposition at issue: to will to procreate offspring to be religiously educated for the increasing of divine cult.

20. This is proved by reason, because perfect human operation is the end of man, *Ethics* 1.9-10.1099a7-9b28, 10.1.1174b18-5a1. Therefore, for this end should anyone want to have offspring.

21. This is also proved from matters of belief, because anyone should love his neighbor from charity as he loves himself, that is, for the same thing; but anyone should love himself for honest conversation and divine cult; therefore he should thus love his neighbor, and especially the offspring to whom he is especially bound.

22. This is confirmed by Augustine [in fact Lombard, *Sent.* IV d.31 ch.2 n.4, though they are quoted as Augustine's by Richard of Middleton], "Not everyone," he says, "who has offspring has the good of offspring, because the good of offspring is not said to be the offspring itself, but the hope or desire whereby offspring are sought for this, that they be religiously formed."

23. But this circumstance does not suffice, although it is first and leads to all the others. And therefore a second circumstance follows, namely that this act ought to be between determinate persons, male and female. That it should be between male and female, this is not a circumstance but is necessarily included in the act that is the procreating of offspring; but that it be between determinate persons, this is one of the circumstances on the part of the agent causes that are due and fitting for this end – and this not only as to procreation of offspring but also as to repeated procreation of offspring (and I say 'repeated', because it is fitting for one man to have determinately one wife not only for procreation but also for repeated procreation, for that anyone would come together with anyone, this nature does not suffer, and in the beasts too it is not found). But that one man should be determinately of one woman is plain, for indiscriminate conjunction would be against the good of offspring (which is the end here intended), and against the good of the family, and against the good of the city.

24. The proof of the first [n.23]: because offspring would be not religiously educated on the part of parents as parents would not have determinate knowledge of their offspring – at least the father, and so he would not be solicitous about bestowing due discipline on his offspring; nor conversely would offspring bestow on the father obedience or due reverence and filial fear, and it is because of this filial fear that a son obeys the father more, and can be more easily disciplined by him than by another.

25. The second [n.23] too is proved, because the good of the family consists in a firm adhesion of the chief persons of the family; otherwise the whole thing is indiscriminate (and for this reason the Philosopher says *Ethics* 8.14.1162a17-19 that man is naturally a conjugal animal because a domestic animal), and neither would some persons apply diligence to the things mutually necessary for themselves or their offspring.

26. The third point [23], that it is against the good of the city, is plain, because by matrimonial contracts of this sort is friendship preserved in cities; therefore it is necessary that contracts of this sort exist between certain persons, because the friendship of citizens arises, for the most part, from determinate closeness in a definite rank. But, given this [sc. indiscriminate conjunction], there would be no known certain closeness that would be the cause of friendship; rather all closeness would be confused.

27. And therefore rightly does Aristotle criticize Socrates' polity, *Politics* 2.1-2.1261a4-12, who wanted all wives to be common, because for the state of fallen nature much better is the polity he himself ordains, namely that determinate persons have determinate wives. And the indiscriminate union of male with female would be against reason for every state [of nature].

28. This circumstance too appears from things believed from Sacred Scripture, because in *Genesis* 2.24 it is said that "they will be two in one flesh," and Christ sets down the same in *Matthew* 19.5 and St. Paul in *I Corinthians* 7.2, "Let each have his own wife," supply, "on account of fornication." And let it be that this determination is not by natural reason proved to be simply necessary in such way that its opposite would be repugnant to natural and manifest reason – at least this affirmative is sufficiently plain,

that it is honorable that the persons of the Church are, for this act, determinate to each other.

29. But another circumstance, that it is honorable for those persons to be obligated to each other with an indissoluble bond for this end, is proved from the preceding one, that just as determination of persons avails for the due education of offspring and for the good of the family and the city, so too does the perpetual adhesion of determinate persons to each other avail for this same thing. And they would, because of the many occasions and difficulties that arise, not perpetually adhere to each other unless they were obligated by such an indissoluble bond to such adherence to each other.

30. And let it be that this conclusion, which is the main one in this article, could not be proved by evidently natural reason to be simply necessary; it is proved the way it is proposed, that it is honorable and consonant with natural reason for male and female to be thus obligated together for such an end.

31. From this is plain the solution to a question, namely whether such obligation belongs to the law of nature; for it was said above, in distinction 17 n.19, that most properly belonging to the law of nature is a per se known practical principle and a conclusion demonstratively following from such a principle; but belonging secondarily to the law of nature is a truth evidently consonant with such principles and conclusions, though not necessarily following from them. And in this way belongs to the law of nature that it is honorable for male and female to be obligated to the aforesaid end.

b. Proof of the Second Main Conclusion

32. For the proof of the second main conclusion [n.8], let this be the first prior conclusion: it is expedient that that indissoluble obligation arise from the act of will of the persons obligated.

33. The proof of this is that the obligation will arise either in this way or by imposition of a superior, namely the legislator. Not the second, because no law ordains or determines this woman to this man or conversely; therefore, the first. And a fitting reason is that the first is more useful and more agreeable to natural reason, because, from the fact that the obligation should be indissoluble, it is expedient that the manner in which it is done be agreeable to the indissolubility of it. But if they were compelled by a legislator to be joined together, they would be less mutually pleasing to each other, and so there would be greater occasion for future dissension; for as is said in Gratian, *Decretum*, p.2 cause 30 q.3 ch.4, "What someone does not choose, assuredly he does not love; but what he does not love, he easily despises."

34. Let the second conclusion be this, that it is honorable that, in a contract of mutual giving, male and female transfer mutually to each other the power of their bodies for this end in their perpetuity.

35. This is plain from the preceding conclusion [n.32], once the reason for a contract of mutual donation is seen. For a 'con-tract' is said to be as it were a drawing together of two wills to each other or of two who are obligating each other; and consequently it necessarily requires acts of will that agree in a mutual transfer, as in the case of other exchanges or sellings (taking 'selling' commonly). Nor does this suffice, but it is necessary for these acts to be expressed by certain signs, otherwise there would be no certainty for either about the act of will of the other. Also, neither wants to make a

transfer to the other save to the extent each conceives the other to want to make a transfer to them.

36. So if, from the preceding conclusion [n.32], it is expedient for them to be obligated through their own wills, and not without signs (expressing or expressed), then it is expedient that there be a contract there from which the obligation arises. But this contract can only be one of mutual giving or interchange (which is the same thing) of power over their bodies for this end in their perpetuity; because power over one's body, which is one's own power, is not transferred by anyone to another save by act of will, because by that act he was lord and ceases to be lord and makes another to be lord. And consequently, the right that the other acquires over this one's body when it is transferred to him is by an act of will freely transferring it – and this along with an extrinsic evident sign from which is obtained the idea of the aforesaid contract. And this contract is called 'I give if you give' or 'I give so that you may give'.

37. This mutual transfer of lordship of bodies is plain according to the rule of the Apostle in *I Corinthians* 7.4, "The woman does not have power of her own body but the man; and the man does not have power of his own body but the woman;" and thus does each have power over the body of the other and over their own by reason of the mutual giving and the mutual contract – and this as to the act of the body that regards procreation of offspring.

c. Proof of the Third Main Conclusion

38. Proof of the third main conclusion [n.9] as follows: no persons would obligate themselves, at least not commonly, to so difficult an obligation unless there were some stricture in place, either a law of nature or a divine or human positive law. Every other licit contract is instituted or at least approved by law, because the correctness of such a contract or obligation is not a practical principle. So there is requirement that the rightness of this sort of contract be approved as a right obligation, or that this sort of contract be instituted or perceived as right.

39. But the law of nature, although it does obligate to the indissolubility of the aforesaid bond on the premise of such contract, is however not a very evident law of nature but is said in a secondary way. And what belongs to the law of nature only in a secondary way is not manifest to everyone. Therefore, it is expedient for the necessity of the precept to be determined by positive law.

40. But no legislator is above the whole of the human species save God alone; therefore it is expedient that the precept be approved or instituted or prescribed by the legislator who is God. For those things that are remote from the practical principles of the law of nature are not apparent to everyone in the way the practical principles are that are known to everyone, because they are not explicated and because other legislators do not know how to explicate such things. Therefore, it is expedient to explicate them through him who is universal Legislator over human nature.

41. Let it be too that a precept of the law of nature said in the primary way (namely a manifest practical principle or conclusion) would have obligated for this purpose; still it would be expedient for a divine precept to be set down for it, because men obey less the law alone of nature than they do God giving a precept, because they fear and revere their own consciences less than they do divine authority.

42. Nor is it expedient that this determination be done in the first way by the human positive law, because human positive laws vary among diverse peoples, and this indissolubility should be uniform among all.

43. Now this was done in *Genesis* 2.24 and *Matthew* 19.4, where Christ relates that God said what Adam pronounced in *Genesis* 2.24 [“man and wife shall be one flesh”], because God spoke through the mouth of Adam as of a herald; and therefore Christ adds that God has united (supply: male and female) in a matrimonial union by the precept by which he pronounced it through the mouth of Adam, “a man shall cleave to his wife etc.”

44. But one needs to understand that to prescribe the contract is one thing, and to prescribe perpetual cleaving on the premise of the contract is another.

For it was expedient for the first to be prescribed for the time for which there was a necessity of propagation, and especially if men were troublesome with respect to it without a precept. But for another time, for which there is no necessity, it has no need to be prescribed. Therefore, after the Fall God gave the precept twice about making the contract, first in *Genesis* 2.24, and again, when men had been destroyed by the Flood, in *Genesis* 9.1, 7.

But it is expedient for the second precept to be given for all time, because it was shown, in the first conclusion [nn.7, 12-13] that the indissolubility is consonant with the law of nature, and it will be less preserved unless, over and above this, there is a precept.

45. For this conclusion there is set down the following sort of reason: no one can obligate some owner's property to owner lord save by the consent and approval of him whose it is; but the body of anyone belongs by right of creation to God; therefore no one can transfer it to the ownership of another save insofar as God approves. Therefore, if the transfer is honorable for this end (as is plain from the first and second main conclusions [nn.7-8]), it follows that it is fitting that God approves this transfer of bodies.

46. But it would be said here that although a man be bound to God by creation in everything he can do, yet God does not exact so much of man; rather he freely leaves him to himself, demanding of him only that he keep the precepts of the Decalogue. Hence one can indeed sell oneself into slavery (although there is no special approval of this found in Scripture), in which selling one transfers ownership and power of one's body to another as one does in the contracting of matrimony; the like is plain about the transfer of ownership of all one's property. And the whole reason is because that in which God does not obligate a man or what is his own he leaves to man's will.

d. Proof of the Fourth Main Conclusion

47. For the fourth conclusion [n.10] let this be the first special prior conclusion: it is fitting that to the aforesaid contract be annexed the conferring of grace, because the aforesaid contract is difficult, since from it arises a very difficult obligation. This is also apparent because of the many miseries and infirmities in which they are bound to serve each other until death. And therefore, as far as this is concerned, there is a greater difficulty here than in Religion. Now the difficulty of it is connected to the honor of it (which was proved earlier [nn.29-30]); and for doing what is honorable, as for doing what is difficult, it is fitting for grace to be conferred. This contract too needs grace because of the difficulty that is in this act, wherein the mind is much distracted from God.

48. The second conclusion: that it is fitting that this grace is regularly conferred under some special sensible sign, instituted for this purpose by God. For such a sensible sign is more keenly asked for by us and more recognized; and it is necessary for us first to know grace and afterwards to desire it. From which it follows that such a sensible sign can reasonably and fittingly be instituted for signifying the grace legitimately conferred on the contracting parties.

49. The third conclusion: it is expedient that some sacrament properly so called be conjoined with the aforesaid contract. It is plain from the two preceding conclusions [nn.47-48] that it be an efficacious sign of the grace then conferred. But one must understand that, by bracketing consideration of the idea of a sacrament, the truths about matrimony in the matter at hand can commonly be shown by reason of contract and obligation.

50. Now this annexed idea of a sacrament seems to introduce many new difficulties, as: by whom and when it was instituted; what form and how it is one; who is the minister and how he is one; and what the effect is of the sacrament.

51. About the first [sc. 'by whom']: it cannot be said that the sacrament of matrimony was established in the state of innocence, *Genesis* 2.7-8, 18-25, because all the sacraments have their efficacy from the passion of Christ displayed and foreseen; but if the state of innocence had endured, the passion of Christ would not have been displayed or foreseen. Nor does it appear that it is a sacrament of the Mosaic Law. Nor is there found in the Evangelical Law where it was instituted. For Christ in *Matthew* 19.4-6 approves what was instituted in *Genesis* 2.24, and Paul *1 Corinthians* 7.2-4 taught that thus is the act or use that follows the contract of matrimony.

52. Someone therefore might say that what is said in *Ephesians* 5.32, "This is a great sacrament, I speak in Christ and in the Church," is understood about a sacrament taken in an extended sense and for sign of a sacred thing, of which, however, it is not cause or efficacious sign. For matrimony is not an efficacious sign in respect of union with Christ, but it is an efficacious sign in a way; so can a vow of virginity be an efficacious sign of union with Christ.

53. Because, however, the Church commonly holds the sacrament of matrimony to be the seventh among the ecclesiastical sacraments, and "one is not to think otherwise of the sacraments than the Roman Church thinks," Gregory IX, *Decretals* V tit.7 ch.9, 'About heretics', therefore can it be said that God has annexed to the contract of matrimony a sacrament properly speaking, at least for the Gospel Law; otherwise it would not be a sacrament of the New Law. And then it is necessary to say that it was instituted by Christ, as was universally said above about the ecclesiastical sacraments [*Ord.* IV d.2 nn.18-26].

54. But the 'when' is not found more plainly than in *Matthew* 19.4-6. And although there Christ only approved the contract instituted in *Genesis* 2.18-24, and consequently he did not institute that contract, yet he did institute the sacrament. This can be taken from the word that he added [*Matthew* *ibid.*], "What God has joined, let not man put asunder," so that it not be understood precisely that God joined them by instituting the contract of matrimony, but that he joined them from then on with grace through the institution, conjoined with the contract, of a concomitant sacrament.

55. Now the form is some sensible sign, instituted by God for signifying efficaciously the grace then conferred.

56. But here there is a doubt: for either God instituted as indeterminate a sign to be a sacrament of grace as the sign is indeterminate that is required for the contract, or God has determined the sign that has to be the efficacious sign of grace more than is the sufficient sign for the contract determined by human imposition. And if the latter, either he has determined some words precisely, as “I accept you for my wife” or “for my husband,” or he has determined indifferently any words at all expressing the concept of consent.

57. And between these three members there is considerable difference; because if this one be held very strictly, namely that the form of this sacrament consist in these words precisely, it follows that on many occasions there is a contract of matrimony without a sacrament, even in the Evangelical Law, because on many occasions the contract is made through other words than these. If too he has determined the words but any words indifferently that are expressive of mutual consent, still, since sometimes there is a contract (as between mutes) without words, it follows that in some places there is a contract of matrimony without a sacrament. Nor is this absurd, because it is probable that up to the Evangelical Law matrimony was frequently contracted where however there never was a sacrament as we now speak of it, namely in the proper sense. Mutes according to this, therefore, are truly spouses, because there is a true contract between mutes. And grace is given there not by force of the sacrament, but just as grace is given to the truly penitent without expression of words, not by force of the sacrament but by force of merit and contrition, so between the mute there is a true contract, and grace is given without a sacrament.

58. But if God has not determined the sign to be a sacrament of grace more than is determined by human imposition to be sufficient for a contract, then it can be said that in the case of any contract in the Evangelical Law a sacrament is concomitant, because the sign that is required for the contract is by divine institution a sacrament. The Church, however, has determined that the sacrament is done only through words.

Thus is the third point plain [sc. the form, n.50].

59. But how is the form one? Because it is one by unity of integrity, not by unity of indivisibility; for the words, expressive of consent on this side and that, are one integral sign both with respect to the contract and with respect to grace. Nor is it unacceptable that several partial forms are one sacrament, as was said above of the Eucharist about the words over the bread and wine [*Ord.* IV d.8 nn.60-62].

60. About the minister [n.50] there is another doubt because, for the most part, the contracting parties themselves minister this sacrament to themselves, either mutually or each to himself. But neither is this necessarily required if with every contract of matrimony there is a sacrament, for sometimes the fathers contract on behalf of a son and daughter who are present without expressing their own signs; if there is a sacrament there, one must say that the minister of the sacrament can indifferently be whoever can be a minister in a contract of matrimony.

61. But then how is the minister one? It can be said as was said above about one form [n.59].

62. But what is the effect [n.50]? I reply: two graces in the souls of the contracting parties, and this unless there is an obstacle – supply, mortal sin here, there. For it is not sufficient to receive grace that the contracting party is not feigning with respect to the sacrament, but it is necessary that there be penitence first, because this sacrament does

not give first grace. But there is one total and first effect, namely the graced union of hearts.

63. But if the form is to be restricted to a certain sign and to determinate ministers, one must consequently say that not all those who contract [matrimony] in the Christian Law receive grace; and yet it can be said that they do receive grace if there is not otherwise an obstacle, because God assists there on account of the difficulty of honorable contract – not however as much grace as they receive with the sacrament, especially had an impossibility not existed.

e. Proof of the Fifth Main Conclusion

64. About the fifth conclusion [n.11], which applies to the terms; I mean that matrimony is one thing, the contract of matrimony is another, and the sacrament of matrimony another.

65. For matrimony is the mutual obligation or the bond that was spoken about in the first main conclusion [n.7]. And the contract is the mutual act of wills, which was spoken about in the second main conclusion [n.8]. The sacrament is the efficacious sign of grace, accompanying the act, which sacrament was spoken about in the fourth main conclusion [n.10].

66. And the distinction between them is plain:

For the first is permanent in the souls of the spouses. And it is either a real relation coming from outside or, which seems truer, a relation of reason only, because there is nothing there save a new lordship and a new service through a new exchange; but such lordship or servitude posits nothing real in the lord or servant.

67. The second exists only in coming to be, and it is an interior or exterior act or undergoing of act, or rather something consisting in the interior and exterior acts of two persons. And this is related to matrimony in the first way stated [n.66] as the cause in its coming to be, the way generation is to paternity, or rather the way ‘to be baptized’ or ‘to be ordained’ is to character, as is plain above from d.8 [rather *Ord.* IV d.6 nn.277, 317].

68. And the third likewise consists in coming to be, and it simultaneously is and is not with the second; and so it does not remain always with the first.

69. Nor should one say that this name ‘matrimony’ is equivocal as to these three, but rather that it signifies only the first, and it is taken for the others only indirectly, signifying something else, so that for the second this is the contract of matrimony and for the third it is the sacrament of matrimony, where the construction is not intransitive but transitive.⁹⁷

70. But if you altogether contend that the name ‘matrimony’ signify these three things, there will be no contention about the name, which in this case will be equivocal.

71. Now these three can be described as follows:

Matrimony is the indissoluble bond between male and female, arising from the mutual transfer of the power of their bodies to each other, made for procreating offspring to be duly educated.

72. The second as follows:

⁹⁷ Transitive in the sense that the contract and sacrament of matrimony are not what matrimony is but what ‘pass over’ [transit] to what matrimony is, by making it (the contract) or gracing it (the sacrament). Matrimony proper is the bond [nn.65, 71] so made and graced.

The contract of matrimony is the male's and female's mutual transfer of their bodies, in their perpetuity, for procreating offspring to be duly educated.

73. The third as follows:

The sacrament of matrimony is the male's and female's expression of certain words to each other, words signifying the handing over of the mutual power of their bodies for duly procreating offspring, by divine institution efficaciously signifying the conferring of grace on the contracting parties, for the mutual graced union of hearts.

Or if certain words are not precisely the form of this sacrament, nor the contracting parties precisely the ministers, let there be put at the beginning, in place of the 'expression of certain words', the 'exhibiting of certain signs of both male and female' or something more general, as 'the exhibiting of signs signifying the mutual handing over of the bodies of male and female for the due procreation of offspring etc.'

B. The Application of the Aforesaid to the Question

74. Hereby is the answer clear by application to the question –

The contract, indeed, of matrimony [n.72] was instituted by God, *Genesis* 2.24, "This now is bone of my bones," 1.28, "Increase and multiply;" and after the Fall 3.16, "I will multiply your conceptions and your sorrows," said God to Eve; and *Genesis* 9.1, "Increase and multiply," he said to Noah and his family. And the institution is by way of affirmative precept, so that it is always binding but not at all times but for time of necessity – not only at the beginning, but it seems to obligate still in the same way if a like paucity were for some reason to come about, as from war or plague or disaster and the like. And this proves how the contract was instituted by God through divine and positive law, and by his similarly impressing the law of nature on the hearts of men, to which law of nature does this contract belong, if not completely as known of necessity, yet as secondarily consonant with it.

75. The second part, namely indissoluble obligation [n.71], God instituted by his positive law, *Genesis* 2.24, "He will cleave to his wife" – 'will cleave', I say, not 'momentarily accept'. God also instituted it by impress of the law of nature, not only as to things that are known evidently from the same law but as to those that are evidently consonant with that law. And that he did so institute it is proved at the beginning of the third man conclusion [nn.39-43]. Now this second precept has the force of a negative precept, because it obligates always and at all times, unless a special dispensation be made by the Legislator, as will be said below in d.33 nn.15-21.

76. He instituted also the third part, namely the sacrament of matrimony [n.73], as was said in the fourth main conclusion [nn.47-50].

77. But there is here a doubt when the reasonableness of the contract of matrimony, and of the obligation, and the divine institution of it are obtained from all these conclusions, and from the solution, only because of this end, namely to procreate offspring to be duly educated. And this institution is said to have been instituted as a duty. But, besides this, matrimony is also said to have been instituted as a remedy, namely for avoiding incontinence after the Fall. How, first, is the honorableness of the contract or of the obligation obtained in this way? Or how is there divine institution or approval of it for this end?

78. I reply: it does not appear an easy thing that anyone should, according to right reason, use this act precisely for pleasure; indeed, the opposite seems more consonant with reason. Therefore, this is more something to be tolerated; because nothing laudable seems to be found in the act save procreation of offspring. Natural reason too does not seem to establish any honorableness in the act, nor consequently in the obligation or in the mutual obligatory contract for the act, nor consequently to establish that the Legislator should rightly approve or institute such contract or obligation.

79. What then if it be said that someone who wants to use his body for this delight, so that he not use it unjustly with someone not his own, can make exchange of his body with the body of another which he may justly use as his own, and then this giving is honorable because of this justice? Also, on the presupposition that such an end is licit, it will not then be necessary that, in order to use it licitly, he use it for such act by the license of God, because (as was said when excluding the reason for the third main conclusion [n.46]), God committed to each one his own self and his own property, wherein he did not obligate him specifically to himself. If this answer not satisfy, nor is justice for this act more praiseworthy than a just exchange is for another act that would not be praiseworthy (as an exchange to use something else for a similar use elsewhere), at least can, conversely, recourse be had here to a divine institution that is not based on the praiseworthiness of an act for an end other than propagation, but based on infirmity after the Fall for avoiding a greater evil. And, having allowed this indulgence, he instituted a contract ordained for it – if not by the impress of the law of nature, at least by positive law; and this both as to contract and as to obligation.

80. But it is difficult to find the ‘when’ in between as concerns the contract for the first end, because never in the Old Testament is there found a contract prescribed or praised save for procreation of offspring; for always the divine command is for this, “Increase,” which is only by propagating. At least in the New Testament we are informed that this contract is indulged for another end, namely avoidance of fornication, *I Corinthians* 7.6, “But this I say according to indulgence etc.,” and it is likely that such an obligation would not first have been made in the New Law, but from the beginning of human law.

81. So then, from the first conclusions is obtained the result about the institution of the contract of matrimony, and about obligation in order to procreate offspring, and also about the institution of the sacrament accompanying the contract. But the institution of this contract for avoiding fornication is not so obtained by natural reason, indeed scarcely as something permitted by divine institution. Justice there as to indissolubility, however, and the sacrament accompanying the contract, are made clear in the same way as previously about matrimony instituted for the first end [nn.7-30].

82. To the first argument [n.3] the answer is plain from the third conclusion [n.9], that Adam pronounced as herald the words “This is bone of my bones etc.,” as is manifestly expressed by Christ in *Matthew* 19.4-6, when speaking about God who made them male and female he said, “Wherefore a man will cleave etc.” For if Adam had instituted matrimony and had not just been the herald and minister of God who did the instituting, Adam could have revoked matrimony – which is not true.

83. As to the second [n.4], I believe that no one inferior to God can change anything in what is essential to the contract of matrimony (on the presupposition of suitable matter), or about matrimony when a firm and ratified contract has been made.

But the Church does sometimes well make changes as to fitting and unfitting matter, by ordaining what matters should and what should not make a contract; for so does the Church do about the matter of penitence, subjecting this man to this priest as subject to him and not to another; but about the virtue or sacrament of penitence the Church cannot change anything.

Twenty Seventh Distinction

Question One

Whether Matrimony is Suitably Defined as 'The Marital Union of Man and Woman Retaining, between Legitimate Persons, an Indissoluble Life'

1. "After this one must note" [Lombard, *Sent.* IV d.27 ch.2].
2. About this twenty seventh distinction I ask two questions: first about the definition of matrimony that the Master puts in the text [*ibid.* ch.1], whether it is fitting when he says that matrimony is the marital union of man and woman retaining, between legitimate persons, an indissoluble life.
3. It seems that it is not:
Because union there is taken either for passive union or for relation:
Not in the first way, because it passes when the act passes, and ceases when the act of the contracting parties ceases, and it does not remain, but matrimony remains. Likewise, every passion in the category of passion has some form or some term that is induced in the passive subject; but it is not possible to grant any term introduced by this union, because nothing is new save a respect of reason.
Not in the second way; first because a relation is not a term of motion or change, but this union is the term of a preceding motion or change because after the change it is present and before not; second because although 'the road from Athens to Thebes is as the same as the reverse', *Physics* 3.3.202b8-14, yet the relation is different and diverse from here to there and conversely [*Ord.* IV d.13 n.68]
4. Therefore in the same way there will be two relations here, one of man to woman and the other conversely; and then it would follow that there were two matrimonies, or that matrimony is not essentially one.
5. The opposite is plain from the Master in the text.

I. To the Question

6. The answer to this question is clear in accord with what was said in the fifth conclusion of the preceding question [d.26 nn.56-67], because this definition of matrimony must be understood according to what it is explained to be in the definition or description set down there. And if matrimony is taken properly for the union, then this sort of union must be understood to be the same as obligation. And if it is taken for the preceding contract, then the union can be taken for the act of joining or the passion that includes both acts, namely the interior and exterior act, of the persons joined by the act.

II. To the Initial Arguments

7. To the argument [n.3] I say that, when understanding matrimony properly, union is understood there as a relation. And when you say that it would be the term of a motion or change, this does not follow, because the change, which was there, was according to an act of will, not leaving behind any induced term, and according to an act of causing an exterior sign, from which again nothing is left behind.

When it is said that relation is not the term of motion, this is true perhaps of a relation coming from within. But if one wish to say that there are relations of wills there from the mutual obligation, then it would have to be said that the union would be a respect coming to the will from without and not from within, just as it is not by my will that the Religion of Blessed Francis is a Religion, but this is an extrinsic respect. Likewise, this obligation [sc. of matrimony], as it is a certain relation, does not come from within to the persons obligated, because such respect does not exist by the nature of the extremes or wills obligating themselves. And if the respect is not real but only a relation of reason, then it is only a certain ordination, namely one according to justice, which ordination is in him who has the power of law; for God himself, who as legislator ordained that contract and that obligation to come to be, retains it in his ordination such that there is only a change according to reason there, just as is plain in other obligations and lordships; for lordships are not real entities but real relations, and we only love lordships and such powers of law or such jurisdictions because of that for which they are, as for pleasures or honors or the like.

When you say, secondly, about doubleness [n.3] that there will be a double relation and a double union, I concede it; and therefore is it called, not any union, but a mutual union, because the contract includes two parts, namely the consent of this person and of that, and in both persons also there are two acts, namely interior and exterior, or an intrinsic one and an extrinsic one signifying the intrinsic one.

Question Two

Whether Consent Expressed in Words is the Efficient Cause of Matrimony

8. Second I ask whether consent expressed in words is the efficient cause of matrimony.

9. It seems that it is not:

Because then no one could be certain of matrimony, just as neither of the consent of another, because not always is what the mind thinks expressed in the words. The consequent is unacceptable, because then no one could, in certitude, use the act of matrimony without danger.

10. From Gratian, *Decretum*, p.2 cause 32, q.2 ch.13, and Gloss, is it obtained that silent consent suffices for matrimony, along with expression by the parents on behalf of the children.

11. To the opposite is the Master in the text [Lombard, *Sent.* IV d.27 ch.3 n.1], and Gregory IX, *Decretals* IV tit.1 ch.26: consent is that ‘without which the other things are unable to complete a conjugal agreement’; also, tacit consent does not suffice for a sacrament, because it is not there a sensible sign.

2. Again, right over someone is not obtained by touch of the senses; but a right is acquired by matrimony, as is contained in *I Corinthians* 7.1-8; therefore etc.

I. To the Question

13. The solution of this question is plain from the second conclusion of the first question [d.26 nn.32-37], because it is contained there how the contract of mutual donation of power over bodies is honorable, and how it is disposed to the bond left remaining between the spouses.

14. And then to the form of the question, one must not say that it is the efficient cause of this bond but that it is a prior disposition, as ‘to be baptized’ or ‘to be ordained’ is a prior disposition for the character [d.26 n.67]. For the consent expressed in adequate words, including these two [sc. “I give,” *ibid.* n.36], is nothing other than the contract of matrimony, and therefore is it disposed to matrimony as that contract is.

15. Speaking of matrimony as it is a certain contract, it can be done and is done by mutual consent, expressed not only in certain words but in other definite signs; for if the signs there required are the words alone, than that alone is said to be a matrimony where there is a sacrament; but if there are signs other than words, as was perhaps so in the case of Abraham and the other ancient patriarchs, then it is said to be a true matrimony but not a sacrament according to the Church, though it could be called a sacrament of the Old Law.

II. To the Initial Arguments

16. To the first argument [n.9] I say that about the consent of another there can be the sort of certitude that is required in human acts. For in other contracts, as the selling and exchange of things, demonstrative certitude is not required, but probable certitude is enough, for the most part. And such is what there is in the issue at hand, on the supposition of the proposition ‘everyone about whom there is no sign of the opposite is truthful’. And this following one belongs to the law of nature (that is, consonant with the law of nature), that ‘truthful and faithful must each be held to be, until, through himself or through testimony of others, the opposite is with certitude or conjecture reckoned to be’. But if one say that he cheated the person contracting with him – about this below, d.30 nn.14-21.

17. To the other argument [n.10], when it is said that in the gloss one has it that there are spouses by tacit consent, I concede that they are true spouses because it suffices for a contract that the parents contract for the children, and a contract by letter without words would be sufficient, since indeed in other contracts (of buying and selling) a contract in writing is held to be firmer than one in bare words. But whether the idea of the sacrament would be preserved in signs other than words, or signs displayed by others than the contracting parties, was spoken about in the fourth conclusion of the first question about matrimony [d.26 nn.55-58].

Twenty Eighth Distinction

Single Question

Whether Consent Alone, Expressed in Words about the Present, is Cause of Matrimony

1. "Here it is wont to be asked etc." [Lombard, *Sent.* IV d.28 ch.1 n.1].
2. About this twenty eighth distinction I ask whether consent alone expressed in words about the present is cause of matrimony.

3. It seems that it is not:

Because every bond or contract on which carnal union can licitly follow is matrimony, or a contract of matrimony; but after consent expressed in words about the future, carnal union licitly follows, for such persons are not said to be fornicators or adulterers; because when carnal union follows a contract in words about the future, the Church says simply that matrimony is there, and the parties cannot be separated; therefore etc. There is confirmation too in Gregory IX, *Decretals* IV tit.1 ch.30, 'About espousals'

4. Again, every indissoluble bond, if on it carnal union licitly follow, is matrimony; but of this sort is the bond that comes from a contract through words about the future; therefore etc. Proof of the minor, because the fulfilment of a promise, as also fidelity, belongs to the law of nature; but what belongs to the law of nature cannot be dissolved; and [the bond] is not by the act following, because that act is neither a form of contracting nor a form of sacrament; therefore the promise is the indissoluble bond, and especially if it be confirmed by an oath, because to keep an oath belongs to the law of nature. Therefore it was indissoluble before; therefore after it there was matrimony.

5. Again, there is no middle (as concerns this contract) between espousals and matrimony; but when an oath is added to espousals, the contract goes beyond the firmness of espousals, because espousals have their firmness without oath; therefore, when an oath is added there is a contract of matrimony; from the promise, then, along with the oath, there arises an indissoluble bond; therefore matrimony.

6. To the opposite is the Master in the text [Lombard, *Sent.* IV d.28 ch.2 n.1].

I. To the Question

7. I reply: From the second conclusion of the first solution [d.26 nn.34-37], it is plain that the contract of matrimony, which of course introduces the obligation or bond (which is called the marital bond), is a giving; and if it is not free, still, because 'giving on behalf of another' is what substituting is, it at least is a mutual handing over of the power of bodies. But no one in promising hands over what he promises; indeed, this would be a contradiction, because a promise is about a handing over in the future. Now consent about the future expressed in signs suitable to that consent is only a promise; therefore, it is impossible for such consent to be a handing over, nor consequently a matrimony.

8. But if someone in this case wanted to apply force concerning the sacrament accompanying the contract, one could say that the proper form of this sacrament, whether it consist in words only or in other signs, consists in a representative sign only and not in a prognostic one. Nor is it the minister's intention, which is sufficient for ministering this sacrament, to intend for the future, but he must intend it for the present, as the sign signifies; because in sacraments of truth the minister does not suitably minister if he is lying. There is, then, no sacrament there if the consent is only about the future, because of the defect in the intention of the minister; and it is a lie if he use a representative sign. But

if he use a prognostic sign, although he not be lying, yet the requisite intention is lacking, and the requisite due sign.

9. To the first argument [n.3] I say that the major is not true, unless it be understood of an indissoluble bond before the act of carnal union, but not if it be made indissoluble through the carnal union, because matrimony is of its nature an indissoluble bond; but if the bond be made indissoluble through this act, yet it is not indissoluble beforehand.

10. And if you ask, on the supposition that, according to the Church's presumption, this sort of thing is matrimony, what must be said according to the truth, whether the following act cause the bond to be indissoluble – I reply: truth prevails over presumption, both simply and in any court, if the truth can be known as equally as that whence the presumption arises. In truth, therefore, if he in the act following espousals not change consent of espousals into matrimonial consent, a matrimony is not effected by the act, because that act neither by the nature of the thing nor by the divine law is the proper form of the sacrament; nor is it matrimony in the issue at hand. The Church, however, to which the mind of the one performing the act cannot be known, presumes it, supposing that he does not want to sin mortally and therefore that he is departing from the consent of espousals and knows her with a new matrimonial consent or affection.

11. And by this is plain the answer to what is added in confirmation from Gregory IX, *Decretals*: I concede that, if the prior consent is not changed into a matrimonial consent, it is not in truth a matrimony, though the Church presumes it. For I do not see that presumptions of the Church could make a true matrimony.

12. To the second argument [n.4] I say that the promise, although by the law of nature it should be kept, does not yet reach to a contract of giving; and therefore, however much he may be bound to pay the promise, the thing remains his own. And therefore, if he give it to another, it is given, nor can he afterwards take it away from the one to whom he gave it so as to return what was promised; but he should be penitent about the impossibility of returning it. So it is here. If anyone, after he has contracted with another, through the words about the future, by contracting only espousals with her – if he later contracts with someone else by words about the present, it is impossible that he fulfill the promise that he had made to the first one. And because of this he should be penitent about the breaking of the promise and the impossibility of paying it; but he is not bound to make restitution to her, because the promise took nothing from her. Therefore, by words about the future there is no giving, but a promise about future giving. The major proposition, therefore, that 'an indissoluble bond...is matrimony' is true of the indissoluble bond both in law and in fact. However, in law it is indissoluble, in fact it is sometimes soluble. And so this promise, which in law is indissoluble, is in fact dissolved by a subsequent giving.

13. To the third [n.5], I say that in espousals there are degrees of firmness, and though the firmness of an oath, applied to espousals by consent about the future, make them more certain, yet it does not go beyond the certitude and firmness of espousals.

Twenty Ninth Distinction

Single Question

Whether Coerced Consent in One or Both of the Contracting Parties Suffice for Contracting True Matrimony

1. “Now it is necessary that conjugal consent etc.” [Lombard, *Sent.* IV d.29 ch.1 n.1].

2. About this twenty ninth distinction I ask whether coerced consent in one or both of the contracting parties suffice for contracting true matrimony.

3. It seems that it does:

Someone baptized through fear of penalties, being coerced to this, does consent sufficiently to receive baptism truly; hence too he who is coerced to observance of the faith already received, Gregory IX, *Decretals* III tit.42 ch.3, ‘Of baptism and its effect’ [*Ord.* IV d.4 nn.61, 74]; therefore, by similarity in the issue at hand, he who is coerced into making a contract [of matrimony] does truly make it, since there is spiritual matrimony there just as carnal matrimony here. Indeed, the consequence seems to hold [from the argumentative place] *a minori*, because less liberty seems required in carnal matrimony than in spiritual.

4. Again, no one can be coerced to make a contract save through fear; but no fear impedes save one that can happen to a man of constancy; but such fear is no fear, because a man of constancy is brave, and a brave man is fearless, from *Ethics* 3.9.1115a32-b11.^a

a. [Interpolated text] Besides, Gregory IX, *Decretals* 1 tit.40 ch.3, ‘Of things done by force or by reason of fear’ “The renunciation of a choice done through fear, if confirmed by an oath, is obligatory;” therefore by similarity in the issue at hand.

5. Again, coercion done through fear is only a certain efficacious inducement to something, and it is not simply coercion, for the will cannot be coerced; but blandishments can induce just as terrors and threats can; therefore, he who consents because of blandishments or enticing pleasures would not truly contract matrimony. The consequent is false; therefore [the antecedent too].

6. Gregory IX, *Decretals* IV tit.2 ch.1, ‘On the espousal of those below the age of puberty’: “A son not yet adult, whose will cannot be discerned, can by the father be handed over in matrimony to whom the father wills; and after the son has reached the perfect act, he must altogether fulfill it.” And in Justinian’s *Digest*, XXIII tit.1 n.12, ‘On espousals’, it is said of a daughter that “only then is the license to dissent from the father permitted to her if the father choose for her a spouse unworthy or base in morals.” There is a confirmation of this, because the Pope can compel spiritual sons to contract spiritual matrimony, as by receiving episcopacy; therefore, a carnal father can compel his son, though unwilling, to contract carnal matrimony.

7. To the contrary is the Master in the text [Lombard, *Sent.* IV d.29 ch.1 n.1].

8. Similarly, spiritual matrimony is more favorable than carnal; but coerced consent impedes profession of Religion, as is contained in Gregory IX, *Decretals* I tit.40 ch.3.

9. Again, that no son can be compelled by a father to contract matrimony is contained in Gregory IX, *Decretals* IV tit.2 ch.1, ‘On the espousal of those below the age of puberty’; and it seems an authority contradictory to the ones that were stated for the opposite side [n.6].

10. Again, Gregory IX, *Decretals* I tit.40 chs.2-3, ‘Of things done by force or by reason of fear’, and Gloss *ad loc.*, “Matrimony contracted through fear is not binding, nor is he who does this obligated, even if he swear an oath.”

I. To the Question

A. Opinion of Others

1. Exposition of the Opinion

11. One way of speaking here [Richard of Middleton, *Sent.* IV d.29 princ.1 q.1] is that no one can be so coerced to consent that his will consents, because the will is not compelled nor can be compelled. But only in a certain respect is anyone coerced by a fear of penalties he wants to avoid. Herefrom the argument is: anyone does sufficiently avoid the penalties he fears by consenting with words exteriorly; and therefore if, over and above the consent that appears in the speaking of the words, he consent interiorly in his mind, he consents with that consent, not from fear. And consequently, the interior consent is free, not coerced, and so it obligates and the matrimony is ratified in the judgment both of God and the Church. But he who consents in his mind but with the words only, since the consent in his mind is not free, such as he does not contract matrimony either in the forum of conscience or in the forum of the Church, because the Church presumes that such as he did not consent.

2. Rejection of the Opinion

12. But, first, this seems unreasonable, because, according to everyone, the fear cannot be simply fear within or without, or simply coercion, because he who speaks is voluntarily moving his tongue. For however much his mouth were with fingers violently opened or his tongue moved, he could not speak or express words unless he were moved voluntarily by himself; therefore, coercion is only the inducement to do something to avoid a threatening evil.

Likewise, fear that leads to mortal sin cannot happen to a man of constancy, because then a man could be coerced into mortally sinning.

13. From these points I argue as follows: whoever is coerced to something, which cannot, in the absence of something else, be without mortal sin, is coerced to that something else, and this when taking ‘coercion’ in the same way on this side and that. But this person, for you, is coerced by fear into speaking external words expressing consent, and these words cannot, in the absence of interior consent, be without mortal sin, because he who speaks them without interior consent is perniciously lying. So, just as he can, for you, be coerced to speak the words, so can he be coerced to interior consent.

14. Proof of the major in multiple ways:

First, because the fear that excuses is only that which can happen to a man of constancy according to law; but a man of constancy seems to be one whom a fear of greater disadvantage than fear of mortal sin cannot happen to.

15. A proof also of this is that no fear can, according to right reason, happen to anyone save to undergo a lesser evil in order not to do, or in order to avoid, a greater evil; but suffering some pain is a lesser evil than sinning mortally; but it is a mortal sin to express outwardly that one consents and yet not to consent interiorly.

16. This could also be proved about what is licit and illicit, because fear cannot bring anyone to anything save to what is licit; for it is more necessary to avoid what is illicit than to flee pain, since indeed anyone is directed by a higher cause to flee what is illicit than to avoid pain, because God draws a man back from what is illicit through affection for justice, but love of advantage inclines toward avoidance of pain.

17. This reason [n.13] is confirmed by a double example:

First because if it were not licit for someone to consent interiorly, no fear ought to bring him to speak the words exteriorly – just as would be the case with a Religious, who ought in no way to be brought to speak these words, for either he is consenting and sins mortally against his vow, or he is not consenting and sins mortally with a pernicious lie. Therefore, fear is not sufficient to bring anyone else to speak those words save as he is distinguished from a Religious, for whom it is not licit to consent interiorly.

Another example is if someone, while inflicting violence on this person to accept this woman through the violence, were also to exact from him this sort of oath, ‘I swear on the holy Gospels of God that without fear I consent to her’ – in no way should he be brought by any fear to this oath, because, by swearing deceitfully, it is mortal sin. Therefore, similarly, by no fear can this man be brought to accept this woman by words exteriorly, save as it is licit so to accept her; but it is not licit save as conjoined with interior consent.

18. If you say that it is proved by these reasons that he should not speak words for any fear whatever unless he consent with his mind, yet, if he does consent, he is bound, because fear is not sufficient to bring him to that consent – on the contrary: neither is he coerced so to the exterior words simply that another be the mover of his tongue, but because something more to be avoided threatens him, namely death; for this reason is he said to be coerced by fear into so speaking; therefore, by similarity, when an evil threatens him greater than giving consent to this woman (as death or mortal sin), he is coerced by fear into giving consent to her.

19. This is confirmed, because the opposite would give many people the occasion to lie perniciously. It is also confirmed by an example, because if someone in great peril cast merchandise into the sea lest he drown, he casts it from fear; and if there were some other act in the absence of which there could be no casting into the sea, either absolutely or not without mortal sin, he would be coerced in like manner into that.

20. Second, the opinion is at fault in its saying that the Church presumes there is no interior consent there, because the Church presumes he only consented exteriorly out of fear, not interiorly in his mind. For this is false, because the Church always makes assumption for the better side, as is contained in Gregory IX, *Decretals* V tit.41 ch.2, ‘Be merciful’, and I tit.12 ch.1, ‘About scrutiny in conferring Orders’, “Him whom one does not know to be unworthy, one should reckon to be worthy.” It is manifestly plain that the Church assumes that carnal union, following espousals, comes from marital affection, because the Church assumes that spouse and spouse are not sinning mortally in the act; therefore here similarly.

B. Scotus’ own Response

21. To the question, therefore, I speak differently. And there are here two things that need looking at: first, how consent can be coerced; second, whether it be sufficient for contract of matrimony.

1. How Consent Could be Coerced

22. About the first I say that coercion does not properly happen to a man in any human act; for it is a contradiction that the will is simply coerced to an act of willing; because, since from *Ethics* 3.1.1110b15-17 “the violent is that whose principle is outside, the passive thing contributing no force to it,” understand this to be ‘contributing no force’, that is, ‘contributing no violence’ – not by way of negation but by way of contrariety, that is, ‘not contributing violence to the contrary’. This is to say, ‘the violent is what is totally from a principle outside and is against the inclination of the passive thing’; and an act of will cannot in this way be in the will, because then he who does not will would will, which manifestly includes a contradiction.

23. However, what has a will can be coerced to some passive suffering (as that it remain here bound), or to some instrumental action, which however is not its own action (for example if he strike someone with my hand, because he could do that with a bronze hand).

24. But to an elicited or commanded action of the will, which alone is properly a human action, a man cannot be compelled save in a certain respect, namely by fear of a greater evil than that act is. And this coercion can exist in a virtuous man, namely when he knows – not by a slight guess or suspicion but with certitude (at least a certitude sufficient in the case of human acts) – that an evil is to be inflicted on him that is more unacceptable to him and more to be avoided than eliciting the act that displeases him. And it can well be that it is more unacceptable to him according to right reason, as death or undergoing imprisonment or captivity, and as major mutilation or disgrace or the like evils.

25. Since, therefore, he is lord of his will, he can also will something that he would otherwise not will, and command an act otherwise refused, before he incur those evils – and this according to right reason; hence such fear is said to happen to a man of constancy. But no fear can, according to right reason, bring anyone to mortal sin, because there cannot be a greater evil that threatens than mortal sin, because no penalty, mere penalty, is worse than mortal sin.

26. Now as to venial sin let it here be a matter of doubt. But about it elsewhere.⁹⁸

2. Whether Coerced Consent Suffice for Contract of Matrimony

27. On the second main point [n.21], I say that this consent, coerced thus through fear as was said [nn.17-19], does not suffice for contract of matrimony, as is obtained expressly from Gregory IX, *Decretals* IV tit.1 ch.14, ‘On espousals’, and ch.28, ‘By your consultation’. Therefore, we have it that so it is.

28. But what is the reason for this?

⁹⁸ Vatican editors: The doubt is briefly introduced by Scotus in *Rep.* IV/A d.29 q.1 n.9, “Now about venial sin...whether it should, according to right reason, be committed by anyone rather than that any pain be allowed, is doubtful.” However, he gives no solution to it.

I say that a cause and reason can be given, both from the formal cause of this contract, and from the efficient cause by which the contract has such form, and from the final cause because of which the efficient cause has given this contract such form.

29. The first point is clear, because this contract is a giving, and though it is not a generously free⁹⁹ giving (supply: because given so that equal to oneself be given), yet it is a free giving simply, because it is against the idea of giving that it not be free. This then is the formal cause of matrimony (and a form cannot be proved of itself);¹⁰⁰ and thus is it plain, on the part of the form or the formal cause of matrimony, that coerced consent is not sufficient, because it impedes liberty, which is the form of it.

30. This is plain second from the efficient cause, because God has instituted this transfer to be such, namely purely free. Hence this is not determined by the Church but only expressed. For it is plain that even in the law of nature this was required in the contract of matrimony, *Genesis* 2.24, “He will cleave to his wife.” One does not cleave to that which one holds unwillingly. And *Genesis* 24.8, 57-58, where it is said of Abraham that he said to his servant, “If the woman not wish to come with you, you will be free of your oath;” and when he sought for Rebecca, they said, “We will call the girl, and we will ask her will;” and at once her parents asked her, “Do you wish to go with this man?” She replied, “I will go.” But where is it seen to have been instituted by God? I say that in *Genesis* 2.24, through the mouth of Adam, “Wherefore,” he says, “a man will leave his father and will cleave to his wife.” Now this ‘leave his father’ is not to throw away or despise his father; nor does he say ‘he will be left or thrown away by his father’, but ‘he will cleave (he says) to his wife’, namely ‘his own wife’, and ‘to cleave’ is done by love. And so is it plain that this condition (namely of mutual will and mutual love and consent) God bestowed on matrimony, and instituted it.

31. Third, this is plain on the part of the end, which is the offspring to be procreated, to be religiously educated, and for the divine cult – or the indissolubility of the bond for that act; because the act looks for this giving to be simply free, for love does much for this, that such bond be preserved through mutual affection; for as was said earlier [d.26 n.33; Gratian, *Decretum*, p.2 cause 30 q.3 ch.4], “What someone does not love, he easily despises.” Similarly, marriages that are not free or not loved are, for the most part, destined to a bad end.

32. Also a certain person says [Richard of Middleton, *Sent.* IV d.29 princ. 1 q.1] that it could be said the Church makes a person, even a suitable person, illegitimate for the time for which there is coercion, because just as the Church can make illegitimate simply, so also in a particular case and for a time.

33. But this I do not believe; rather the statute of the Church requires this [sc. free gift] for the nature of this contract, from the efficient cause that determines it, and on account of the end for which it is.

3. Some Doubts against the Aforesaid

⁹⁹ ‘Generously free’ because the Latin word ‘liberalis’ is used here to qualify the giving; in the next line the word ‘libera’ is used to qualify the giving. So, to bring out the difference, ‘generously free’ is translated here and merely ‘free’ there.

¹⁰⁰ The form of a thing is also its definition, and a definition cannot be proved; rather is it the first principle of proof (as the definition of triangle is the principle to prove it has internal angles equal to two right angles). A definition is reached rather by process of description and division.

34. But against the aforesaid are some doubts.

Because he who is coerced by fear does simply give consent in his mind to this woman (as was said before [n.12]); otherwise he would be lying in saying that he consents – but this is not true, because from the fact that he is virtuous he does, in order to avoid mortal sin, give consent interiorly, in agreement with the words said exteriorly. Therefore he has an act of will of voluntarily transferring both his body and the right over his body, just as another does who is in no way coerced. Therefore when, by act of will he transfer dominion, he transfers the power of his body to her, and consequently, when the power over his body has, by act of his will, been thus transferred to one woman, power for another woman does not remain with him.

35. Again, if someone contract matrimony from fear of mortal sin, he would simply contract it, as being by divine precept or by precept of a man who was superior (if he could prescribe it); and yet fear of mortal sin is thus fear and does happen thus to a man of constancy, just as does fear of any pain, indeed much more so. Or like this in logical form: if coercion from fear command matrimony, then a greater fear would command more; but he who makes a contract from fear of mortal sin contracts it on account of a greater fear, because from fear of a greater evil than if he were to make a contract because of any fear of pain; therefore such a one would make a contract – which is false.

36. Again, one can and should fear evil not for oneself but also for one's neighbor; therefore if evil either of sin or pain threatens this woman (evil of sin, as when she says, asserting firmly, that she would at once prostitute herself unless she be conducted into matrimony; evil of pain, as if she for certain say that she will kill herself, or another says he will kill her, unless she be conducted into matrimony), then the man, so as to avoid all these evils, accepts her. It seems that this is a contract of matrimony, and yet here there is fear; therefore etc.

4. Solution of the Doubts

37. For the solution of this question [sc. from the preceding doubts, nn.34-36], an argument could be taken from the sacrament, because free intention is required in ministering this sacrament; but this fact is not as known as the fact about the freedom required for a contract.

38. [Solution of the first doubt] – As to the first [n.34] I concede that he who is threatened by this fear of sin, or of death, or of prison, should, according to reason, say the matrimonial words that are exacted of him, and so, consequently, he should consent interiorly in agreement with the words. Indeed, he is also bound, by necessity of safety for the moment, to have such a 'to will' and such an interior consent, just as he gives expression exteriorly in words, if such words he should give expression to. Nor yet does he by this consent transfer power over his body to another, because no consent makes a transfer in this way save a purely free one.

39. And if you say 'this man at least freely has an act of will, therefore as far as in himself he does make the transfer' – I reply: he does not freely have the act, because he has it only from fear, though the fear not be the sufficient efficient cause, but a cause strongly inducing him, just as he does not freely speak the exterior words, because he

speaks from fear. Or it could be said that although by such ‘to will’ he does, as far as his own part is concerned, make a gift to the other, yet God, who is the superior lord in this transfer, does not ratify it unless it is purely free.

40. But from this it could be argued, against the aforesaid that, from the fact he knows he is not transferring his body (because he is not freely consenting), and he shows by an exterior sign that he is transferring, then he lies.

41. I reply: he shows he is transferring as far as it is in himself, though he knows he is not transferring, because he knows it is not ratified by the superior.

42. If therefore you say that then he should say, so as not to be lying, ‘I accept you for mine if the Lord permit it’ – I reply: this condition is always understood however absolute the speech, and his absolute word must in this way be understood, ‘I accept you for mine (supply: ‘as far as is in me, on presupposition of this violence’), and if God were – through such consent as I now have – to ratify that a handing over is taking place, I would hand over my body to you, and I do hand it over, as much as I can hand it over through such consent’.

43. [Solution of the second doubt] – As to the second, about obedience [n.35], some say that, just as one can be coerced into accepting some prelacy, and in every spiritual contract one is bound to obey – as a bishop, coerced by obedience, is bound to accept the church of which he is the spouse (whether it be so about a Religious, let me not here say) – so can someone be coerced in a matrimonial contract to give consent to such and such woman.

44. However I reply otherwise, that someone coerced by obedience to make a contract, and who does thus make it through fear of mortal sin, contracts it so he may keep justice, and therefore, he does so from the fact that no one is compelling him exteriorly, but he himself, by his own inclination and affirmation of justice, is interiorly inclined, by pure choice, to this sort of contract.¹⁰¹ And therefore I say that there is there a matrimony by choice, and he does truly make a contract. But not so if he were coerced into it by fear of pains or threats.

45. [Solution of the third doubt] – To the next [n.36], about the fear of pain or a neighbor’s sin, if only pain in the neighbor were feared it can be said that the consent, coerced by such fear, is not sufficient for matrimony, as was said before about fear of pain in oneself [n.44], because such consent would not be by a choice made in charity. But if sin against his neighbor were feared, and this fear be very certain, the perfect work would be if he were to accept her lest she would sin; and if he accept her, he would hold to the matrimony, because it would be a free consent by charity.

46. But whether he is bound to this by necessity of salvation, look elsewhere [*Rep* IVA d.29 q.1 n.15].

47. To the first main argument [n.3] I say that the case of someone baptized through fear of pain and the case of someone contracting [matrimony] through fear of pains are not alike, for three reasons:

¹⁰¹ The Vatican Editors note the following addition from some of the mss.: “But then it seems that the argument against the first opinion fails [n.43], because one would thus say that, having been coerced into the words by pure choice, one does consent to the words, because one has the consent by title of justice, lest one sin.”

First, because the condition of the baptized is made better, but the condition of one who contracts matrimony is made worse; and therefore it is [not]¹⁰² enough that someone coerced through fear into receiving baptism intend to receive baptism; but in matrimony this does not suffice, but freedom is required; hence too those who cause there to be violence in it are excommunicated.

Second because the will of the superior ratifies someone's becoming, by such coerced consent, a child of the Church, but does not so ratify it in the matter at hand.

Third, because in the case of baptism there is not as properly a marriage as an adoption. And it can well be that less of the voluntary suffices in someone who is adopted than in someone who contracts matrimony; hence someone who does not have the use of reason can be adopted but cannot be betrothed.

48. To the second [n.4] I say that a brave man is not altogether fearless, because this degree of audacity means to be afraid in nothing; but the brave man is fearless where one should not fear or be afraid. Hence Aristotle too adds in the same place [*Ethics* 3.9.1115b10-15], "But he is afraid where he should be afraid, that is, he is afraid where right reason bids he should be afraid." And right reason dictates being afraid and fearing where a greater evil threatens, and consequently fearing death or prison more than this unpleasant act [sc. coerced matrimony].

49. To the third [n.5], in the case of inducement through fear there is much of the involuntary and little of the voluntary; and it is the reverse in the case of inducement through blandishments and pleasures, because there is much of the voluntary there and a moderate amount of the involuntary;^a for in the first case, if the will were left to itself, it would at once spring back; but in the second case, if an enticed will were now left to itself, it would perhaps go on pursuing. Therefore, the case of the involuntary when enticed by blandishments is not like how it is with coercion through threats and terrors. And the reason is that the will frequently agrees with the sense appetite, and the sense appetite, being affected by some agreeable object, is inclined more and more, but when affected by a disagreeable object it flees more and more.

a. [Note by Scotus] An example: if a stone were to choose to be above, there would, so that it not grow weary, be much of the involuntary there and little of the voluntary, because being above is simply unnatural to it.

50. As to the last one [n.6], that chapter [from *Decretals*] can be expounded as 'must by congruity' and not as 'must by necessity of precept'. And as to what is added from the *Digest*, the civil law is speaking there; but canon law is the contrary. Hence the remark of Paul's, *Ephesians* 6.1, "Children obey your parents," is not understood as applying to this [sc. matrimony], because a child is not obliged to obey a father in this. As to what is added about spiritual matrimony, I say the case of a carnal father and the case of a spiritual father are not alike, because a carnal father does not have as much obedience over a son for carnal matrimony as a spiritual father has over a son as to spiritual matrimony. And the fitting reason is that in the latter case, the one who contracts it is made to be of a better condition, but not so in the former.

¹⁰² The 'not' is printed in the Vatican edition, but it seems to be a mistake.

Thirtieth Distinction

Question One

Whether for Contract of Matrimony a Consent is Required that Follows a Non-erroneous Apprehension

1. “And not only coercion” [Lombard, *Sent.* IV d.30 ch.1 n.1].

2. About this thirtieth distinction I ask two questions: first whether for contract of matrimony a consent is required that follows a non-erroneous apprehension.

3. That it is not:

In *Genesis* 29.18-35 is the story of Jacob and Leah, to whom he did not consent save by error, believing her to be Rachel; and yet it seems that there was a matrimony there, otherwise the carnal union between them would have been fornication. And if you excuse him through ignorance, though perhaps not sufficient because not invincible – on the contrary: then on the morrow at least he could have repudiated her as not his own.

4. Again, in *Genesis* 27.27-29, 33, Isaac by error blessed Jacob, believing him to be Esau, and yet Jacob was blessed because afterwards Isaac said, “I have blessed him and he will be blessed;” therefore similarly here.

5. Again, if a priest, believing he is baptizing one person, baptize another, whether free or slave, the person is baptized; therefore, error is not an impediment there, and by parity of reason neither will it be an impediment here.

6. Again, more of an obstacle to a spouse is moral malice in the other spouse against the divine law than is the condition of servitude; but erroneous apprehension as to that malice, if consent to this person follow it, does not impede contract of matrimony; therefore, neither does error in condition of servitude.

7. To the opposite is Gratian, *Decretum*, p.2 cause 29 q.1, and the Master in the text [Lombard, *Sent.* IV d.30 ch.1 n.2], who sets down an example about gold and brass.

I. To the Question

A. Solution of the Question

8. To this question I reply that it is clear from the second conclusion of the first question of d.26 above [nn.32-36] that this contract is a contract of free and voluntary giving (and as was also said in the preceding distinction [d.29 nn.29-31]). But ignorance, and especially of the condition that is required for an act of will, causes the involuntary, *Ethics* 3.2.1111a2, and according to Augustine *On the Trinity* 10 ch1 n.1 [also 15 chs.27, 50], “nothing is loved or willed unless it is known” [cf. *Ord.* I d.3 n.589].

B. Corollary

9. From this follows a short corollary, that error or erroneous apprehension as to any condition per se required for a contract makes the contract null. And there are in general three conditions, two on the part of the persons: one, namely, when this person is thought to be that person, the other when an enslaved person is thought to be free. The third condition is the corresponding error on the part of the contract, as when one person were to believe that the other person was contracting with him in a like contract although,

however, in the truth of the matter the other person is not contracting, because he does not intend to give as that person intends to receive.

10. As to the first error, it is plain that it impedes all buying and selling of things, as that if gold is bought and the seller is selling brass. So here, if someone intend to give to *b* power over his body and he give it to *a*, nothing from such *a* comes to be.

11. The second condition is a special one here, because here there is a substitution of power over a body for power over a body; but a slave cannot give power over his body to a free woman, as she conversely can; and she, not knowing his servitude and consequently not consenting knowingly to a slave, does not want to exchange power over her body for a power over a body that the slave does not have. And from this follows something else, that error of a better condition is not an impediment – and servitude likewise is not an impediment, if it is not unknown.

12. The third condition is general to every contract, because if one of the two is contracting with a straight mind and the other is only using signs of a contract without a mind to contract, there is no contract; because the more principal cause is lacking, namely the mutual act of will, and the less principal one that is in place, namely the extrinsic sign, does not suffice.

13. This contract [of matrimony] therefore, when it limps on one side, is dissolved; for a contract of matrimony cannot limp since there is a transfer of equivalence there – just as there is a likeness between things that are alike, for one thing cannot be like another thing if the other is not like it.

C. Doubts

14. But here there are some doubts.

First: let it be that someone, in order forcibly to sate his¹⁰³ lust, say the words but not be intending in his mind to make a contract – is the other person, who contracts with single mind, obligated? It seems so, because on her part there is both consent and words; therefore, the total cause for obligation remains in such a person consenting.

15. Again, let it be that he who contracts deceitfully make express to the other his deceit; that other person, who contracts with single mind, cannot withdraw from the contract because she would expose herself to peril of fornication. Nor yet can she abide on her own side, because she cannot with certitude demand the [marriage] debt, nor yet can she return it on the other side, because in abiding by it she would expose herself to peril of fornication. Therefore, it seems that in such a case the single-minded person is in perplexity.

16. To the first [n.14] I reply: a contract of matrimony does not limp, and therefore if the second person does not give, the contract does nothing. For (as said in the first question, the second conclusion [d.26 n.36]) “I give so that you may give” or “I give

¹⁰³ Latin words, while rife with grammatical gender, can often be left ambiguous as to biological gender, and Scotus' Latin here is ambiguous as to whether the lustful person in this doubt, or the deceiving person in the next doubt [n.15], is the male or female partner. It could in principle be either, of course, but the Latin becomes clear enough later, especially in nn.19ff., to show that Scotus is thinking primarily of the male party as the deceiving party, and therefore also, one presumes, as the lustful party. The English translation accordingly follows this presumption from the beginning, even where the Latin remains ambiguous.

if you give;” although on the part of the one who contracts with single mind there is no impediment of fact, save as a consequence.

17. But about the second doubt [n.15] there is considerable dispute, with some saying [Richard of Middleton, *Sent.* IV princ.1 q.4] that this person cannot render the debt while her conscience about the other’s deceit remains, nor can she withdraw, because she would expose herself to fornication, as was said [n.15].

18. In brief I say there is no perplexity in the Divine Law, even with any act at all of one’s own in place – provided however that there not remain some mortal sin by which that perplexity come about. But she who, in single mind, contracts with another does not then have, and much more not afterwards either, any act because of which she may be perplexed; therefore the way of salvation lies simply open to her.

19. I say, therefore, that the safer way is that she settle in her conscience that the other is not deceitfully consenting, indeed that he then truly gave consent, but is now lying; and in this case let her do as a true wife does.

20. But if she cannot get rid of the conscience she has about the other spouse’s privative word [sc. the word that deprives the contract of validity], then, while that conscience remains, she mortally sins in rendering the [marital] debt, because it is fornication.

In not rendering it, too, and much more in withdrawing, she is exposing herself to the peril of mortal sin – that he is lying [sc. now]. And this is more probable than that he lied in the main contract; and then she is denying him what is his own, or if she withdraw, she commits adultery, according to the Gospel [*Matthew* 5.32]. Into a considerable penalty, then, is she dismissed who treats with one who makes a contract deceitfully.

22. But surely the deceiver will not be immune?

I say that, while the deceit remains in the forum of his conscience, he must be told that in no way should he render or ask for the [marital] debt, because it would be fornication; and, along with this, he must be told that he is bound by necessity of salvation to make satisfaction to the person harmed; but he cannot make satisfaction unless he render to her as much of his own as, without doubt, he took from her; for it seems that his body is not [sc. not yet] the body of the wounded woman, that he exchanged his body for her body, and therefore that he is necessarily bound to change the deceit into a true contract.

23. But let it be that in the meantime he contract with another woman, what then is to be done?

I reply: that contract is to be kept and, as to the impossibility of rendering to the former woman what is due her, he must be penitent, along with the exterior satisfaction possible, as by procuring a suitable matrimony, as is found in *Exodus* 22.16-17 about him who sleeps with a virgin, that he is bound to a definite restitution for her, according to the custom of the dowry that virgins are wont to receive in that country.

24. If against this solution an argument be made about the error, which solution consists in this, that exchange is only according to the apprehension of the value of the thing exchanged relative to what it is exchanged for – against this solution, that someone can give something or exchange something expecting something greater to be returned to him, for which however nothing will be given in return, nor yet is the first giving null for this reason.

I reply: some giving, expecting a future return, is not a generous one; and some giving demands a preceding or concomitant giving, which is exchange properly. The first does well hold, although afterwards the expected return not follow, because the transfer is made there only under hope of future return. The second never exists save where there is at once a concomitant return, because the contract is conditioned (even if not with an expressed condition, yet one universally understood implicitly by the nature of a contract), and a conditioned contract does not stand save when the condition stands.

II. To the Initial Arguments

25. To the first argument [n.3], whether Jacob could be excused of sin if he knew Leah on the first night or not, is no great concern, for he was not confirmed [sc. about her identity]; but I say that after he apprehended she was Leah he consented to her with a new consent, perhaps because of the words of Laban [*Genesis* 29.26], “It is not the custom in this place that the younger are handed over to marriage first;” and from then was she his wife; otherwise I concede that he could well have repudiated her as not his own.

26. To the second [n.4] I say that after the departure of Jacob and the entry of Esau, it is added there [*Genesis* 27.33] that Isaac trembled violently and wondering beyond what can be believed he says, “Who was it etc.,” and about the blessing of Jacob he added, “And I have blessed him, and he will be blessed,” where, consequentially and in accordance with the text, Isaac is understood to have been rapt in that ecstasy wherein he saw that Jacob justly and according to the will of God had to be blessed, and therefore the first blessing – although extorted by man and human precaution, yet afterwards, because in that ecstasy and wonder Isaac saw it approved – he pronounced as firm, adding “and he will be blessed.”

27. As to the third [n.5], there is no similarity with a baptism unknowingly conferred, because there is no mutual contract there.

28. If however, for the solution of this question, someone were to take an argument from the idea of a sacrament, that it could not be conferred by someone in error, it seems probable that he who errs about the person would not, in baptizing, baptize him, just as neither in the case of matrimony.

29. But this argument is not set down for solution of the question, nor does such error about the person (that it is *a* or *b*, provided however he intend to confer this sacrament on this person who is present) seem to prevent conferring of baptism, or of the other sacraments. But here such error is an impediment, not because it impedes first the sacrament, but because it impedes the contract of making gift to him to whom one does not want to give that which is here given.

30. I say that there can be error in baptism about the person, but not in joint giving, because servitude does nothing there [sc. nothing for contracting matrimony, n.11]; for if he were to intend to baptize some determinate person and he does not baptize that person, then it is nothing.

31. To the last argument, about moral malice [n.6], I say that moral goodness is not something per se required for a contract of matrimony, and this neither when preceding nor concomitant nor following; nor similarly the opposed malice. And so error

in this condition does not prevent the contract. But it is otherwise about the condition of servitude, on account of the reason stated in the solution of the question [n.11].

Question Two

Whether between Mary and Joseph there was True Matrimony

32. Second [n.2] I ask whether between Mary and Joseph there was true matrimony.

33. That there was not:

Gratian, *Decretum*, p.2 cause 17 q.1 ch.2, “For those who vow chastity not only marrying but wanting to marry is damnable;” but the Blessed Virgin had vowed chastity; therefore, she did not contract matrimony with Joseph; otherwise she would have mortally sinned.

34. Again, in *Numbers* 36.7-8 is contained that according to the Law women ought to marry men of their tribe; therefore, Mary was only able to marry a man of her tribe; but Joseph was of the tribe of Judah, *Luke* 2.4, because he was “of the house of David,” but Mary was of the tribe of Levi, *Luke* 1.36, because “her kinswoman, Elizabeth.”

35. Again, one who contracts matrimony consents to something; not only to cohabitation, because brother and sister can consent thus; therefore, to carnal union, because matrimony seems to add nothing else over and above cohabitation; but the Blessed Virgin could not have consented to that union, because she had vowed virginity.

36. To the opposite is the Master in the text [Lombard, *Sent.* IV d.30 ch.2 n.1], and it is taken from *Matthew* 1.18, “Since she was betrothed etc.”

I. To the Question

37. Here two things need looking at: first, that it was so; second, how it could have been so.

A. Between Mary and Joseph there was True Matrimony

38. The first point is plain from the authorities that the Master puts in the text [Lombard, *Sent.* IV d.30 ch.2 nn.2-5, from Ambrose and Augustine].

39. And there is a fitting reason for this, because either there was a divine precept universal for everyone in the Law about contracting matrimony, not yet revoked at the time when the Blessed Virgin contracted matrimony, since indeed fecundity was held a blessing in the Law and sterility a curse (as is plain in many places of Scripture [*Genesis*, *Deuteronomy*, *I Kings*, *Psalms*, *Proverbs*]) – or if there was not a general precept, which is seen from the fact that Jeremiah and John the Baptist remained virgins, and Elijah and perhaps many others (for whom however we do not read that a special dispensation about this was made), then a special command was given to the Blessed Virgin about making a contract with Joseph.

40. There can for this be the fitting reasons assigned by Ambrose [*Exposition of Luke* II nn.1-13], namely so that her husband would be witness to Mary’s virginity, who would also have been able, were he not to recognize the oath [*sacramentum*: ?of

virginity], to lament injury and avenge scandal. Thus too is greater faith ascribed to the words of Mary, and cause for lying removed. For a pregnant unmarried woman would seem to have wanted to hide her fault with a lie; and a non-betrothed woman had a reason for lying, a betrothed woman did not, since the reward of marriage and the grace of nuptials is women's offspring. And thus, both from testimony and from presumption, she would be more believed about her virginity and the matrimonial conception of her Son.

41. It was also congruous for her to be believed about her virginity lest she be marked for ill repute, because Christ did not think faith about his own origin needed to be built on injuries to his Mother; for he knew the Virgin's sense of shame was tender and reputation for modesty fleeting.

42. Another reason too is so that her husband would be of service also to the boy, whether going into Egypt or returning thence; which reason Origen touches on [as quoted by Deacon Winfred homily 17 *On the Vigils of the Nativity*] in his commentary on *Matthew* 1.18, "Since she was betrothed."

43. Another reason is assigned by Ambrose [*ibid.* n.40], namely so that the devil be deceived. – But this reason seems of little moment; for how could the devil not see the virginity of Mary if she had Joseph as husband than if she did not have him? But it needs to be understood that he could not see this because he was not allowed to, though by the natural power of his intellect he could have seen integrity in her, both of mind and body. But, being prohibited, he was unable to approach her in place or in intellect. This also does Bernard say [*On the Praises of the Virgin Mother* hom.2 n.13], that he could not approach her; but neither did he care to, because he saw her betrothed to a husband. This reason, therefore, does not seem to be of great moment, because he could have been as equally prohibited if she had not had a husband.

44. But the other reasons do seem well fitting to the issue at hand: that Christ would [otherwise] take his beginning from injury to the Law, that he not give occasion to Jews and to Herod to persecute Christ, since the offspring of an unmarried woman is condemned by the Law; so that too he not leave to virgins living under sinister opinion a veil of excuse, because the Mother of the Lord would also be seen to be defamed.

B. How there Could have been a True Matrimony between Mary and Joseph

1. Opinion of Others

45. On the second main point [n.37], some say [Thomas Aquinas, *Sent.* IV d.30 q.2 a.1; Richard of Middleton, *Sent.* IV d.30 princ. 2 q.1] that the Blessed Virgin vowed virginity under a condition, namely unless God were to dispose differently; and therefore it was licit for her to contract matrimony.

46. On the contrary: in every vow, however absolute, this condition 'if it please God' is understood, because no one should offer anything to God regardless of whether God wants it or not; nor would he who intends so intend in ordered manner. Therefore, an absolute vow stands along with this condition, so understood; and if the condition be added, it counts as not added, because in no respect does it diminish the idea of a vow.

2. Scotus' own Opinion

47. I say, therefore, along with the saints, that she absolutely and simply vowed virginity, which the saints [Augustine, Bede, Bernard] also put together from the words of her question or query to Gabriel [*Luke* 1.34], “How will this be since I know not man?” For if she had not known man only in act without a firm resolve never to know man, there would have been no question, because she could, being known later, have conceived, since she was not sterile. But for this reason was the question reasonable, and about something beyond marvelous for her, because she had most firmly pledged or vowed that she was never to be known by man. And to this understanding did the angel reply: “The Holy Spirit will come upon you etc.” [*Luke* 1.35]

48. How then was she able to contract matrimony?

I reply: in a matrimonial contract there is a mutual giving of bodies for carnal union only under a condition, namely if it is asked for. Hence those who contract with the resolve at once to vow chastity do truly contract. Now this condition is not prejudicial to a vow of chastity, even when a contract of matrimony is in place, unless the condition were put into effect; therefore, when there is certitude simply that it would never be put into effect, a contract of matrimony does not at all prejudice a vow of chastity. But here there was such assurance, at least by inspiration or perhaps by revelation; for from the fact we have it in *Matthew* 1.20 that the Angel instructed Joseph saying, “Do not be afraid to take Mary your wife,” much more indubitably must we believe that she, by an angel or immediately by God (before she was espoused to Joseph), was taught with certitude as follows, ‘Do not be afraid to take Joseph for your spouse; for behold the Holy Spirit will give him as both guardian and witness of your virginity, who is to be continent along with you by equal vow, and who is to serve you in many things that are becoming to the guardianship of your virginity’. Nor is there wonder about this probability, since whatever was done in Joseph by the angelic vision was all done by reason of Mary, who was immediate in that ineffable and admirable conception of the only begotten Son of God. And many things are read in her life about how Mary and Joseph came together with each other [Jacob de Varagine, *Golden Legends*, ch.6, Jerome, Bernard]

49. An example of this can be taken from Boniface VIII *Decretals Book Six* V tit.12 ch.3, ‘On the signification of words’, where is read compendiously that ‘to concede to others the use, while retaining the lordship, is not useless; indeed such concession is fruitful to the owner, since it is meritorious for things eternal and opportune for the profession of the poor’. So in the issue at hand, to give to another power over one’s body for such act, if it be asked for, having retained however the use for oneself, because it will not be asked for by the other, is not useless.

50. However this example is subject to evasion, because it does not seem that use could be kept back while ownership is handed over as ownership could be kept while use is handed over, because the latter can more be handed over without the former than conversely. But as far as this is concerned, it seems that one without the other can belong to anyone. However, in the issue at hand neither did she retain the use by her own authority, but she was certain that the Holy Spirit would retain the use, because never would the other, to whom that use was due, demand the use.

51. Another example is: if someone had contracted espousals with an oath and had afterwards vowed virginity, it would seem that she should be advised that she should complete the espousals by contracting matrimony in fact and yet should keep her vow, because immediately before consummation of matrimony she should fly off to Religion;

therefore it is licit for her to give power over her body to her spouse, by contracting matrimony truly ratified, and yet the intention of never giving the use, and this on her own part, without knowing that the other person would never ask for the use; therefore much more would it be licit to contract matrimony thus, if she knew with certitude that her spouse would never ask for the aforesaid use.

52. Again, an adulteress has power over her husband's body, because through matrimony was it given to her indissolubly; and yet she does not have, nor can have, as concerns her own part, the use of his body, because of her sin. Therefore, sin can perpetually prohibit use, while the power given in matrimony stands. Therefore, much more does the Holy Spirit have power for this on account of some honorable cause.

II. To the Initial Arguments

53. To the first argument [n.33] I say that the authority must be understood of those who want to marry according to the common law, for whom, of course, it is not settled with certitude that the use consequent to such act would never be asked for.

54. As to the second [n.34] it can be said that that law was given because of the daughters of Salphaad, and this, it is plain from *Numbers* 36.6-10, so that property not be transferred from tribe to tribe. Therefore, it only obligates those women on whom the inheritance devolved (as the paternal inheritance had devolved on those women, because their father was dead). But Mary was not an heiress, therefore it was licit for her to marry someone of another tribe.

55. It can also be said in another way that Mary was of both tribes, both Judah and Levi: of the tribe of Judah on the part of her father, of the tribe of Levi on the part of her mother. For indeed Joachim was descended from Nathan, the son of David, as is plain from Damascene *Orthodox Faith* ch.90, where he sets down the generation of the holy Mother of God. But Anna, the mother of Mary, is presumed to have been of the tribe of Levi, so that Elizabeth through her would be Mary's kinswoman. The first point, too, that Mary was of the tribe and kinship of Judah, can be proved by the fact that the Gospel deduces that Christ was of the tribe of Judah by deducing that Joseph was of that tribe, which would only be the case if Mary were of that tribe, because Christ was not of the tribe of Judah on account of Joseph but on account of Mary. And this reason Jerome touches on at the beginning of *Matthew* [*Commentary on Matthew* 1.1.18]

56. To the final argument [n.35] the answer is plain in the solution of the question, the second article [n.48], that this consent lies in the handing over of the mutual power of bodies for procreating offspring, and consequently for use if it be asked for; but there was certitude here that this use would never be asked for by her spouse, namely Joseph.

Thirty First Distinction

Single Question

Whether the Goods of Matrimony are the Three that the Master Sets Down in the Text, namely Faith, Offspring, and Sacrament

1. “After these things, about the goods of matrimony” [Lombard, *Sent.* IV d.31 ch.1].
2. About this thirty first distinction I ask whether the goods of matrimony are the three that the Master sets down in the text, namely faith, offspring, and sacrament.
3. It seems that they are not:
Because a sacrament is formally good in itself; therefore it is not good by other goods, that is, good through other goods.
4. Again, faith does not seem to be a good of matrimony, because between adulterer and adulteress or another woman there can be a true matrimony, where however there is not faith or the good of faith.
5. Again, there can be matrimony with someone who is sterile, where there is not the good of offspring.
6. Again, since matrimony is a sacrament, the sacrament cannot be a partial good of matrimony, because the same thing is not a part of itself.
7. To the opposite is the Master in the text [n.1].

I. To the Question

A. Opinion of Others

1. Exposition of the Opinion

8. Here it is said [Richard of Middleton, *Sent.* IV d.31 princ. 1 q.1] that he who contracts matrimony obligates himself to carnal union, at least under the condition if it be asked for; and certitude about not asking for it is found in very few. But in that act a man is deprived of the greatest good, namely the use of reason, according to the Philosopher *Ethics* 7.7 15-18, “such an act robs the wisest man of intellect.” Hence Augustine, *City of God* 14.16 [Lombard, *Sent.* IV d.31 ch.5 n.1]: “Pleasure, than which there is none greater among bodily pleasures – in the moment of time when its extreme is reached, almost all the keenness and as it were vigilance of thinking is overthrown” But no one, according to right reason, should obligate himself to anything by which he suffer so great an evil unless there be there some compensating good; therefore no one ought to contract matrimony unless there are goods compensating this throwing away of the use of reason; and those are said by the saints to be goods excusing the carnal act [Lombard, *ibid.*, ch.5 n.7]. Now these goods are the good of faith, of offspring, and the sacrament [Lombard, *ibid.*, ch.5 n.1].

2. Rejection of the Opinion

9. Against this: that in the state of innocence there would have been a matrimony having these goods, and yet they would not then have been goods excusing the carnal act or the contract of matrimony, because neither the act nor the contract would then have needed excuse.

10. Again, in the matrimony of Mary and Joseph there was no need to set down these excusing goods, nor universally in the case of spiritual matrimony with an equal vow by the spouses of chastity.

11. Again, much more is a man deprived of use of reason by sleep than by that act, and this both according to intensity (hence *Ethics* 1.13.1102b6-7, “The happy man only

differs from the miserable man as to half his life, namely when awake”) as according to extension, because sleep deprives [use of reason] for a long time, but this act deprives it as it were momentarily. Therefore no one, according to right reason, should expose himself to sleep, unless there were goods excusing it and goods better at that time than the use of reason, which however is not admitted.

12. It is said here [Richard of Middleton, *ibid.*] that there are recompensing and excusing goods in sleep, namely necessity of nature, invigoration of bodily members, strengthening of the organs – because without sleep there would be too much weakness and dullness of sense powers, and consequently impediment of intellect, because the intellect is impeded when imagination is impeded. In another way is it said that one does not in sleep suffer loss, the way one does in that act; because after sleep the intellect is strengthened; after this act it is dulled, so that not only is one deprived of this good through that act, but one is rendered less apt for this good after that act; it is the opposite in the case of sleep.

B. Scotus’ own Response

13. To the question, therefore, I say, according to the Philosopher, *Metaphysics* 5.16.1021b12-30, chapter ‘On Good’, that good and perfect are the same thing. But there is a double perfection: intrinsic form, extrinsic end, or first the form, second the end. Now there can be a double end of something: remoter end and nearer end. The remoter is regularly the more principal end, because the nearer end is ordered to it.

14. These three exist proportionally in matrimony, and they are called the three goods of matrimony [n.2].

For, taking matrimony for the bond left behind from the contract of matrimony, this is the indissoluble form, as was touched on in the first question [d.26 n.29], and the indissolubility is called the sacrament by reason of the fact that it signifies the indissolubility of Christ and the Church; therefore ‘sacrament’ as it is here taken is the intrinsic good of matrimony, because it is its first and formal perfection.

15. But this obligation is, by way of end, for this, that such persons procreate offspring to be religiously educated. Offspring to be religiously educated, therefore, is the extrinsic good of matrimony, as the principal end.

16. But this end only follows from a certain other principle, namely from carnal union. Therefore, the bond or obligation, which is the first and formal perfection of matrimony, is immediately ordered to mutual rendering of the carnal act, if it be asked for, and this rendering is just because of the mutual preceding obligation. And this near and immediate end of matrimony is called the good of faith, and is fidelity or justice in rendering to the other spouse what is that spouse’s own, and in not giving it to another; and this fidelity, or justice, to the act to which it obligates is an extrinsic good as proximate end, as was said.

17. There is, then, a single form of matrimony, and two subordinated ends, which are also called the three goods of matrimony.

18. In this way is it plain, therefore, how the sacrament, as it is here taken, is the first and intrinsic good of marriage and the form of it. Faith, that is, fidelity, in justly rendering the act due is the good as proximate and less principal end. And the good of offspring is the extrinsic good and the more principal end.

19. And only the first good is essential to matrimony, because the second good, namely to render the debt or the good of faith, is not simply and absolutely necessary for true matrimony, but only under a condition, if it be asked for. Nor either is the third good [simply and absolutely necessary], namely offspring, because that good does not follow save with preceding carnal union. And consequently it is not simply necessary for matrimony, but only under condition, as is also the good that, according to the common law, is necessarily presupposed to it.

20. But whence arises the first good, namely indissolubility?

I say that it formally arises from the mutual giving but effectively its perpetuity comes from God as Legislator, who also does not permit that anyone could give his body to another for that act unless he have power and concession from his superior lord, namely from the Legislator, which indeed God did not regularly concede, but sometimes did well dispense from, as in the Old Law, when he permitted a bill of divorcement to be given [*Deuteronomy* 24.1-3, *Matthew* 19.7-8, *Mark* 10.3-9].

21. The obligation, therefore, and its indissolubility or perpetuity, formally arises from mutual consent and effectively from the Legislator.

22. But, on account of some arguments, it is necessary to see how these three goods exist in every matrimony. For it does not seem that the good of the sacrament exists in a ratified non-consummated matrimony, because this is dissoluble through entry into Religion, as is plain in Gregory IX, *Decretals* III tit.31 ch.16 [or better tit.32 ch.2]. Nor does the good of offspring exist where there is an impossibility to get offspring. Nor the good of faith where faith is not kept, as in adulteries.

23. I reply: as was said [n.14], the sacrament, according as it is set down as a good of matrimony, is not taken for a sacrament of the New Law, because that is only a sensible sign. But this indissolubility is something spiritual in the minds of the contracting parties. The sacrament of matrimony also passes by at once, because it consists in coming to be; but this indissolubility remains and exists in being at rest not in coming to be. A sacrament also is a disposition for grace in those who worthily receive it; not so this indissolubility. It is however an intrinsic good of every matrimony of the New Law, such that it is impossible for there to be a matrimony formally without it, because it is the form of matrimony, that is, of the bond.

24. But the other two goods are not intrinsic goods of matrimony, nor necessary there formally; but they are necessarily there in obligation and virtually. The good indeed of keeping faith in actually rendering to the spouse what is the spouse's, and not giving to another what is foreign to that other, is necessarily there in the obligation. As concerns the negative obligation at least, the obligation is there always and at all times (as for the affirmative, it will be spoken of in the next question [d.32 nn.10-28]). And therefore, one who does not keep faith sins mortally. The other good, namely of offspring, is there in the obligation under a condition, if it come about, in order for offspring to be taken up gratefully and religiously educated. And therefore always and at all times is not being studious to impede that good under obligation there.

25. From these points to objections:

It is in one way said as to the first good [Richard of Middleton] that this indissolubility remains until death. But if, as the Apostle says *I Corinthians* 8.39, the man is dead, the woman is loosed from the law of her husband. But they say that this holds not

only of carnal death but also of civil death, because this act [of matrimony] only belongs to someone living in civil life; but when he professes Religious life he dies to civilian life.

26. Against this: if the matrimony were consummated, it would be altogether indissoluble until natural death, such that, if the spouses were to be continent with parity of vow, the bond between them would not be dissolved, even by entry into Religion. So, according to the above way [n.25], indissolubility between them would belong to matrimony, not by the matrimonial contract simply, which is the mutual giving, but by the superadded carnal act; this does not seem probable, because the act is not any part of a new contract, nor consequently does it introduce any new indissolubility of obligation.

27. It is said in another way [Henry of Ghent] that by profession of Religion the conjugal bond is not dissolved. And if it be argued that the bride, remaining in the world, can marry another and be his wife and thus be at the same time wife of two men, they reply that this is not unacceptable – so, however, that she be wife of one spiritually and by spiritual bond only, of the other spiritually and carnally; but it would be unacceptable that she were wife of two men carnally.

28. And according to this, they would consequently have to concede that one woman could by this spiritual bond be at the same time wife of a hundred men, and then matrimony, whence it is matrimony, would not determine that one woman be wife of one man, nor would the commutative justice that is there required do so; nor does it seem that the following carnal union bestow any new justice.

29. It can in a third way be said that in a ratified matrimony, even if the one contracting intend not to consent but at once to fly off to Religion before consummation, there is not only a joint borrowing or bartering of power over bodies for a time but in their perpetuity; otherwise it would not be a true matrimony of the New Law. And from this giving there arises an indissoluble bond, unless it be dissolved by the natural death of one of the spouses, or by the revocation or relaxation of him who constituted it thus to be indissoluble. But Christ, who brought back this indissolubility, *Matthew* 19.4-12, rejecting for his Law the Mosaic repudiation, himself relaxes this indissolubility when one of the spouses is converted to Religion.

30. Hence, the Church would never have attempted to give license for Religion to one spouse, after unconsummated ratified matrimonies, while the other remains in the world, unless Christ had instituted this. But it is obtained from the fact of Christ calling the Apostle and Evangelist John from marriage to the apostolate, *John* 2.11 [Rupert of Troyes, *Commentary on John* II]; and John's example was imitated by the holy fathers Alexius, Theonas, and others [Jacob de Voragine *Golden Legends* ch.90, John Cassian *Collations of the Fathers* ch.8-9, Gratian, *Decretum* p.2 cause 27 q.2 ch.26, Lombard, *Sent.* IV d.27 ch.6 n.2]. Nor, according to this, would she, by then marrying another, be wife at the same time of two men, but only of the second; because her bond to the first has been dissolved by the revocation or relaxation of Christ, not dissolved precisely by such or such death of hers; for the dissolution that is through death is by the failing of one of the two extremes, and it does not require a special relaxation by the legislator.

31. Now this relaxation of Christ's was reasonable, because it is reasonable that an obligation to a lesser good be exchanged for an obligation to a greater good by him who has the authority to make the exchange; profession in Religion, which is an obligation to a spiritual good, is an obligation to a greater good. Hence also Christ preferred the state of virginity (understand: not only by lack of the act but with resolve

for perpetual continence) to the conjugal state, *Matthew* 19.12, “There are eunuchs who have made themselves eunuchs for the kingdom of heaven etc.” Hence this chastity, as it is distinct from conjugal chastity, is said to have fruit a hundredfold and that one thirtyfold (Jerome, *Against Jovinian* I ch.3).

32. If you ask whether this indissolubility belong to Gospel matrimony because of the idea of the sacrament, I say no; rather it would have been indissoluble also in the law of nature, and yet it would not then have been a sacrament properly speaking annexed to the Gospel contract. And Christ could have prescribed this indissolubility in the matrimony of his own Law, even if he had adjoined no sacrament to the contract. He could also have adjoined a sacrament to the contract from which contract he would not want an indissoluble bond to arise, as if he had wanted to approve the Mosaic repudiation. This indissolubility then is precisely from the superior Lord determining that the contract had to be done for always and the obligation to follow for always, unless he himself would anywhere dispense it. With this is natural reason in agreement.

33. From this solution follows a notable corollary, that those who contract under some condition repugnant to any of these three goods, accomplish nothing – as against the first, ‘I accept you for my wife until another more pleasing come along’; against the second, ‘I accept you for my wife, so that I not be bound to keep faith with you, either affirmatively by rendering it to you save when I want to, or negatively but that I be able to marry another at my pleasure’; against the third, ‘I accept you for my wife provided however you will to procure poison for sterility or consent with me in procuring such poisons’.

34. And the reason why these contracts are not matrimonial contracts is that they only hold under that condition, since they are conditional contracts. But it is impossible for them to be matrimonial under that condition, because the condition is repugnant to the matrimonial contract; indeed, they are contracts of no one, because he cannot give himself to her against the prohibition of his Superior, and the prohibition of the Superior concerns contracting under these conditions; for he has prescribed a transfer that must be done under the opposite conditions.

35. Hence, all those who have attempted so to make the contract are not only sinning mortally, but they are, by such contract, in no way obligated mutually to each other for withdrawing mutually, by virtue of such contract, from any use [sc. of each other].

II. To the Initial Arguments

36. As to the first argument [n.3], it is plain that these are not three goods of the sacrament of matrimony (for that is a certain sign accompanying the contract), but they are three goods of matrimony properly taken (namely the indissoluble bond that remains after the contract), and it is not unacceptable that it is good with other goods. But it is good with one of these goods as with intrinsic goodness, with the others as with ends that are nearer or more remote or more principal.

37. To the second [n.4] the answer is plain from the solution to the question; for the good of faith is always in the obligation though not always in the execution [n.24].

38. To the third [n.5] the answer is plain through the same thing, that the obligation is not absolutely for the good of offspring, but under the condition, if it happen,

for receiving offspring gladly and for educating them religiously, and for not studying to procure the opposite, so that offspring not happen. However, in truth, where there is a certain impossibility for the good of offspring, the conjugal act does not seem much excused by this, unless you say that perhaps God would miraculously give fecundity to the sterile. But if that not be probable, nor intended by those using such act, the other two goods excuse it, and the matrimony is there only as a remedy, but not as an office, which was spoken about above, in distinction 26 in the solution to the question [nn.77-81].

39. As to the final one [n.6], it is plain how ‘sacrament’ is equivocal; for as it is taken as one good of matrimony, and in the way it is taken in this question principally [nn.14, 23], it is only the indissolubility formally of the bond or obligation. But as the sacrament of matrimony is taken properly, it is a sensible sign of the grace conferred on those worthily contracting matrimony, for the graced union of minds.

Thirty Second Distinction

Single Question

Whether in Matrimony it is Simply Necessary to Render the Conjugal Debt to the Other when Asked

1. “But what without consent etc.” [Lombard, *Sent.* IV d.32 ch.2 n.1].

2. About the thirty second distinction I ask whether in matrimony it is simply necessary to render the conjugal debt to the other when asked.

3. That it is not:

No one is obligated simply to mortal sin; but to render that debt is mortal sin.

Proof:

First because to deprive oneself of virtue is a mortal sin; therefore, to deprive oneself of a greater good than is the good of virtue is a greater sin; but the use of reason is a greater good than the good of virtue, and one is deprived of the use in an act of rendering the debt; therefore to render the debt is illicit.

The confirmation of this is that, if there were no contract of matrimony, such an act would be a mortal sin; but no one can license himself to such act, nor consequently will something be licit for him by his own proper act that was not licit before; but a contract of matrimony is an act of those who contract matrimony; therefore etc.

4. Again, one who contracts matrimony and before he consummate it enters Religion is not bound to render the debt, and yet he is then a spouse. And if you say that he is then dead in civilian life, on the contrary: he is not thus dead before profession, and yet in the time from entry up to profession he is not bound to render it.

5 Again, in the sacred time of prayer and fasting one is not bound to render the debt, because then he would be indisposed to eating the flesh of the Lamb, as is contained in the text [Lombard, *Sent.* IV d.32 ch.3 n.2, quoting Jerome, *On Exodus, in the Vigils of Easter*]; but no one is made unfitted for the Eucharist on account of an act to which he is necessarily obligated.

6. Again, one is not obligated to render the debt in a sacred place, because a greater evil would happen than would be avoided; for an interdict of the place would

occur, which is an evil common to a multitude, and an evil in some way against God, whose worship in that place is impeded.

7. To the opposite:

I Corinthians 7.3-5, “Do not cheat each other, save by consent for a time so as to be free for prayer; and let the man render the debt to his wife, and the wife to the man,” and he proves it there, because “a man does not have power of his body but the wife,” likewise conversely too.

I. To the Question

8. To the question I say that ‘to render the conjugal debt’ can be understood in a double way, or it can be for a double end, just as matrimony too was instituted by a double cause, as was said above in question 1 about matrimony [d.26 n.77]: namely as an office, for procuring offspring to be religiously educated, and as a remedy, for avoiding fornication, lest there be union with another than one’s own (and all other women, besides one’s wife, are not one’s own). Therefore, because all men after the Fall were prone to carnal concupiscence (by reason of which concupiscence was the flood also brought upon the earth), it was expedient for matrimony to be instituted as a remedy for mortal sin or carnal concupiscence, and thus each would have his own, and not sin with one not his own.

9. I say therefore that to render the debt because of the first end, namely because of the good of offspring, is doubly laudable: in one way, because it is for a praiseworthy end, because for the good of offspring; in another way, because in itself it is an act of justice, rendering to another what is their own, which is said to be for the end. In the second way it is not doubly laudable, but only from the second one, if however the thing justly rendered ought only to be hers and rendered to her because God had made dispensation on account of man’s proneness after the Fall.

10. Setting aside, then, the first good of praiseworthiness, namely the good of offspring, if the question be asked about rendering the debt universally. from the obligation of the spouses, I say that ‘to render the debt’ is an act of an affirmative precept, explaining commutative justice. Now an affirmative precept obligates always, but not at all times or for all times, but when the act can be circumstanced as it ought.

11. Now a defect of due circumstances in the issue at hand (when one is justly able not to render the debt to the spouse) is double in kind. In one way, if the spouse does not have the right to ask for it now; in another way, when there is an obligation with a stronger bond not to render it. And both can happen in many ways.

A. About the First Circumstance Excusing the Conjugal Debt Universally Taken

12. As to the first case, if one of the two has been suspended from or deprived of his right – and this can be because one¹⁰⁴ does not have the right to ask immediately after a ratified matrimony (although one has still not lost their right, because still not sinned), then, because it is licit, after a ratified matrimony, to enter Religion, this does not have to

¹⁰⁴ The Latin is ambiguous and allows the pronoun, ‘he’ or ‘she’ (or ‘it’), to go unexpressed. Scotus presumably means ‘he’ or ‘she’ indifferently, and so the neutral word ‘one’ is here used instead. In what follows Scotus does sometimes make the genders of his pronouns explicit.

be immediate, but it is possible for a time to remain in the world and deliberate. And if one were bound immediately to render the debt, one is bound to make oneself unsuitable for Religion.

13. And the reason why a spouse¹⁰⁵ does not then have the right to ask, is because the use has still not been handed over, though the ownership has been. Hence before the handing over of use, one does not have the right to ask. For although one not sin if one hand oneself over for use, and if one does use it, one uses it well, however when the other wants it one is positively compelled. Nor do I believe that the Church suspends this use from them, but they are suspended from this right by Christ, or by Christ's institution, otherwise anyone would have the use and the right of using immediately from when they have right and ownership.

14. Another case is when one is deprived of one's right because of one's own fault, as happens in fornication by the spouse, especially if only one of the two fornicated; for then the innocent party can repel him who fell,¹⁰⁶ whose sin stands publicly on his side. And he who fell loses the right to ask, because of the fact he did not keep faith, and therefore faith is not necessarily to be kept with him, at least affirmatively. Also, if both have fallen, then each is bound equally to render to the other, because equal crimes are destroyed by equal vengeance.

15. Another case in which one is deprived of one's right without fault is when, if he is not unwilling but consenting, the other wants to be continent or enter Religion; for this is licit when one of the spouses renounces the right; for from the fact he has vowed chastity with the other's permission and assent, the other does not have the right to ask of him the debt.

16. But let it be that, after the man's entry into Religion,¹⁰⁷ the woman, remaining in the world, is not continent, or fears that she does not want to be continent, is the man who has made profession to be withdrawn from Religion and returned to her? In Gratian, *Decretum*, p.2 cause 33 q.5 ch.10 is expressly said, "he who has permitted his wife to take the veil, may not accept another, but let him be similarly converted."

17. But the contrary seems to be expressly said in the first chapter of Gregory IX, *Decretals* III tit.22 ch.1, 'On the Conversion of the Married': "A married layman who, with the license and permission of his wife, has entered Religion and made profession, while his wife remains in secular habit and does not pass over into Religion or vow perpetual continence – we say that unless his wife pass over into Religion or promise to keep chastity perpetually, the man can and must be called back from the monastery."

18. If it be said that this passage from the *Decretals* must be taken to mean 'when the woman does not renounce her husband, or her right over her husband, save only for a time, so that her husband may be free for prayer' – against this is the plainness of the letter, because there is contained: "he who, having entered Religion by the license and permission of his wife, has made profession." But what by strict rigor should be done in this case – whether she should be compelled to continence or he withdrawn [from Religion] – the case, namely, when it was done without the knowledge of the bishop

¹⁰⁵ Latin word for 'spouse' here is *coniunx*, which can refer to wife or husband, but is more often used to refer to the wife, and Scotus so takes it in what follows.

¹⁰⁶ Scotus here, and following, uses a word in the male gender.

¹⁰⁷ Here Scotus does make the gender of the parties clear with words explicitly for man (or husband) and wife.

though in the presence of the monks and priests – is doubtful; because she seems to have renounced her right as to requesting the debt in perpetuity, by licensing him publicly to profession in Religion. For such renunciation does not necessarily require that it be done with the knowledge of the bishop; and if she made a sufficient renunciation, she has no right to ask for him back.

19. Likewise, the coercing of a woman to continence is something licit and, though penal, yet it is due from the license she gave to her husband; and coercing a husband, who has thus made profession, to stand with his wife seems to be inducing him to something illicit, because to mortal sin, by the fact he has vowed chastity; and he was able to make the vow, because he had been given license. At least this is touched on in the Rule of the Friars Minor [*Rule* ch.2], where, about those who wish to receive this life, it is said, “if they do not have wives, or if they do and their wives have already entered the monastery or have given license to them by the authority of the diocesan bishop, and a vow of continence has already been made, and their wives are of an age that no suspicion could arise about them, let them say to them the words of the Gospel etc.”

20. Hence, having set aside these conditions, namely about a vow of chastity made by the wife, or at least license given by authority of the diocesan bishop, it seems that today it would happen according to the above chapter [of the *Decretals*, n.17], namely that the man be withdrawn [from Religion] and returned to his wife.

21. And then, as to the fact that she is said to have renounced her right [n.18], I reply that she did not do so sufficiently and perfectly as to the forum of the Church, which has determined the due manner of this renunciation, by the making of a vow of continence and the giving of license by authority of the diocesan bishop.

22. And as to what is touched on about the mortal sin of the one withdrawn [from Religion, nn.14, 19], it could be said that she¹⁰⁸ is bound not to ask, because she was not able to renounce another's right, and he thought he was absolved from that right, and therefore he did not at that time sin. However, when it is clear to him through the Church that he was not absolved from the right of his wife, he is bound to render to her what he was not able to renounce. I believe, however, that if she do give license, she sins mortally in calling him back, because she has obligated herself to a like continence.

B. About the Second Circumstance Excusing the Conjugal Debt Universally Taken

23. About the second main circumstance [n.11], which is, as I said, that one ceases to be obligated [to render the debt] by a stronger bond not to render it. I say that this has many cases:

First, if it tend toward the loss of one's own well-being; for one is more properly bound to love one's own well-being than to render the debt to the other spouse; for no one should make themselves useless as to human acts common to everyone; and always too should one ask for the debt in the way that one ought to want it to be rendered to oneself, and one would not want it to be rendered by oneself to one's own harm and against the well-being of one's own body.

24. Similarly, one is bound by a stronger bond not to kill a fetus in the womb of a pregnant woman, or not to be cause of an abortion, than to render this debt; therefore,

¹⁰⁸ Here Scotus' pronouns become ambiguous, and they are made explicit in the English according to the way Scotus was using unambiguous pronouns in the immediately preceding paragraphs.

where the danger of extinguishing a fetus or causing abortion is probable, one is not bound to render the debt.

25. Similarly, one is bound by a greater precept not to act in a way that offspring, which could otherwise be procreated healthy, would be born leprous than to satisfy in the now the will of a woman; and for the most part a child born at the time of menstruation is born a leper. Hence not without cause in the Mosaic Law ought he to die who goes to a menstruating woman, nor was death there inflicted save for a mortal and grave sin. It is not therefore probable that in the Gospel Law, which is the law of chastity, going to a menstruating woman would be less prohibited.

26. If you object, ‘therefore a healthy person should not render the debt to someone leprous, because this would be both against the good of the offspring, which would be born leprous, and against one’s own well-being, which could incur leprosy from such an act, the opposite of which is contained in Gregory IX, *Decretals* IV tit.8 ch.1, where is written: “We thus far command that wives follow their husbands, and husbands their wives, who incur the disease of leprosy, and minister to them with conjugal affection, and that you [sc. canon lawyer etc.] do not put off inducing them [to do this] with solicitous exhortation; but if they cannot be induced to it, you are more strictly to impose on them that they each observe continence while the other lives. But if they despise keeping the command, you are to constrain them with the bonds of excommunication;” and in the following chapter, “If a husband or a wife happen to become leprous, and the sick one demand the carnal debt from the healthy one,¹⁰⁹ then, by the general precept of the Apostle [*Romans* 7.2-3, *I Corinthians* 7.27-28, 39-40], ‘what is demanded must be paid’, to which precept no exception in this case is found” –

27. I reply that although a healthy or leprous spouse should render the debt to a leprous spouse according to these chapters [of the *Decretals*], yet it does not follow that the debt is bound to be paid to a woman at the time of menstruation, because there it is not only against the good of offspring, which would be procreated leprous, but it would be more against the good of offspring that they were never procreated; but from this mother it will never be procreated if she is avoided because of leprosy; and although this offspring not be procreated at the time of menstruation, it can be procreated afterwards at a fitting time, and then healthy; at the present time procreated leprous.

28. If you also object about the risk of leprosy in the case of a healthy spouse rendering the debt, it could be said that from that brief union it is not probable for leprosy to be incurred; but a long cohabitation is not prescribed, because a healthy spouse can from that be infected by a sick one. Let it also be that from such union infection of leprosy would be an object of fear in the healthy spouse, at least when rendering the debt frequently as often as the leprous one asked – I say that to such penalty has one obligated oneself in a contract of matrimony; hence too priests express the fact somewhere expressly on the door of the church.

II. To the Initial Arguments

29. As to the first argument [n.3] I deny the minor.

¹⁰⁹ Scotus here, interestingly, puts both Latin adjectives for ‘healthy’ and ‘sick’ into the same masculine gender.

To the first proof [n.3] I say that perpetual use of reason is a greater good than an act of virtue; and therefore he who has by some act deprived himself of the perpetual use of reason would sin mortally, indeed most mortally. But the lack of the use of reason for a moment is not as great an evil as an act opposed to an act of virtue; nor is anything that takes away the use of reason for a time a sin, for extreme torments, even minimal ones, impede thus the use of reason just as pleasures do, and yet the martyrs, when knowingly exposing themselves to such torments, did not sin but merited.

30. To the confirmation [n.3] I concede that such an act would not be licit for them before the contract, but it is licit after the contract, not because they can license themselves, but because they do a certain act upon which God licenses them for a certain subsequent act that would otherwise not be licit for them. Hence this proof seems to give conviction that not from the justice alone by which they mutually give themselves is this use licit on their own authority, but on the added approbation of the superior.

31. As to the next [n.4] the answer is plain from the solution of the question [n.13], because a spouse does not at that time have the right to ask.

32. As to the next [n.5], the Apostle does not say absolutely that one should abstain at a sacred time, but he counsels it for a time, so that they may be free for prayer, and so that they may again go back to it lest Satan tempt them. And as to what is added about Jerome, and it is in Gratian, *Decretum*, p.2 cause 33 q.4 ch.1, “Whoever renders the debt to his wife cannot eat the flesh of the Lamb” – I reply: he cannot at all do it with due reverence. And when you say he is not excluded from receiving communion because of an act of a precept, I deny it, for an act is prescribed on account of which he is less disposed to receive reverently. If however you speak of being excluded by necessity of the precept I concede the fact, because I do not see how he would, for this alone, sin mortally if he received the body of Christ.

33. To the last one [n.6] I say that one should regularly abstain in a sacred place, because the danger of fornication does not threaten with such immediacy that it would not be possible for the debt to be rendered in advance in a non-sacred place. If however it were necessary for them to remain together for a long time in a sacred place, one might deny he sins if he render the debt when asked. And what is added about the interdict of a place, perhaps he would say that a place is not, because of a hidden act, so under interdict, at least publicly, that divine worship should be publicly foregone in the same place.

Thirty Third Distinction

Overview of Questions

1. “A question is raised about the ancients” [Lombard, *Sent.* IV d.33 ch.1 n.1].
2. About this thirty third distinction I ask first about bigamy, second about repudiation of a wife.
3. About the first I ask two questions: first whether, as concerns the Mosaic Law or the law of nature, bigamy was at some time licit, or whether it was licit for the ancient fathers to have at the same time several wives joined to them in matrimony; second whether, as to the Gospel Law, a bigamist before baptism could be promoted to Holy Orders after baptism, or is irregular.

Question One

Whether Bigamy was at Some Time Licit

4. To the first question [n.2] argument is made that it was not:

Because bigamy is against the law of nature and against the first institution of matrimony. The proof is:

First from the statement in *Genesis* 2.24, “They were¹¹⁰ two in one flesh,” where it expresses the law of nature about matrimony; therefore, it is not licit and was not licit to have several wives.

Second from a certain interlinear gloss on *Genesis* 4.19 [Nicolas of Lyra] about Lamech, who “took two wives,” where it is written that he “first introduced bigamy and against the law of nature.”

5. Again, ‘biviry’¹¹¹, if I may so speak, was never licit, namely that a woman would have two husbands; so not conversely either. The proof of the consequence is that, for conjugal acts, they are judged equal, *I Corinthians* 7.3-5.

6. To the opposite:

Genesis 16.1-5, 25.1-2, Abraham had Sara and Hagar and Ketura, and about Jacob *Genesis* 29.18-30.24, who had two wives, and about David *II Kings* (= *II Samuel*) 5.13 who had many wives and concubines; but it is not probable that these holy fathers did anything illicit in such union; therefore etc.

7. Again, in favor of this is Augustine, *On the Conjugal Good*, ch.25 n.33, “For the just among the ancient it was not a sin that they had use of several women, nor did they do this against nature, since they did it for the sake of begetting; nor was it against the law or against morals, because at that time it was prohibited by no law.”

I. To the Question

8. Here one must see first what is required for strict commutative justice in the contract of matrimony (and this on the part of the contracting parties), and what is added, beyond this, for complete justice in such a contract (and this on the part of the superior). Second, one must see what, in the event, suffices for justice as to the matter that is being asked about, and how it may become sufficient and completely just.

A. What is Required on the Side of the Contracting Parties for Strict Commutative Justice in the Matrimonial Contract

9. About the first I say that in every exchange justice requires, as concerns the exchangers and the things exchanged, equality of value in the things exchanged, as far as possible, for the end for which the exchange is done.

10. Now this exchange in the contract of matrimony is done for two reasons: one the procreation of offspring, the other as a remedy for avoiding fornication.

¹¹⁰ Possibly a misprint for ‘will be’ (‘erant’ for ‘erunt’)

¹¹¹ A word modeled on ‘bigamy’ using the Latin word ‘vir’, man or husband, and the Latin prefix ‘bi’, two. The word ‘bigamy’ is actually a hybrid of the Latin ‘bi’ and the Greek ‘gamy’, marriage (‘digamy’ is the more proper Greek derivation). ‘Biviry’ is not such a hybrid.

11. As to the first, the body of a man is of greater value than that of a woman, because the same man can at the same time fertilize more women than the same woman could conceive from men. As concerns this end, therefore, bigamy seems, by strict justice, to be licit, so that a man may exchange his body with the bodies of as many women as he can fertilize, in the way it is possible for a man to fertilize them. Hence it is not against nature in other animals that one male have several females. And yet in the state of innocence, when matrimony was and would have been precisely for this office, bigamy did not exist and would not have existed. For there would have been no necessity for a man to have exchanged his body with several women for procreating several offspring, because there would have been sufficient procreation through the simple exchange of one man with one woman, since neither the man nor the woman would then have been sterile.

12. As concerns the second end [n.10], which is only for the state of fallen nature, namely for avoiding fornication, the body of the man and the woman are of equal value.

13. And so, by strict justice in the state of fallen nature, when considering this contract as it is for both ends, the exchange of one body with one body is required.

14. I add that the completion of justice in this exchange comes only from the authority of the superior who institutes or approves such or such exchange; because although there are things that belong to the inferiors as to owners, yet such or such exchange of them is determined to be just by the legislator, and much more so in the issue at hand, about the mutual exchange of bodies, in relation to the legislator who is God. But he has by rule established, both for the state of innocence and the state of fallen nature, that this exchange of bodies must be done by one with one. In this, therefore, is justice complete.

B. What, in the Event, Suffices for this Justice and How it May Become Sufficient and Completely Just

15. About the second article [n.8] I say that ‘dispensation’ is a declaration of right or a revocation of right; for God was able either to declare his law about this exchange or in some case to revoke it – and reasonably in this case when a greater good came from its revocation than from its observation.

16. But now, when there was necessity for multiplying the human race either simply or for the divine cult, because, to be sure, there were few worshippers of God, it was necessary that the worshippers of God procreate as much as they could, because in the succession of them alone did faith and the divine cult abide. So for that time did God reasonably make dispensation so that one man might exchange his body with several bodies of women, for the greater multiplication of worshippers of God, which multiplication without this would not happen. And thus did he in fact make dispensation, as is presumed about Abraham and certain others of the fathers.

17. But as to how justice will be preserved here, considering the contract on the side of the contracting parties, is made clear as follows: because when something is ordered to two ends, a principal one and a less principal one, it is reasonable to use it in the way in which it has more value for the more principal end, although something thereby be taken away from the less principal end. An example: food is of value for pleasure, which is less principal, and for nutrition, which is more principal; food,

according to right reason, is to be used in the way in which it is of value for nutrition, although in this it be of less value for pleasure.

18. But this matrimonial contract is for rendering the carnal debt (so that fornication may be avoided) as for the less principal end, and for the good of offspring as for the more principal end. Therefore, according to right reason, the contracting parties should so exchange that the exchange is of more value for procreation, though it be of less value for rendering the debt. But in this way is exchange made of the body of one man for several bodies of women – and just as this is absolutely to be done, so in case of necessity should it necessarily be done, namely when the principal end is most necessary; and then the less principal end is to be neglected as it were.

19. And from this is plain how there is justice on the side of the parties, because each party should, according to right reason, want to dismiss something of its right in exchanging and receiving relative to the less principal end so as to receive the equivalent relative to the more principal end, which each should more desire, although from someone would something need to be exchanged that it would be a detriment for them to remit. And at times is it in some case necessary, when to be sure one is bound to such remission; and it is licit and necessary to carry it out, when this is ordained by a superior; the fact is plain because Sara in *Genesis* 16.1-4 as it were compelled Abraham to go in to Hagar her handmaid, so that at least thus would he have from the handmaid the son he could not have from her.

20. If you object that this would in modern times be bigamy and illicit, I reply that although it be illicit by reason of the fact it is not now dispensed by the legislator (indeed that part of the law of nature, “they were two in one flesh” was brought back by Christ, *Matthew* 19.5-6 [d.31 n.29]), however, speaking of justice on the side of the contracting parties and of the contract, it is not licit now, because the principal end is not necessary now, for the reason that many of the faithful devote themselves to generation, whose children are ordained to the cult of God and are religiously educated; and so without such contract is the faith multiplied. Therefore, when the necessity to take something away from the second end by necessity of the first end ceases, the contract must be kept, so that justice there in relation to both ends may be kept; but this is above all that one man have one wife.

21. But if in some event, by war or disaster or disease, a multitude of men were to fall and a multitude of women were to remain, bigamy could now be licit, considering precisely the justice on the part of the exchangers and the exchangings; and also ought women, on their own part, to want to make exchange thus with men, more with fewer, as to the second end, but equal with equal as to the first end, and then ought a woman to want this according to right reason, so that the good of offspring may come about by the commingling of her man with another woman; nor would there be a lack there save only of the completion of justice, which is by divine approval, and approval would perhaps then be given and be specially revealed to the Church.

II. To the Initial Arguments for the First Side

22. To the arguments.

To the first [n.4] I say, as was said above in d.17 [n.19], that something is said to belong to the law of nature in two ways:

In the first way, certainly, that what is a practical truth simply is known simply by the light of nature; and there the highest rank is held by a practical principle known from the terms; the second rank is held by a conclusion demonstratively proven by such principles.

But belonging secondarily to the law of nature is what is regularly consonant with the law of nature stated in the first way.

23. No dispensation happens against the first, and therefore the opposite of it seems to be always a mortal sin.

Dispensation from the second happens in a case where the opposite would seem to be commonly consonant with the law of nature, and precisely in this second way is monogamy of the law of nature and bigamy against it. And in this way do I concede the assertions in *Genesis* 2 and the gloss on *Genesis* 4 [n.4].

24. Nor yet does it follow from this that in some case the opposite could not be licit; indeed, it is necessary even as to the exchanging of justice on the side of the parties exchanging and of the things exchanged – when by reason of necessity right reason dictates the exchange must in some way be done, and when there is a divine precept there.

25. I say that the authority “they will be two in one flesh” [n.4] must be taken to mean that they will be ‘one flesh’ by reason of the offspring that is generated from both parents; and so it is not repugnant to the first institution of matrimony to have several wives. Or it can be said etc. [as in n.24].

26. About Lamech however [n.4], it can absolutely be conceded that he sinned mortally, because against a law of nature even if taken in the second way; he sinned, I say, by making a contract with several women not in a case where right reason would dictate that the law was to be revoked, nor where the superior gave dispensation; rather the contract was opposed to both.

27. To the second argument [n.5] I say that, on the part of the contract, justice between the exchanging parties was never to exchange in a way that the more principal end happen less and the less principal end happen more, because the more principal end is more to be willed; but biviry would be more for the less principal end and much less for the more principal end; because the same woman cannot within the same time be impregnated by several men.

III. To the Argument for the Opposite

28. As to the argument for the opposite [n.6], although about some holy fathers it may be assumed that in contracting bigamy they did not sin, because both reasons for contracting bigamy there came together (namely both the necessity because of which contracting matrimony in this way was justly done, and also divine authority giving approval and prescription), yet if some did contract without these reasons or one of them, that they sinned mortally is not unacceptable to me, because I do not reckon that they were confirmed.

Question Two

Whether a Bigamist before Baptism Could after Baptism be Promoted to Holy Orders

29. Proceeding thus to the second [n.3] – argument is made that a bigamist before baptism could after baptism be promoted to Holy Orders.

First, according to Jerome (and it is in Gratian, *Decretum*, p.1 d.26 ch.1, and is taken from the epistle to Oceanus [*Epistle 69* n.3]), “If someone before baptism had a wife who has died, it is not held against him, against whom, as he is straightforwardly new, neither defilement nor anything that was before now stands in the way.”

30. Again, Gratian, *Decretum*, with Glosses, p.1 d.50 ch.8, and it is contained in the gloss, “if before baptism he killed someone, he can after baptism be promoted;” therefore by similarity about bigamy before baptism.

31. To the opposite:

Gratian, *Decretum*, p.1 d.26 ch.2, and Augustine is quoted on *Titus* 1.6 [*On Conjugal Good* ch.18 n.21], “They have a more acute understanding who judged that neither was he to be ordained who had one wife as a catechumen or pagan, and a second after baptism.”

32. Again, Gratian, *Decretum*, p.1 d.26 ch.4, and Ambrose is quoted [*On Offices* I ch.50 n.247], “Repeated marriages before baptism generate impediments to the prerogative of ordination.”

I. To the Question

33. Here two things need to be looked at: first, what is to be maintained; second, for what reason.

A. What is to be Maintained

34. On the first point all agree that a bigamist, whether before baptism or after, is irregular, as is expressly contained in the chapters cited for the opposite [nn.31-32]. And yet a murderer before baptism is not irregular after baptism, as is expressly contained in Gratian, *Decretum* with Glosses, p.1 d.50 ch.8, where at the words “after baptism” the gloss argues from the opposite sense; therefore, if before baptism someone is conscious in himself of homicide, it is not an obstacle.

35. But as to what is said by some [cf. n.29], that no one contracts irregularity before baptism, because one is then first able to have a privation when one is of a nature to have the possession (as a puppy before the ninth day is not able to be blind); but before baptism one is not capable of Orders. The proof is Gregory IX, *Decretals* III tit.43 ch.3, ‘About a non-baptized Priest’, that, if he was not baptized, he should be baptized and afterwards ordained. From this it is plain that he received nothing before when he seemed to be ordained a priest, for if he had received Orders he would not have to be re-ordained afterwards, as is contained in Gregory IX, *Decretals* V tit.29 ch.1, ‘About a Priest Promoted by Leaps’, where he, who without prior Orders receives a later Order, receives the Order afterwards that was passed over, and yet what was received before is not repeated.

36. This reasoning [n.36] is not valid, because although a privation cannot be in something save when the thing is of a nature to have the possession of it, yet an impediment to having the possession at the time when the possession should be present, can precede the time for having the possession, as is plain in the example adduced;

because a puppy can have, before the ninth day, some impediment so that it not ever have sight even when sight would belong to it.

37. This indeed is plain about the fetus in the body, which can be prevented from living before it is apt to have life; and yet there will not there be a privation of life, because a privation is only present when the possession is of a nature to be present. And much more can there be impediments in the case of a legislator than in nature, because a legislator's impediments are voluntary.

38. Now irregularity is not properly a privation of what should be possessed, but is rather a lack of ordering toward it, so that it be understood negatively (but understood privatively this is: irregularity is an impediment preventing one from being capable of Orders at the time at which one would be capable of them). Therefore, irregularity can exist before baptism. Also, let it be that the privation would be unable to be present; still the cause of privation can be present, when possession is not of a nature to be present.

39. And so it is here about irregularity, which is cause for depriving or lacking Orders at the time fitting.

B. For What Cause it Must be Maintained

1. About the Cause of Congruity

40. On the second point [n.33], it is one thing to speak of a cause of congruity and another of a cause of necessity:

One cause of congruity – why, to be sure, course it is fitting for a bigamist to be kept away from Holy Orders – is commonly set down by everyone, namely defect of sacrament. This is touched on by Augustine [n.31] and Ambrose [n.32]. And it is understood as follows: a priest, as vicar of Christ in the Church, or a person representing the person of Christ, ought not to have something that is repugnant to Christ in relation to the Church; but now Christ is the unique spouse of one Church, and the Church is the unique spouse of one spouse Christ; therefore he who has the opposite of this does not rightly signify or represent Christ in the Church. But a bigamist, who had two spouses, or one spouse who was spouse of two men, has something repugnant to the union of Christ and the Church.

2. About the Cause of Necessity

a. Opinion of Others

α. First and Second Opinion and the Weighing of Them

41. But when asking about the cause of necessity, why this man is necessarily excluded from Orders, there is a threefold opinion:

One that by baptism sin is destroyed and its consequences, and this properly [Gratian, *Decretum with Glosses*, p.1 d.26 ch.3]; but bigamy is not a sin nor a consequence of sin properly.

42. And hereby is response made to the case of homicide committed before baptism [n.30], that the case is not similar; for homicide is a consequence of sin or a sin, especially if he commit sin in killing. But what if he kill justly, as a judge does? This homicide, therefore, is not destroyed as concerns the irregularity. One glossator concedes

this [Gratian, *Decretum with Glosses*, p.1 d.50 ch.8], but irrationally, because then the condition of the sinner would be better in a like act than the condition of the non-sinner.

43. Therefore others say [Gratian, *Decretum with Glosses*, p.1 d.26 ch.3; *supra* n.30] that this homicide is a sin in this way, that it would be a sin unless it were excused by other circumstances, and so it does not of itself depart from the genus of an act of sin.

44. But why then does baptism not take away the penalties of this mortality [sc. judicial killing], penalties that follow original sin?

I reply because they are not consequences of sin properly.

45. The whole argument stands, therefore, on this, that baptism destroys every sin and what would be a sin by the nature of the act (unless circumstances were to prevent it), and the consequences of it; but it does not taken away that which is in neither way a sin proper,^a or a consequence. And of such sort is bigamy.

a. [Note by Scotus] By 'sin proper' I mean what is either a sin in its kind or is a proper act [sc. of sin] formally.

46. On the contrary: let it be that the bigamist sin in bigamy, as by contracting illicitly (for example with his sister), it follows that this contract, since it is a sin or a consequence of sin or annexed to a sin, will be destroyed.

47. Again, in that chapter [n.31], Augustine says that "if a woman catechumen is corrupted, she cannot after baptism be consecrated among the virgins of God;" and yet it is possible that the corruption was a sin before baptism; therefore the sin is destroyed as to the proper penalties corresponding to it.

48. Again, if irregularity were necessarily in bigamy for this reason (that it is not a sin nor a consequence of sin), the Church could not take this irregularity away, because it cannot bestow on bigamy what is of itself a sin or a consequence of sin.

β. Third Opinion

49. There is a third opinion, that just as some ill repute is consequent to an act from the nature of the act, and another precisely consequent to an act by statute of the Church, and just as the Church cannot take the first away, nor can a sacrament of the Church (as baptism), but can take away the second, so also in the case of irregularity. Bigamy, not by statue of the Church but by defect of signification, introduces irregularity, because a bigamist does not represent the Christ as he is spouse of the Church in the way a priest should represent Christ or, at any rate, should not have anything repugnant to that representation. But homicide does not introduce irregularity save by statute of the Church; therefore, it is taken away by the first sacrament of the Church, and the other is not.

50. And that the ill repute follows bigamy by the genus of the act they prove [Glossator on Gregory IX, *Decretals with Glosses* I tit.21 ch.3] by the fact that someone ordained in the Church is constituted in a preeminence and in a rank preeminent over others, and this sacrament of matrimony, as they say and say well [n.49], signifies Christ the spouse of the Church, and Christ is one spouse of one spouse only. Therefore he who has what is contrary to this signification is unsuited in the Church for having any preeminent rank, because he ought to signify the union of Christ and the Church, which union is one of one only.

51. Hence that is the reason why the canonists [Raymond of Peñafort, Henry of Segusia] make the denial, that a bigamist cannot be ordained nor moved into Holy Orders because, on account of defect of sacrament, he is, by nature of the act of bigamy, unsuited.

52. But this does not seem to be sufficient, because if by the nature of the act the bigamist suffers ill repute, and therefore the Church cannot make dispensation for him as to the irregularity, then, by similarity, since no Church can ordain a murderer when he is notorious without him being of ill report, the Church would not be able to make dispensation as to the irregularity perpetrated by or consequent to homicide – just as neither can it, for that reason, make dispensation as to bigamy.

53. On the contrary: if the irregularity were from something prior to a statute of the Church, the Church could not then make dispensation – the opposite of which is stated in Gratian, *Decretum*, p.1 d.34 ch.18, where Martin concedes that a Lector, who had married a widow, can be ordained a sub-deacon but no higher. And the gloss says there [Gratian, *Decretum with Glosses*, p.1 d.34 ch.18 ch.1] that “the Pope makes dispensation against the Apostle (namely Paul in *I Timothy* 3.2, ‘a husband of one wife etc.’),” and Innocent is said to hold the opposite, that “it is not licit to make dispensation for a bigamist” [Gregory IX, *Decretals* I tit.21 ch.4], and Martin says the same [*Decretum*, p.1 d.50 ch.8]; yet Pope Lucius made dispensation for Archbishop Panormitanus, who was a bigamist [Gratian, *Decretum with Glosses*, p.1 d.24 ch.18; reported by several doctors, Albert, Thomas Aquinas, Roger Marston].

54. But a certain gloss [Gratian, *Decretum with Glosses*, p.1 d.34 ch.17] agrees in this way, namely that in the primitive Church the Order of sub-deacon was not a sacred Order; and therefore did Martin concede that a bigamist can be made a sub-deacon but did not make dispensation higher up.

55. This gloss of someone called Nicholas Furiosus is opposed in some books [Gratian, *Decretum with Glosses*, p.1 d.50 ch.16].

56. At any rate the Church finally holds this, that dispensation should not be made for a bigamist for either the diaconate or the priesthood.

57. Nor is the deed of Lucius concerning Archbishop Panormitanus disapproved of on this account, as if he did what he could not do, but that he did what was not fitting save for great cause.

b. Scotus' own Response

58. I say therefore that the cause is only the institution of the Church. Nor is there here any other foundation than Paul; and the Church has it here only from Paul, who was one prelate only in the Church. Hence I say that the cause for irregularity in homicide and bigamy comes from a merely positive statute of the Church, and I take ‘Church’ here for the statutes of the Apostles and letters. For no man is so unsuited by any act of his own that he not be able to be restored to a worthy rank through penance, because any man is capable of this rank and of preeminence in the Church, and capable of the character, even a child, as was said above [*Ord.* IV d.6 n.200, d.7 n.68].

59. But why is the penalty for perpetrating a homicide regularly remitted in baptism, but the penalty that by statute of the Church follows bigamy not remitted? The cause is only the statute of the Church wanting this penalty to be so remitted and that one not. But this ordination by the Church is reasonable by the fact that a murderer is

unsuitable for Orders only because of the horror of shed blood, because of which horror David was forbidden to build a temple for the Lord, *II Kings* [*II Samuel*] 7.2-13. But this horror is taken away by baptism, because the supposition is that from a wolf is made a lamb, just as also Paul was a persecutor before baptism, afterwards was made sheep and pastor.

Therefore the cause of the unsuitability ceases in baptism; therefore ought the effect to cease.

60. And that this is the cause is plain, for homicide too (done deliberately or in self-defense, with the moderation of guiltless defense [Gregory IX, *Decretals* V tit.12 ch.18]) does not, after baptism, make anyone unworthy to receive Orders, because there is no presumption of cruelty.

61. But unsuitability for Orders in a bigamist does not cease in baptism, because always there remains the defect of sacrament, that is, of signification, that is required in a priest representing the person of Christ in the Church; therefore, the effect there is not taken away, save later by special dispensation.

II. To the Initial Arguments

62. To the first argument [n.29]: either Jerome is denied, as the canonists [e.g. Raymond of Peñafort] do commonly deny him, holding to Augustine [n.31], or that ‘crimes do not stand in the way’ can be expounded as to the receiving of grace, but they do stand in the way as to holding a rank of dignity in the Church; and this distinction is taken from the chapter from Ambrose [n.32].^a

a. [*Note by Scotus*] I say that one must deny Jerome if he spoke contrary to Augustine, because although Jerome may be compared to an ox, because he is senior or older, and Augustine to a calf, because junior, yet Augustine more set his foot where the other did not stay; and therefore where he contradicts Augustine, by the Church is Augustine held to. Or Jerome can be glossed: ‘is not held against him etc.’ is true as to the crime, but it does not follow that it not be held against him as to the penalty of irregularity, however much he has been regenerated through baptism; or it will not be held against him if there is necessity in the Church.

63. To the second [n.30] I say that this irregularity and that are not alike, and the cause is stated in the main solution [nn.52-58-59].

Question Three

Whether in the Mosaic Law it was Licit to Repudiate a Wife

64. About repudiation I ask whether in the Mosaic Law it was licit for a man to repudiate his wife.

65. That it was: *Deuteronomy* 24.1, “When a man has taken a wife, and married her, and it come to pass that she find no favor in his eyes, because he has found some uncleanness in her, then let him write her a bill of divorcement, and give it in her hand, and send her out of his house.”

66. Again, *Malachi* 2.16, “When you hate her [your wife], put her away, says the Lord the God of Israel.”

67. Again, Gregory IX, *Decretals* V tit.41 ch.1, ‘On the rules of right’, “Everything is dissolved by the same causes by which it is born;” but matrimony is born through mutual consent; therefore can it be dissolved by mutual dissent.

68. Again, Gratian, *Decretum*, p.1 d.34 ch.1, ‘If anyone his wife’, “If a wife has committed adultery against a husband established in clerical office, he must, after giving her a repudiation, dismiss her.” Therefore, the repudiation of a wife is licit also in the Gospel Law.

69. The opposite: it seems to be against the law of nature which Adam promulgated, *Genesis* 2.24, “A man will cleave to his wife;” from which Christ concludes, *Matthew* 19.6, “What then God has joined, let not man put asunder.”^a

a. [Note by Scotus] It is against the law of nature that man separate what has been joined by God, as Christ supposes in the Gospel when he says, “What God has joined...”

70. Again, a contract of matrimony is essentially the giving of power over one’s body irrevocably to another in exchange for power over their body; therefore, no leasing or giving for a time can be matrimony. But if it were licit for a repudiation to be made, there is in the contract a giving only for a time; because if it had been for perpetuity, then the repudiated woman would have remained as wife, and in that case she would be dismissed illicitly. It follows, therefore, that if repudiation was licit in the Mosaic Law, that there was no matrimony there.

71. Again, it was never licit for a woman to repudiate a man; therefore not conversely either, since they are judged as equal in respect of things that belong to the marriage.

I. To the Question

A. First Opinion

72. Here is it said that in the Mosaic Law it was licit to repudiate a wife, and that he who marries a repudiated wife sinned mortally, because he went to someone impure, for she was only repudiated, as it seems, because she was impure. This sin, however, was not punished in the Law but was permitted because of homicide, lest men would kill their wives. And therefore, to avoid a greater evil, this lesser evil was permitted in the Law.^a

a. [Note by Scotus] I reply: when it is said that it is probable a woman is repudiated because she is unclean, this is true if she was repudiated by two men, but not if by one only. And so then he sinned mortally by marrying her.

73. The proof of this is:

First by the authority of Christ condemning repudiation, *Matthew* 19.9, “I say to you that whoever shall put away his wife, except it be for fornication, and shall marry another, commits adultery: and he that shall marry her that is put away, commits adultery.”

74. This is also proved by the reason that Christ brought forward for himself, which is that from the beginning God joined male and female in matrimony, as he proves from the word of Adam, and he adds, “What God has joined, let not man put asunder” [*Matthew* 19-4-6].

75. It is proved also, third, from his response to the question of the Pharisees [Matthew 19.7-8], “They say to him, ‘Why then did Moses command to give her a bill of divorce, and to put her away?’ He says to them: ‘Because Moses by reason of the hardness of your heart permitted you to put away your wives: but from the beginning it was not so’.” The interlinear gloss on “Moses...permitted” says “not God.” And the gloss says that “it was the council of man, not the command of God” [Nicolas of Lyra]. And the Master in this distinction [Lombard, *Sent.* IV d.33 ch.3] says that this was permitted by Moses “not to concede separation but to remove murder.”

76. And Augustine *On the Lord’s Sermon on the Mount* I ch.14 n.39, “He who commanded to give a bill of repudiation did not command the wife to be dismissed; but let him who has dismissed her, he says, give her a bill of repudiation, so that the thinking about the bill would temper his rash anger in dismissing his wife.” This can be understood from something that Ambrose prescribed to the Emperor Theodosius for a certain cruelty impetuously effected by Theodosius’ command: Ambrose wanted him to pass a law that no minister should carry out his cruel commands for thirty days, if perchance within that time his anger would quieten and temper his judgment. Hence too Plato said to a certain person [Archytas of Tarentum], as Jerome reports [*On Joel* 1.5; *Epistle 79 to Salvina*, n.9; also in Valerius Maximus, *Memorable Deeds and Words* IV ch.1 ex.1]: “I would punish if I was not angry.” And Augustine adds, *ibid.*, “He who sought a delay in the dismissal did signify, as far as he could to harsh men, that he did not wish separation.”

77. Also Gregory IX, *Decretals* V tit.19 ch.8], ‘On Divorce’, “Repudiation of a wife is condemned by Truth in the Gospel.”

B. Second Opinion

1. Exposition of the Opinion

78. Another opinion says that the giving of a bill [of divorce] and repudiation of a wife was licit for the time of the Mosaic Law; because Moses announced the Law of God, and therefore those whom he as legislator joined together and announced it, God too joined together; and those whom he separated God too separated; and God can separate those who are matrimonially joined together.

79. Again, according to Augustine, *Letter 40 to Jerome* ch.3 n.3 (and it is in Gratian, *Decretum*, p.1 d.9 ch.7), “If useful lies were admitted into the Sacred Scriptures, what would remain of authority in them?” As if he were to say, “Nothing.” And the reason is that whatever authority be brought forward to repulse a heretic, the heretic will reply that it was spoken as a lie, a jocose or officious lie, just like that one too somewhere else [cf. *Ord.* IV d.3 n.178]. Therefore, by similarity, if a heretic not have anything in Scripture, he will not have authority by any prescriptive authority in Scripture.

80. Likewise about advice; if any advice given in Scripture were not healthy or useful to keep, there would be no authority of observance in Scripture; therefore, by similarity, if there were any concession in Scripture about anything illicit, as this one [about repudiation], it follows that no concession of Scripture will have authority to show that the thing conceded is licit. For as concession is related to what is licit, so precept is related to what must necessarily be done, or warning or advice to what is useful. For just

as a precept is not about anything that is not necessarily to be done, so neither is a concession about anything save what can licitly be done.

81. Again, a just law should not directly give occasion to sin mortally; but this concession seemed to be an occasion directly for the Jews to dismiss their wives; for if it had not been written down, they would no more have dismissed them than the fathers before the Law of Moses did; therefore, either that dismissal was not mortal sin, or the Law was not just.

2. Weighing of the Opinion

82. The way in which this opinion can be held acceptable is this: complete justice does not exist in this exchange or contract of matrimony save by divine ratification, though there is found before it what suffices for justice on the side of the exchange and the exchanging parties; and whenever such justice can be found in the exchange, it is reasonable that it ought to be ratified. But just as the exchange of the body of one man in return for exchange with the bodies of several women is something just when such exchange is necessary for procreation of offspring – and so then God justly made dispensation for bigamy, indeed approved it, on account of a greater good resulting than would, on the other side, result by exchange of one woman with one man; and the exchanging parties should, according to right reason, want so to exchange – thus in the issue at hand can God, for avoiding a greater evil than is the good of indissolubility of marriage, make dispensation that a contract may be made for a time, until the woman displease the man.

83. And in this is justice in some way preserved, because the parties should want thus to exchange, not only for attaining a greater good but also for avoiding a greater evil; and uxoricide is a greater evil than is the good of indissolubility; because the former is the evil of penalty for a killed wife and the grave evil of guilt for the killer. It would also be an evil for the whole republic, because an occasion for continuous discord and fighting, on account of the anger of the wife's parents against the killer; and in this there would be a continuing dissipation of the family, because, with the man being killed by his adversaries or by the law, the family and the education of the offspring would be destroyed.

84. So it could, therefore, be said that, just as God made dispensation for bigamy on account of a greater good, so could he make dispensation in the repudiation of wives for the [Hebrew] nation on account of avoiding a greater evil.

85. And according to this can it be said that, since the good wine of matrimony is indissolubility and perpetual obligation, no matrimony of the Jews was perfect, because the contracts were always under a condition on account of the bill of repudiation. But in the matrimony of the New Law this good does exist, namely indissoluble union; and, in addition to this, something else, namely the signification of the union of Christ and the Church, which is the union of one with one. Now in the matrimony of the law of nature, as with Abraham, the first perfection or the first good existed, namely indissolubility, but not the second, which is to have one wife only. But in the Mosaic Law, when there was repudiation and one man had several wives, neither perfection of matrimony existed, because neither was there union of one with one nor was the union simply indissoluble; but this was done by divine dispensation.

C. To the Arguments for the First Opinion

86. And then as to what was adduced for the first opinion [nn.73-77], it can be replied that Christ promulgated that for the time of his own Law, namely the Gospel Law, so that, just as he brought back matrimony in the way it was instituted in the law of nature (namely, so it be of one man with one woman, although, however, bigamy was licit in the Mosaic Law), so he brought back a matrimony simply perfect, that is, indissoluble, for his Law, the way it was instituted in the law of nature. And thus does he make invalid for his Law the contract that was licit for the Mosaic Law, which was the leasing of bodies for the procreation of offspring for a time – namely until the woman would be lacking favor in the eyes of the man. It is just as Christ also emptied out many other imperfections licit under Moses, by bringing back the things that were, for perfection, going to be permanent in his Law. And therefore it was, from when the Gospel was promulgated, damnable to have several wives or to dismiss one and marry another; but it was not damnable before. Thus would they say about this opinion.

87. And so from then on, according to this opinion, the Jews were bound not to have two wives but one only, and in no way to be separated from her.

88. As to Christ's proof [n.75], it is plain he is speaking for the law of nature; and in this did he sufficiently refute the Pharisees, because they were not sufficiently observing matrimony as it was in the law of nature, and he showed that he himself was rationally establishing inseparability for his own Law, because this is consonant with first institution in the law of nature.

89. As to what is added about the response of Christ to the Pharisees, "for the hardness of your heart God permitted you to put away your wives" (which many [Lombard, William of Auxerre, Bonaventure, Thomas Aquinas, Peter of Tarentaise] consider was only permission, not concession [n.75]), I say that Christ "permitted" it, by which he means that Moses did not prescribe this, nor even advise or approve it but, as if it was licit by a certain necessity, did not prohibit it. Nor is this permission deceptive as to something illicit; for that would be to say nothing other than that Moses would permit them to go to damnation, not by showing them that this would be a way of damnation, but rather by insinuating the opposite; and this no legislator can justly do, even in human laws, which leave many evils unavenged, according to Augustine *On Free Choice* I ch.6 n.42. And if the legislator not punish every evil, and thus permit it because he does not punish it, yet in no way does he in his law concede it. Hence unjust would be the human law that would write down something that was against that law [of nature].

90. And as to what is added there, that "for the hardness of your heart etc." [n.75], it does not prove that it was illicit; for frequently the hardness of subordinates is a reason that something be relaxed for them that otherwise would not be relaxed, and that would be useful for them not to be relaxed – provided however they were tractable. It is like a prelate, when seeing a college prone to something whose opposite would be more honorably something to observe, although he could usefully establish the opposite if the subordinates were easy to sway, yet he can very well not establish it; or if it is established, he can well relax it, and honorably, lest, with it standing in place, they multiply their sins more.

91. As to the glosses:

The first [n.75] seems it should be denied, because Moses, as legislator, was only the herald of God. But he who wants to give exposition of them can say: Moses permitted it, not God immediately prescribing it to Moses among the other precepts. Hence never in the first four books of the Law is it found that God prescribed this to Moses or to anyone. Therefore, this is more precisely of Moses (as also are all the things that are in *Deuteronomy* and are not elsewhere) than are the things that elsewhere God spoke to Moses. And this is the fitting reason, that the relaxations, as pertaining to human working out, God did not want to place in Scripture as if they were put forward by himself the way they were put forward by his servants. Hence too the alleviation of the labor of Moses, who sat all day judging the people, was not expressed by God immediately per se, but Jethro [*Exodus* 18.13-27], the kinsman of Moses, expressed it, as pertaining to human working out.

92. As to the other gloss [n.75], it is easy to see that it says nothing against this opinion. For it is true it was not the precept of God, namely ‘to dismiss her’, but that if he dismiss her he give her a bill of divorce; but it was ‘the counsel of man’, not as of a man, but as of a herald of the divine Law.

93. As to the remark of Augustine [n.76], I concede that, by the delay which [Moses] imposed in the writing of a bill, he did insinuate that the dismissal was absolutely displeasing to him; not only therefore was he who did not dismiss her doing better than than he who did dismiss her, but he who dismissed her was doing badly, though not so badly that he sinned mortally against matrimony, as he would have done if he had not had license from the Law.

94. To the point about divorce [n.77], the answer is plain in [the solution of] the first [argument; n.86]; for it is true that Christ condemned divorce for the time of his own Law.

II. To the Initial Arguments that are for the First Opinion

95. To the initial arguments [nn.69-71] for the first side [n.72].

To the first argument [n.69], the answer is plain from the solution [nn.86-88]. And when it is said that it is against the law of nature that “what God has joined etc.,” I say that it is not against the law of nature, because not against the principles of the law of nature, nor against the conclusions deduced immediately from the principles, that such a contract, according to this opinion, be made for a time; nor is it simply against the education of offspring. For God could have ordained otherwise as to the education of offspring, but not as acceptably as now. However, it then was against a certain good that is consonant with the law of nature, namely against indissolubility; and against such a good can God give dispensation, to avoid a greater evil.

96. To the second [n.70] I concede that matrimony simply is a perpetual obligation. But matrimony in a certain respect can be an obligation firm for a time, though not perpetual; and thus do I concede that in the Mosaic Law there was not any ‘matrimony simply’, unless perhaps some wanted, beyond the perfection of the Law, to obligate themselves perpetually, which was not necessary insofar as they had contracted a marriage under that Law.

97. Or it could be said that, if there was matrimony perfect or simply, and so an indissoluble obligation, it is a true matrimony, unless the Legislator were to revoke or

dispense from it – and he did dispense from it when the woman was too displeasing to her man, inasmuch as uxoricide was feared – as was said above about a non-consummated ratified matrimony, that it is dissolved through entry into Religion [*supra* d.31 n.22]. And yet it was a matrimony simply, and not just a leasing for a time. But the Legislator in such a case makes dispensation for pursuit of a greater good; but here [sc. in the Mosaic Law] for avoiding a greater evil.

98. To the third [n.71] the case is not alike, because the reason for dispensing is not alike; for it is not as great an evil if a woman hate a man as the converse is, because sex itself holds back a woman from exterior revenge more than it holds back a man, just as was it also conceded to one man, for the good of offspring, to have several wives. But this was not conceded to the woman, because it would be against the good of offspring if one woman had several men. And so, in neither of these cases, is it alike for a man and a woman.

III. To the Initial Arguments that are for the Second Opinion

99. He who wants to hold the first opinion can easily reply to the arguments to the contrary:

To the authorities of *Deuteronomy* and *Malachi* [nn.65-66], that they are permissions of a lesser evil, but yet of mortal sin, lest a graver mortal sin come about.

100. As to the second [n.67], that rule is true precisely of dissoluble obligations, of which sort this obligation is not. It could also be said to the minor that this obligation is born from the wills of the contracting parties as from the instrumental cause but principally from divine approval; and the rule ought not to be understood of instrumental causes. Hence does God prove inseparability from the principal cause, *Matthew* 19.6, “What therefore God has joined etc.”¹¹²

¹¹² Scotus apparently gave no separate response to the third argument [n.68]. Perhaps the reply could be that the matrimony in this case is not so much dissolved as its effect permanently suspended, because the wife’s offense compromises the proper exercise of clerical office in the husband. She must live in secluded penance, and he in celibate ministry. In other words, the ‘repudiation’ and ‘dismiss’ talked of in the *Decretum* are not the sort talked of in the Mosaic Law, but mean repudiating and dismissing, not the matrimony, but, by way of due penalty, the exercising of it. Christ seems indeed to have such cases in mind in *Matthew* 5.32 when he speaks of putting away a wife “except for the cause of fornication.”

Thirty Fourth Distinction

Single Question

Whether Impotency for the Carnal Act Impede Matrimony Simply

1. "Now it remains to consider etc." [Lombard, *Sent.* IV d.34 ch.1].
2. About this thirty fourth distinction I ask whether impotence for the carnal act impedes matrimony simply.
3. That it does not:
Because this would only be because, by contracting [matrimony] one obligates oneself to the act, for impotence only impedes as to the rendering of the debt and exercising the act; but this is false, because one can contract with a will at once to enter Religion.
4. Again, it would then follow that an old man would be impeded from contracting matrimony, the opposite of which is held by the Church, which allows such marriages.
5. Again, sorcery is not a perpetual impediment, for the one ensorcelled can, it is plain, be cured by destruction of the sorcery; and, as it is now, temporary impotence is not an impediment; therefore at least impotence through sorcery does not impede matrimony.
6. The opposite:
Gratian, *Decretum*, p.2 cause 33 q.1 ch.4., "If by fortune tellers"
7. Again, Gregory IX, *Decretals* IV tit.15 chs.7, 2, "Those who are impotent are reckoned not to be suited to contracting matrimony."

I. To the Question

8. First one must look at the conclusion in general; second at double impotence in particular

A. About the Conclusion in General

9. In general, all impotence simply and permanent, namely that cannot be aided by nature or art, impedes contracting matrimony simply, if it precede it, and dissolves one already contracted.
10. And for this there is, from the nature of this contract, a threefold reason:
First because this contract is a giving of the power of the body for such act, if it be asked for; but this¹¹³ [impotent person] has no such power; therefore he can give nothing such; therefore neither can he so contract.
11. Again, in this contract one obligates oneself to such act, if it be asked for; but such an act is impossible for him, even if it be asked for; therefore he obligates himself to

¹¹³ Scotus' pronouns are, again, ambiguous (implicit in the verb or noun and not separately expressed), but where they are made express they are mainly in the masculine gender. In English one just has to translate making adjustments case by case.

what is impossible. But an obligation for what is impossible is null, by divine Law; therefore, divine Law does not approve such an obligation; therefore it is null.

12. Again, some other person intends to exchange the power of body with the power of body of a second person; therefore, the belief is that the other person is able, conversely, to make the exchange; but the other person cannot; therefore there is error here pertaining to something that is per se required for the contract; such an error makes the contract null, as was said above, d.30 q.1 nn.9-13.

This then is said about impotence in general.

13. But if such impotence follow a consummated matrimony, it does not dissolve it, because the power was handed over, and the one to whom it was handed over has been put in possession of it; therefore it cannot be revoked on account of any supervening impediment.

14. But if such impediment intervenes between a ratified and a consummated matrimony, it is doubtful whether it dissolve it; Gratian, *Decretum*, p.2 cause 33 chapter 1, seems to state the negative side, other chapters the affirmative side, “marriage is confirmed by carrying out the office [of matrimony];” and afterwards follows, “before it be confirmed, the impossibility to perform the office dissolves the bond.”

15. The contrary seems to be the case, for the power has already been given; therefore, if an impediment to the use of it happen afterwards, not for this reason can the prior giving be rescinded. Whether it did not precede a ratified matrimony, if yet it did precede a consummated one, would be difficult to judge, unless perhaps there was, intervening at that time, a removal of some part necessary for the act.

B. About Double Impotence in Particular

16. About the second article [n.8]:

There is a double impotence in genus: natural and by occasion. Natural in a man is frigidity, in a woman constriction; by occasion is through sorcery.

17. The first impossibility is plain.

18. The second impossibility is this: evil spirits, who have compacts with certain men, keep their promises with them through certain chants or herbs or this sort of thing, not because they are honest but in order that others adhere to them (because if they kept no compacts no one would serve them), and in order that those for whom they keep the promises worship them, because, from pride, their chief desire is for divine honors.

19. God also permits them to exercise power over others (because of these others' sins or some other hidden cause) to impede these others from certain acts that they would have power for if they were not impeded. For because the devil has power, unless he be impeded by God, over the whole of corporeal nature, therefore can he prevent such and such bodily members from having such and such effects, and this by incantations or other things of the sort; and thus can he prevent this act [of carnal union] in this person in relation to such and such person.

20. And in this way does a sorceress, who has a pact with a demon, procure from the demon his impeding this person from this act with this woman, as long as such sorcery lasts, as a bent pin¹¹⁴ or something of the sort. And this frequently happens

¹¹⁴ The Latin word is ‘acus’, which means ‘needle’ or ‘pin’. Compare our, more vulgar, word ‘prick’.

through the sorcery of such a woman, who procures and invokes the devil under a certain pact for the impeding of such act between such persons.

21. And this impediment by occasion is called [malicious]¹¹⁵ sorcery, because the devil, for malicious procuring of someone, impedes the act, or something else of the sort.

22. What then is the remedy against this impediment by demons?

I reply: if the power of the demon is impeded by the prayers of the saints, it is well done. If God not answer the prayers, if the sorcery be known and destroyed, the demon would not vex further, because, from the pact, he only assists while the sign lasts.

23. And from this is plain that deceitful is the question whether it is licit to take away the sorcery with the intention of curing the one has been ensorcelled. For it is licit, indeed meritorious, to destroy the works of the devil. Nor is there any infidelity in this, because he who destroys the sorcery is not acquiescing in evil works, but he believes the demon can and wants to vex as long as such sign lasts, and the destruction of this sign puts an end to the vexing.

24. About these two impediments I say, as to the issue in hand, that they are in some way similar and in some way dissimilar.

Similar because they prevent contracting matrimony and break off the contract already made with respect to the person with respect to whom these impediments exist. Which I say and add to this extent, that not only an occasional but also a natural impediment can exist with respect to one person, not with respect to the other, especially a natural one in a woman.

25. But after divorce there is a double difference.

One, that someone who has an occasional impediment may licitly contract a matrimony, and if after the contract there is carnal union, it ought not to be rendered to the prior spouse, because someone ensorcelled with respect to one person is not, for this reason, ensorcelled with respect to all; for he is ensorcelled as the ministers of the devil get hold of him, through the sorcery of the devil, for being impeded. But it can be that some sorceress want him to be perpetually impeded with respect to this person, not with respect to another, as if she not wish him to marry this woman but herself or someone else.

26. But the other, namely the one who has a perpetual natural impediment, and this with respect to anyone, must remain without hope of marriage, and it would be safe for him to enter Religion. But if he contract matrimony in fact afterwards and have carnal union, he is compelled to return to the prior spouse, because it appears that the sentence of divorce proceeded from an error, and that it was no error before God and that the matrimony was true, because there was not the impediment supposed.

27. But how does the perpetuity of this impediment become known?

It is contained in Gregory IX, *Decretals* IV tit.15 ch.5, "Praiseworthy": they should delay for three years and make efforts for the act; and if afterwards they protest [sc. failure], they must swear with a seventh hand [sc. seven witnesses], that is, man and wife by knowledge and seven neighbors by fidelity; and if the man protest the accusation of the wife, the man is believed, because "he is the head of the woman" [*Ephesians* 5.23, *Decretals* ch.1]; and if the man accuse, the proof rests on him in the aforesaid way.

28. But how will the difference between this and that impediment be known?

¹¹⁵ The Latin for sorcery is 'maleficium', which literally means wickedness or crime, and shares the same root with the (English and Latin) word 'malicious', namely 'mal-' or 'evil'.

I reply; it is difficult save by inspection of the body, whether some necessary disposition is stopped in the part required for this act; or by the judgment of doctors as to frigidity, if any signs display him to be of such complexion. But if neither this way nor that, and yet he is simply impeded, one must presume that it is sorcery.

II. To the Initial Arguments

29. To the first argument [n.3] I agree that one obligates oneself to the act if it be asked for, at least for some determinate time; but within that time it is not necessary to render the act if one want to enter Religion. But one cannot obligate oneself to the act for any time at all if there is a perpetual impediment, because, as said at the beginning of the solution [n.9], only perpetual impediments impede, and it is contained in Gregory IX, *Decretals* IV tit.15 ch.6, “Fraternity.”

30. To the second [n.4], if the old man be altogether impotent, I would say that he would not contract matrimony, although she¹¹⁶ could perhaps licitly allow certain things to him for living together as brother and sister; and thus perhaps do many women espouse to themselves wealth rather than persons.

31. To the third [n.5] the answer is plain from what was said [nn.17-23]: if the sorcery is temporary, it only impedes temporarily; but it is presumed to be perpetual if it persist for three years.

Thirty Fifth Distinction

Single Question

Whether Adultery with Someone while the First Husband is Living Impedes Matrimony with the Same Person after the Death of the Husband

1. “Here too one must note” [Lombard, *Sent.* IV d.35 ch.1 n.1].
2. About this thirty fifth distinction I ask whether adultery with someone while the first husband is living impedes matrimony with the same woman after the death of the husband.
3. That it does not:
II Kings 11 [*II Samuel*] David commits adultery with Bathsheba and yet, after Uriah was killed, he contracted matrimony with her.
4. Again, Augustine *On Nuptials and Concupiscence* I ch.10 n.11 (and it is put in Lombard’s text, *ibid.* ch.4 n.2), “It is possible for a marriage to be made where there was previous adultery.”
5. The opposite:
Gratian, *Decretum*, p.2 cause 31 q.1 ch.3, “But that”

I. To the Question

¹¹⁶ No express male or female pronoun is given here, and the ‘many women’ in the next line could also be the neutral ‘many persons’, but the word translated ‘to him’ is definitely masculine.

6. I reply: there are three crimes, together or separately, that seem to cause difficulty for a contracting of matrimony. And the crimes are: 1) adultery with a married person, 2) machination in the death of a legitimate spouse, 3a) pledging one's faith to an adulteress herself 3b) or a contract with her in fact 3c) or a promise with an oath about making a contract with her (which last three are reckoned as the same for the issue in hand).

7. About the two first the answer is plain in Gregory IX, *Decretals* IV tit.7 ch.8, 'About him who has taken in matrimony a woman whom he has first polluted through adultery', last chapter.

8. About the third, namely promise with an oath, that it is valid is contained in Gregory IX, *Decretals* I tit.40 ch.3, 'About things that are done through fear or force'.

9. About these three I say that the last one does not per se impede contracting matrimony after the death of the husband, as is contained in *Decretals* [*supra* n.7], "If anyone, while his wife is alive, promise, after pledge of faith, to marry another, or did in fact contract with her, if he knew the same woman neither before nor after, his legitimate wife still living, then, although on both of them (for the fact that in this they are greatly delinquent) a grave penalty must be enjoined, yet the matrimony that he contracted with her after the death of his wife is not to be destroyed," and this if both are not aware [of the other's previous marriage]. So, therefore, matrimony is not impeded by the pledging of faith alone. But this is, as I said, when neither knows about the other that they are in a matrimony; but if they do know as much, then I say it does impede the matrimony, and the contract is null.

10. But the third along with the first does simply impede and destroy a matrimony, for it follows there *ibid.* [n.7], "[Matrimony] should not be tolerated, if before or after, while his wife lived, he had polluted her in adultery;" the 'before' and 'after' are referred to the pledge of faith.

11. And this is to be understood when both are conscious that the act is adultery; for if the man alone is conscious, and the wife or woman not conscious, namely because she does not know he has another wife, then if the man afterwards contract with her, on the petition of the man the divorce is not to be made public, as is contained *ibid.* [n.7], ch.1.

12. But what if the person, being before unaware, ask, after learning of this impediment, for a divorce?

It seems it should be made public, from that chapter [n.11], by this argument in its contrary sense; and in the text is found there that "if the woman not seek divorce, they are not to be separated;" from which is insinuated that if she do ask for it, they are to be separated.

13. But this is doubtful, because such a contract with an unknowing woman is either a matrimony or not. If it is, then there should be no divorce given on the petition of the woman; if it is not, then there should be a divorce given on the petition of the man, because they cannot abide together, since they are not man and wife.

14. I reply: it is not a matrimony because the woman consented to him as to someone able to contract; but he, on his part, is not such as she believed him to be. And when it is said that 'they cannot abide together', I concede that he cannot deal with her matrimonially, because on his part it would be fornication; but she can be joined matrimonially with him, because invincible ignorance excuses her.

15. But let it be that the woman, when understanding the impediment, does not seek a divorce, then according to that chapter no divorce is to be made public; therefore, they should abide together – and yet not in marriage, because for you [sc. Scotus himself, n.14] that contract was not a contract of matrimony or marriage; therefore, some should abide together in fornication according to this judgment.

16. I reply: if the woman, knowing the impediment, consent to matrimony, the man is compelled to consent to it, as penalty for his sin, because he knowingly deceived someone who was ignorant; and then there is a new matrimony from a new consent. And this judgment is most just, so that he who deceives someone who was ignorant in the matter of giving power over the body (because he does not intend to give that power or cannot give it) – that he be compelled to fulfill truly afterwards what before he did deceitfully.

17. But you will say: surely they were not able to abide together by virtue of the first contract? Let it be that she, not knowing what act she is conjugally consenting to, and he, knowing that she wants to be his wife, consents with her anew, not making the impediment explicit to her, because perhaps from this would hatred be generated – can they really abide together?

18. I reply: the first consent was not matrimonial, and therefore no act can be licit in virtue of that consent; and so, in order for them to be spouses, a new consent is required.

19. And then to this second consent I say that, if the impediment is not made explicit to the unknowing woman, she does not, in the following carnal union, consent with a new consent, but only renders it in virtue of the first consent, which was null; and therefore, though the person who knows consent again, yet it does not suffice. This is expressly said by a gloss on that chapter [Gloss on the *Decretals* IV tit.7 ch.1], “She is understood to be continuing in the first consent, which was null,” as is proved about a slave “who is believed to be a free man with whom a contract is made; if he is manumitted afterwards, the wife being ignorant of the fact, the matrimony is not contracted; because after the manumission was carried out, she is, in remaining with him, understood to be giving approval throughout to the first consent, which was erroneous and not a matrimony.”

20. In another way can it be said: if she was married without knowing, while the legitimate wife of the one who marries her still lives, this judgment is true [sc. that there was no contract of matrimony]; and in this case does the gloss speak, because this is the case in the text [n.11], that “a certain man, having a wife, joined another to himself, she unaware of the fact;” therefore he took the second wife while the first was living. And then indeed is it true that there was no contract, because he was then bound to another, though she believed him free from matrimony.

21. But if only two things, namely adultery and pledging of faith, are performed with a married woman who does not know, and if after the death of her husband, and also of the wife of the adulterer himself, he marry her, what is the case with the law?

22. It seems from this chapter that there is simply a matrimony, even if the defect is never made express to the unknowing person, nor does she, after the defect is made express to her, consent anew. And the reason is that from that chapter [n.11] is collected that the Church does not, because of the two concurrent factors, simply make those persons illegitimate, but does so in a certain respect, namely if a deceived person protest.

23. But the first judgment seems more certain, because if after she knows of the impediment and protests, a divorce will be made (from that chapter); therefore, there was not a matrimony before.

24. Third I say that whether the first crime go along with the second, or the third does [n.6], it impedes and destroys a matrimony, as is plain in Gregory IX, *Decretals* III tit.33 ch.1, 'On the conversion of infidels'. Indeed, the second alone seems to impede it, from that chapter; for it speaks there of "Saracens who while they were in captivity killed the husbands of certain Christian women by the traps and machinations of those women;" and the judgment is that "if they have come, through the women, to the Christian faith and have adhered to them (supply: in matrimony), they are not to be tolerated, since the Church does not wish to compensate such a loss with such a gain."

25. Here there is no touching on adultery of a Saracen with a Christian woman, nor about pledging of faith, but only of machination in the death of a legitimate husband, and this with the knowledge of the wife; nor does the gloss [Gloss on *Decretals ad loc.*, n.24] add there to the case this pledging of faith or adultery; but the machination must be understood along with the effect [sc. the actual killing], as 'if there be both affection and effecting' (as the gloss says on the word 'they have procured').

26. But what if, the wife unknowing, this man alone kills the husband, can he really marry her afterwards?

Response under that title, second section [of the *Decretals*, n.24]: if it be done without intention of marrying her, as that he kills him in a just war, not so that he may marry, it does not impede matrimony; but if he kill so that he may marry, it is not found expressly that he could not afterwards marry her, provided however the woman not know, because, in the case of a just war, the chapter says there that "since (supply: the women) did not procure the death of their deceased husbands, matrimony between these sort of persons (namely the killer and the wife of the one killed) can licitly be contracted."

27. And the proof is through the argument place of the similar and the lesser; because if a man does not consent to the death of the legitimate husband, but the wife kills him, she can afterwards be married by another who is ignorant of this crime, Gratian, *Decretum*, p.2 d.33 ch.5, "Killers".

28. This is also confirmed by Gregory IX, *Decretals* IV tit.1 ch.23: "When there is a prohibitory edict about contracting matrimony, whoever is not prohibited is by consequence admitted."

29. But let it be that the woman is first ignorant, then later, after hearing of the killing of her husband, approves it, is this really an impediment?

30. It seems that it is, because [Gloss on the *Decretals* III tit.35 ch.1] "in sorceries the approval is pulled back and compared to a command [sc. approval of the killing after the fact is compared to a command to do it before the fact]."

31. The gloss however holds the opposite in the aforesaid chapter, at the end, because of the chapter now added to it. And from the same chapter can be concluded that a simple promise is not equivalent to any of the three things enumerated in the third member [n.6]; therefore not bare espousals either.

32. It is thus plain, therefore, that of these three [n.6], the third alone never so impedes matrimony that it destroys it. The first too alone never impedes, as is plain from the authority of Augustine adduced in the arguments [n.4]. The second alone sometimes impedes and sometimes does not; but always, when it is with the third, it does impede.

33. And does it really always when it is with the first?

I reply as follows: above, in this chapter, Gregory IX, *Decretals* IV tit.7 ch.6, the third with the first always impedes. The whole reason is the ordination of the Church, because this is the first case where a contract is impeded precisely by statute of the Church, making the persons illegitimate for contracting matrimony. But the reason inducing the Church so to ordain is the repression of homicide and of adultery, which would frequently happen if such persons could legitimately contract.

II. To the Initial Arguments

34. To the first argument [n.3]: this law [sc. the canon law of the Church] was not established for that time; however, David would have acted more justly if he had stoned her. Nor did he have to dismiss the thing because of his own guilt without exacting justice on the other.

35. And if you say ‘no, because then he would have stoned himself, because he was partner in the crime’ – to the contrary:

Either you do not excuse him by this, or you must say that a partner in crime is not bound to inflict the same public penalty that he would be bound to inflict if he were not a partner.

But if you excuse him from not punishing her by the fact he remitted for her the penalty of the Law, we do not have this from Scripture, but that it was a private sin and therefore he did not have to punish it with a public penalty. This seems a more reasonable response. And then the fact he took her to wife after the grave sins of adultery and homicide – the last was not an impediment [n.26].

36. To Augustine [n.4] the answer is plain [sc. from the whole preceding discussion about when adultery impedes matrimony and when it does not].

Thirty Sixth Distinction

Question One

Whether Servitude Impedes Matrimony

1. “Now about the condition” [Lombard, *Sent.* IV d.36 ch.1 n.1].

2. About this thirty sixth distinction I ask whether servitude impedes matrimony.

3. That it does:

No one ought to give what is another’s; but the body of a slave belongs to the master, according to Aristotle *Politics* 1.4.1254a12-13.

4. Again, more favorable is profession of Religion than carnal matrimony; but a slave cannot profess Religion without the will of the master; therefore not contract matrimony either.

5. The opposite:

Gregory IX, *Decretals* IV tit.9 ch.1 ‘On the marriage of slaves’. “As in Christ neither free nor slave is someone who should be taken away from the sacraments of the Church, so too should matrimony between slaves not in any way be prohibited.”

I. To the Question

A. Certain Prefatory Remarks about Impediments to Matrimony

6. Here I preface certain things in general about impediments to matrimony. For some impediments to matrimony are from the nature of the contract, others from the condition of the person contracting, and others are from a statute of the Church. The first impediments are about the conditions of the contract, the second about the conditions of the persons contracting.

7. Now in the persons contracting there are two conditions in general, namely impotence simply and tie to another matrimonially or by matrimonial bond.

8. The first was spoken of above, where impotence was discussed [d.34 nn.9-28].

9. The second impeding condition is contained in the verses.¹¹⁷ And it is plain that if one is tied to another by matrimonial bond one does not have power over one's body and so cannot give it, because no one can give to another what he does not have, I mean in the New Law. And this will be dealt with in d.38 nn.16-19.

10. From the nature of the contract there is a multiple impediment: for one is compulsion, and this was spoken about above [d.29 nn.21-33]. Another impediment is error, and this is triple, for either it is error of person (for there should be distinction of sex, as man and woman); or it is error in condition of person (as when he intends to give his body to a free woman, and yet he or she is a slave; but a slave cannot give an equal gift to a free person, as conversely, because he does not have power over his own body, but it belongs to his master, and these matters of error impede not only the contract of matrimony but every exchange); or it is error in the contract, which is 'I give if you give' (for when one gives in words exteriorly and not in mind or intention interiorly but is lying, then in no way is there a contract, as was above [d.26n.36, d.30 nn.12-13]; and likewise about the other two errors). There are, therefore, three errors from the nature of the contract.

11. Another impediment is a condition repugnant to the contract, namely against procreation or education of offspring, as 'I give myself to you such that I prevent offspring by procuring poison for sterility, or that I do not keep faith with you'; this is nothing because it contradicts matrimony and the good of it.

12. Another impediment is about a non-perpetual bond, as 'I give myself to you not perpetually but until another comes along who pleases me more'.

13. So there are, therefore, seven impediments to matrimony: two on the part of the contracting parties and five on the part of the contract. And force or fear is another impediment, and so there are eight.

14. There are other impediments from statute of the Church, and these are three in kind: first from too close kinship on the part of the persons; second is some obligation made for divine cult; third is great crime. On account of these three reasons does the Church delegitimize certain persons.

15. By obligation to the cult of God there is a double impediment to matrimony, namely vow of continence and reception of Orders.

16. Likewise, a twofold kinship impedes matrimony, namely carnal and spiritual.

17. But the vow of continence is double, as below in d.38 nn.7-11.

¹¹⁷ A mnemonic cited by several authors, as: vow, condition, violence, spiritual proximity, error, dissimilar faith, age, crime, blood, union, time.

B. Solution of the Question

18. Here two things are to be looked at: first, whence servitude was brought in and whether it was justly brought in; second to the issue at hand.

1. Whence Servitude was Brought in and Whether it was Justly Brought in

19. About the first, it is said that by the law of nature all are born free, yet servitude, or more properly filial subjection to the father, is more of the law of nature, namely filial obedience pertaining to disciplining, because according to the Philosopher *Ethics* 8.14.1161b27-30, 62a4-7, “a son has from his father being and discipline.” The servitude we are speaking of here, according to which the master can sell his slave as livestock, is that of which Aristotle speaks in *Politics* 1.4-7, for a slave cannot perform acts of virtue because he must perform servile acts at the command of the master; and this servitude is that one belong totally to the right of another. And this is not for the good, but the bad, of the slave, and this servitude is that of which Aristotle says that the slave is like an inanimate instrument [*Politics* 1.4.1253b32], and cannot be good and virtuous. Hence that servitude is not for the good but the bad of the slave, as was said. Therefore, does the Apostle say [*Galatians* 4.31-5.1, 12-13, *Romans* 6.22], “You have become free; do not be subject to slavery etc.” And hence this servitude was brought in only by positive law.

20. But how is it just? I reply: as was said in d.15 nn.93-110 about the way ownerships began to be just, so I say that this base servitude cannot be justly brought in save in two ways:

21. In one way, because such person voluntarily subjects himself to such servitude; but such subjection is vain; indeed, it is perhaps against the law of nature for a man to renounce for himself his liberty; but after it has been done, it is necessary to serve, because this is justice.

22. In another way, if some master of a community, seeing some to be so vicious that their liberty is harmful both to themselves and to the republic, can justly punish them with the penalty of servitude – just as also he could kill them in certain cases for the good of the republic.

23. If you say that there is also a third cause of servitude, as when being captured in war one is preserved alive, and thus, being preserved from death, one become a slave deputed to serving – I doubt this, unless it be said that a slave was there preserved alive. Nor does justice manifestly appear here because, although the captor could have justly killed the captive, if his war was just, by defending himself but not by invading (and this while the persistence of the one fighting back remains), yet from when he ceases to be persistent, because he is now a captive within one’s will, it seems inhuman to inflict a penalty on him against the law of nature. For there is not the same reason here as in the second case [n.22], because perhaps he would not remain rebellious nor abuse his liberty, but would perhaps become obedient and use well the liberty given him.

24. If it be argued against the first member [n.21], that servitude, to be sure, is not against the law of nature, because, according to the Philosopher, *Politics* 1.2.1252a31-35, he who excels in mind should rule, he who excels in strength should serve; but some

naturally excel in mind and some are less prudent in mind and more robust in body; therefore some are naturally fit for lordship and some naturally fit for being slaves; therefore they ought naturally to be slaves (there can be an example for this in the members of the human body, where some naturally serve the principal part) – I reply: this instance is worthy of note, for this is not to be understood of the extreme servitude that we were just now speaking of, but only of political servitude, whereby an inferior is disposed by a superior, and not however as something inanimate but the way one who is less vigorous in mind is ordered through him who excels more in mind.

25. If you argue against the second [n.22], that thus all servitudes that now exist would be unjust,¹¹⁸ because what is against the law of nature can never be made just, for antiquity of time does not ratify crimes but rather condemns them; all servitude other than these two cases is unjust and against the law of nature; therefore through no length of time does it seem to be just that a master be justly master over such slaves. – I reply: it was touched on above, d.15 nn.105-110, how right can be acquired through prescription, if the other conditions that rights determine are concurrent, namely that he acquire it by just title and that the possessor be of good faith and that he possess it without interruption in the time determined by the law. But this point extends itself to possessions and not to servitude, because the reason for possessing gold is not the same as for possessing a slave, as far as concerns the law of nature; and it would be difficult by prescription to save the justice of detaining such slaves, unless it be presumed that they were made slaves from the beginning in one or other of the two ways.

26. If you object, why then did the Apostle bid such slaves to obey their masters? – I reply: many obligations are unjust on the part of those by whom they are made, and yet, after they have been made, they are to be kept. Hence the Apostle, showing servitude not to be laudable in itself [*Ephesians* 6.5-8], and much less the detention of anyone in servitude, says [*I Corinthians* 7.21], “If you are called a slave, let it not be of concern to you; but if you can be free, use it rather.”

2. Application to the Issue at Hand

a. Opinion of Others and the Weighing of It

27. About the second article [n.18]: some say [Thomas Aquinas, *Sent.* IV d.36 q.1 a.2, arg.2 *contra*] that a slave can contract matrimony against the will of his master – and this from the preceding article [n.24], because matrimony is of the law of nature and servitude is not, but is rather against the law of nature; and what is of the law of nature is not taken away because of anything that is only of positive law.

28. Another reason is set down [Aquinas, *ibid.* Richard of Middleton, *Sent.* IV d.36 princ.4 q.1], that a slave does not so belong to his master that he does not have his own right as concerns natural acts pertaining to preservation of the individual; for it is plain that he can use things necessary for life; therefore, by similarity, as concerns acts pertaining to the preservation of the species. The proof of the consequence is that the

¹¹⁸ An odd remark because penal servitude, which the second case is about [n.22], hardly seems unjust. Perhaps the idea is (as Scotus’ remarks agreeing with the objection, and in n.26, suggest) that since most slaves now, in Scotus’ day, were slaves by being born slaves, then while their criminal forebears may have been justly slaves, the innocent descendants are not. So these descendants at least are unjustly slaves; for time does not pass the crime from parent to child, but rather shows that crime to be a crime.

preservation of the species, since it is a greater natural good, belongs more to the law of nature.

29. Or in this way: a slave cannot be a brute; hence every man has, as to some acts, his own right, nor can he make himself a slave as to those acts (rather nature would make him so free [as to those acts] that he cannot make himself slave); and of such sort are natural acts that are for the preservation of the individual and also for the preservation of the species, and he cannot obligate himself to any master against these acts; but he can obligate himself so as to be bound to a master as to later acts.

30. These reasons can be solved:

First because an obligation that is not of the law of nature can well impede some liberty that belongs to someone of the law of nature; and so it is here. An example: by the law of nature I owe you nothing, yet if I vow obedience to you I am bound to obey you. Now matrimony is not of the law of nature except secondarily, as was said above [d.26 n.31]; and it seems to be just as much of the law of nature to render to each his own; therefore, from the fact that he has by an obligation made himself to be slave of a master, he is bound to render the master the master's own, and bound to be held back from that which impedes such rendition, although that other impeding thing would, secondarily according to the law of nature, belong to him when not obligated.

The second reason is not probative, because it is manifest that not everyone who is bound to preserve the individual is bound to multiply the species.

31. And if you say that at any rate it is so licit for him that the fact it is licit for him cannot by man be taken away – this is true in a case of necessity, where the preservation of the species would depend on his act. But because many who are not slaves are intent on generation even in the Christian Law, therefore the act of the slave pertaining to this is not necessary for the preservation of the species, and therefore it is possible by some obligation to preclude him from it. Hence if an obligation to later acts impede prior acts which are not simply necessary for the procreation of offspring, then it does not seem that, because of such non-necessary and prior acts, he must set aside the posterior acts that belong to his master; for the procreation of offspring through him does not seem to be a necessary act simply, because the human race can be multiplied and offspring procreated through others. – There is a confirmation, that before matrimony he is bound to certain acts, as to *a*, *b*, *c*; if he contract matrimony, there will be an obligation to something that is impossible with the *b* or *c*; therefore that obligation cannot justly be made, because therein what is another's is, after the obligation is made, taken away.

b. Scotus' own Solution

32. I say, therefore, to this article [n.18] that a slave can, by the will of his master, contract matrimony; and if the burden of matrimony be something repugnant to the accustomed services, the master, by letting him contract, implicitly relaxes the accustomed services for him. And if the master afterward revoke the concession (as by totally preventing him from carnal union or sending him to far-off parts or detaining him in labors so that he cannot visit his spouse sometimes), he would commit mortal sin, and also he would manifestly have to be corrected by the Church.

33. A slave can also contract against his master's will insofar as he has some right over his own body; for he has not deprived himself of all liberty for all acts; and insofar

as his body is his, he can make exchange with another. But if the other, whether slave or free, wish to be content with the modest liberty or power for a modest use that he knows he [the master] can give, he can well make the judgment beforehand for himself, and the exchange stands. And he does have so much power over his body when he is not occupied in the service of his master, if he contract against the master's will; and then between such [contracting parties] there is only obligation to as much as they can give their bodies to, the master's justice being preserved. Hence the chapter that does allow slaves to contract, Gregory IX, *Decretals* IV tit.9 ch.1 'On Marriage of Slaves', says that a slave, if he have contracted against his master's will, has given what he had, and is bound to fulfill his services to the master, because he cannot give to another save what he had in his power; but he did not have power simply over his body; therefore etc.

34. And from this follows that the slave could contract matrimony with a free woman, provided however she know his condition and to him in such condition, because then she exchanges the power of body that she has for the little that the slave has of power over his own body. And he can make a contract with a slave girl, and then it seems that both concede what they can; and as they contract so are they bound, according to justice, to render the debt, namely insofar as those acts do not hinder them from their accustomed services.

35. But let it be that in such a case, when they contract matrimony against the will of the master, one of the masters sends his slave to Africa and the other sends his slave girl to France, is it really licit to do this?

36. I say that, because a case of matrimony is a favorable thing, the masters would have to be induced not to do this; but if they did do it, it is not apparent how, on the supposition of slavery, they would be acting there against justice; because this slave was before in the power of the master to send him thither, indeed to sell him; and that slave girl was likewise in the power of her master as to some other place; and they were not able through their own acts, without the will of their masters, make themselves freer, nor exempt themselves more from the right of their masters than they were before; therefore it is still licit.

37. But if a slave girl intend to contract with him whom she believes to be free and yet he is a slave, does she really contract?

It could be said that error of worse condition does impede the contract, because it prevents the exchanger from receiving as much as that for which they intend to make the exchange; but ignorance of better or equal condition does not impede, for the same reason.

II. To the Initial Arguments

38. To the first argument [n.3], according to this final reasoning [nn.32-33], it is plain that a slave does not belong to his master as to everything, because he has his own right as to eating and drinking and sleeping, and in brief for performing whatever acts whereby his due services are not subtracted from his master; therefore since at that time he could now and then use the carnal act, he can obligate himself to it insofar as he does have his own right.

39. And as to what the Philosopher says about that cursed servitude where the slave is like cattle, it can be understood that the slave belongs to his master as possession

or as money; but not because in his acts he is only led about and does not lead, for however much he is a slave, yet he is a man and so possessed of free choice. From which a great cruelty is apparent in the first bringing in of servitude, because it makes a man, free in choice and master of his own acts for virtuous action, into a brute as it were, as if not a user of free choice, nor able to act virtuously.

40. As to the second [n.4] the case is not alike, because he who makes profession in Religion submits himself totally to obedience to the superior of the Religion, and thereby he removes himself in totality from the accustomed services of his master. Not so he who contracts matrimony, but only in some acts, which can stand along with his rendering the due and accustomed services. And the Church does not want to prejudice the right of another, nor privilege anyone to the prejudice of another.

Question Two

Whether Age of Childhood Can Impede Matrimony

41. Second I ask whether the age of childhood can impede matrimony.

42. That it cannot:

Because anyone can accept a power before he can use it; therefore in a contract of matrimony, where there is a giving of use and an accepting of power, anyone can accept the power and give before he have power for the use – and so a child can. There is a confirmation, because the age of childhood does not impede the reception of Order (this was spoken of above in distinction 25 [n.75]), and yet he receives there the power to carry out the act of Order, which he cannot at that time carry out.

43. To the opposite:

Gregory IX, *Decretals* IV tit.15 ch.2, “A child, who is not able to render the debt, is not fit for marriage.”

44. Besides, those cannot contract matrimony who cannot transfer power over their body; but a child does not have power over his body; therefore, he cannot transfer or give it.

I. To the Question

45. I reply: as was said above, distinction 34 nn.9-10, impotence does simply prevent contracting, because in this contract there is a giving of the power of marriage, and he who does not have the power gives nothing.

46. This reason is probative about children for the time for which they are children. But because this impotence is not permanent, but future power is expected, therefore can a child now promise power for the future time at which he will have it; and this happens in betrothals, because a child can contract a betrothal but not matrimony.

47. If you say he can give it for the future – I reply: this is not to give but to promise.

48. And the response that is put there about defect of intention [d.34 n.12], whether this is adduced for the contract or for matrimony, is nothing as to *b* [sc. the power], because he can have discretion enough for due intention before he have the power, if intention have to be exchanged in this contract.

49. If the time of childhood be asked for, a time of fourteen years is regularly put for a male, twelve for a female; but, however, “malice sometimes makes up for age” [*Code of Justinian* II ch.32 n.3], and bodily complexion anticipates the regular age. And then, from the fact he has the power and sufficient discretion, he can contract, because he has what he ought to have, and sufficient consent and signs.

II. To the Initial Argument

50. To the argument and confirmation [n.42], I concede that someone can receive a power before he can use it, but he cannot give a power before he have it; and in this contract there is a giving of power.

Thirty Seventh Distinction

Single Question

Whether the Sacrament of Orders Impede Matrimony

1. “There are certain Orders etc.” [Lombard, *Sent.* IV d.37 ch.1 n.1].
2. About this thirty seventh distinction I ask whether Priestly Order impedes matrimony.
3. That it does not:
I Timothy 3.2, “He must be husband of one wife,” is said there about a bishop, and likewise about a deacon.
4. Again, Gratian, *Decretum*, p.1 cause 31 ch.14, “The priests of the Greeks join in matrimony;” but they have Holy Orders the same as the Latins.
5. Again, Orders are more opposed to matrimony than the reverse; but a married man can receive Holy Orders; therefore conversely. The minor is plain, because if a married man in minor Orders afterward receive Holy Orders, he really does receive them, if it is the intention of conferrer and receiver – because before the marriage is consummated he can enter Religion and be promoted to Holy Orders.
6. To the contrary:
 Gratian, *Decretum*, p.1 d.32 ch.13, “It has been agreed that bishops, priests, deacons, and subdeacons, according to prior institutes, abstain from wives,” that is, “not contract [matrimony]” as the gloss says *ibid.*
7. Again, Gratian, *Decretum*, p.1 d.27 ch.8, “We altogether forbid priests, deacons, subdeacons to contract matrimony.”
8. Again, Gratian, *Decretum*, p.1 d.28 ch.1, “Let bishops presume to make no one deacon save him who has promised to live chaste.”

I. To the Question

A. Opinion of Others Explicating the Positive Certain Conclusion

9. Here the conclusion is certain.
10. Some say [Bonaventure, Thomas Aquinas, Richard of Middleton, Alexander of Hales] that it is not licit to contract because a person who receives sacred Orders is

made simply illegitimate for contracting matrimony, and this either by the Church or immediately by Christ (though it not be read in Scripture).

11. But the second alternative does not seem probable, because they were not bound in the primitive Church, unless perhaps you say that it was never licit after reception of Holy Orders to contract matrimony, though sometimes it would be licit to use a matrimony already contracted, as now among the Greeks.

12. But what is the reason for this illegitimacy?

The response of some [Bonaventure, Thomas Aquinas, Richard of Middleton]: it is because of the vow annexed to Holy Orders (and how that vow make it illegitimate will be stated in the following distinction [d.38 nn.26-28]).

13. But against this: either the vow is annexed thus, that he who receives [Holy Orders] makes a vow; or only because the vow is as it were annexed by precept of the Church, because the receiver is bound so to keep it as if he vowed.

14. Not in the first way, because no one who vows vows something he does not want; but this man, receiving Holy Orders, has explicitly in his will not to be continent; therefore, he does not vow that continence.

15. If you say that he does vow in fact because, in receiving Orders, he does what the ancient Latin fathers vowed (and he is receiving such sign [Orders]) – on the contrary: no one is bound by a vow to a vow made by another, especially if he has a contrary vow. Or as follows: no one can vow a vow of continence according to the Latin Church for some other person; therefore, neither were the first fathers able to vow for him who is ordained later.

16. Again, the Orientals receive the same sign [Orders], and yet without vow of chastity.

17. If in the second way [n.13], then he who contracts [matrimony] does simply contract it. Proof: Gregory IX, *Decretals* IV tit.16 ch.2, ‘About matrimony contracted against the interdict of the Church’: “Although one ought not to pass over to second vows against the interdict of the Church, yet it is not acceptable that, for this reason, the sacrament of matrimony be dissolved; some penitence, however, should be imposed on them, because he did it against the Church’s prohibition.

18. Therefore, if the vow of continence is only annexed to Holy Orders by precept of the Church, it follows that the Church has not simply made it illegitimate to contract [matrimony]. For it is universally established in law that what prohibits something being done does not make it illegitimate; but there is need that it contain this sort of judgment: ‘if he has made a contract, let it be broken off’, or: ‘if they have been united, they are in no way to be tolerated’.

B. Scotus’ own Opinion

19. I say, therefore, that neither is it because of a vow properly speaking of continence annexed to Holy Orders, nor is it because of a vow annexed by precept of the Church commanding such a one not to contract, that this person cannot contract, but it is from the fact that the Church makes such person simply illegitimate.

20. And this indeed was established reasonably, whether it was had from Christ or not, because such person is deputed to a sacred ministry that requires purity of mind and

perspicuity of intellect and fervor of affection and bodily purity, to all which things continence disposes, and to the opposites of which frequency of the carnal act disposes.

21. Nor ought anyone to say that in this the Church is prejudicing him in his right, because the Church does not commonly compel any to reception of Holy Orders, and has made it sufficiently public that, after such Orders have been received, the receiver is unsuited for contracting; therefore if he comes voluntarily, he voluntarily incurs this unsuitability.

22. Hence from the fact that the Church prescribes continence to him when the bishop asks in the conferring of Orders “if chaste and pure etc.” [from the ordination rite in the old *Pontifical Books*] and gives him Orders in public, if he do not complain, he is from then on a person illegitimate for contracting matrimony, and nothing happens if he does contract. Statement of this illegitimacy is contained in Gratian, *Decretum*, p.1 d.27 ch.8 “For priests,” and Gregory IX, *Decretals* III tit.34 ch.10, ‘About vow etc.’ But if there could be found another reason on the part of the contract why he who is at the top as regard Holy Orders cannot contract, it would please me, but it would be difficult to find it.

II. To the Initial Arguments

23. To the first argument [n.3]: the remark of the Apostle, namely “husband of one wife etc.” is understood to be, “that is, not of several wives” – and not only then, about the present, but about the past, that is, that he not have had several, because then he would be a bigamist and irregular.

24. If, however, you say that it was also then licit to have one wife – this is true according to the custom of the primitive Church, when making use of a matrimony previously contracted; but it is not licit to contract then, even if he had had no wife before.

25. And by this is plain the answer to the following argument [n.4], for when the text says “they join in matrimony,” the gloss [*ad loc.*] expounds it, “that is, they use one already joined.”

26. To the next [n.5] I deny the likeness, because reception of Holy Orders requires only the due sex and the due minister and the due intention in receiver and minister, and therefore they are conferred on a married man, though he sin in receiving them. But matrimony requires suitability for contracting in the persons; through reception of Holy Orders he is wholly unsuitable for contracting that matrimony; hence, by the converse, the impediment of matrimony to Orders is not such as is the impediment of Orders to matrimony.

Thirty Eighth Distinction

Single Question

Whether a Vow of Continence Impedes Matrimony

1. “Now about a vow” [Lombard, *Sent.* IV d.38 ch.1].

2. Thirty eighth distinction. About this distinction I ask whether a vow of continence impede matrimony.

3. It seems that it does not: Gregory IX, *Decretals* IV tit.6 ch.6, “A simple vow before God binds no less than a solemn one;” but a simple vow does not impede matrimony, *ibid.*, ch.3, “We remember,” and ch.2.

4. You will say that it does not impede for this reason, that a simple vow cannot be proved but a solemn one can.

5. On the contrary, if a non-solemn vow were made in the presence of many, it could be proved, because it is public, and nevertheless then it would not simply impede the contracting; therefore, that is not the reason.

6. To the opposite:

Gregory IX, *Decretals* IV tit.6 ch.7, about a certain noble woman who made a vow of continence and kept it for two years, and afterwards contracted matrimony; after that she was compelled to return to her original state; therefore, a vow destroys a matrimony already contracted.

I. To the Question A. On Distinctions of Vow

7. I say that a vow of continence can be public or private; it can also be simple or solemn. And these distinctions are not the same, because both public and private vow can be simple or solemn; for a vow is not solemnized save in one of the ways that are set down in Boniface VIII *Decretals Book Six* III tit.15 ch.1.

8. Also Gregory IX, *Decretals* IV tit.6 ch.6, three modes are touched on in the gloss [*ibid.*], where is found the following: “A solemn vow is what is made when one of these solemnities intervenes, namely by reception of Orders, Gratian, *Decretum*, p.1 d.28 ch.8; again, by reception of sacred vestments, which should only be given to those who profess in the presence of witnesses by whom it could be proved (if he denied it), Gregory IX, *Decretals* III tit.31 ch.23; in a third way when one vow oneself, by profession, to some Religion or Abbot or Abbess [*ibid.*]. And in order that one not be able to deny it, let there be a public writing therefrom, Gratian, *Decretum*, p.2 cause 27 q.1 ch.36, in which writing let one profess that one want to live religiously. But otherwise, when a vow of continence has been made, even in the presence of many, it is said to be simple, as if not clothed with or instituted by any solemnity. This the gloss.

9. In brief these modes that are here set down, and those that are set down in the other chapter [n.7], are not matter of law save two, namely by reception of Holy Orders and by a true or presumed vow of Religion. It is presumed, indeed, when one receives the habit of the professed, when there is a distinction between the habit of novices and of the professed; and also when there is a stay beyond a year in a monastery, without protestation of not professing.

10. And the vow is called solemn, not because it is public, but because it has something annexed in it, so that it have to come into public notice, and by which the one who vows is put under the power of another man. And so it is precisely in the reception of Holy Orders and profession of Religion, because by reception of Holy Orders the receiver is made a minister of the Church and is under the power of the bishop differently than before, because the bishop can compel him to keep the clerical state and to avoid the things that are repugnant to the clerical state. Hence if he receive the aforesaid Orders in secret, it would still be solemn, for the reason already stated.

11. Thus too, profession of Religion, made in the hands of him who can receive it, has in itself something annexed whence it have to come to public notice, because such a person has to dismiss secular life and live life with others in the cloister of his order; and therefore it is solemn even if it were done in secret.

B. Solution of the Question

12. From this distinction of vow I reply to the question, because whatever the opinions say which the gloss on Gregory IX, *Decretals* IV tit.6 ch.6 recites, this opinion is the common one, that a simple vow does not simply impede, as is found there in the text: “although a simple vow impede the contracting of matrimony, yet it does not destroy a matrimony already contracted,” and only this do we say it simply impedes. But a solemn vow does impede simply, as is found there, *ibid.*, ch.7.

13. Reason assigned for the difference [Richard of Middleton, *Sent.* IV d.38 princ.7]:

One vow manifest and one not manifest, one proved and one not proved.

14. But this is nothing because, as was said [n.11], a simple vow, even if public and proved, does not destroy [an existing matrimony].

15. Another reason [Richard of Middleton, *ibid.*], because by a solemn vow one gives to him to whom one vows a right over oneself as to the act that follows the vow, and so he who solemnly vows continence gives to him, in whose hand he vows, right over himself as to making it to be observed; therefore he cannot give a right over himself, or his own [body], for the opposite act, because he does not now have that right.

16. This reason is probable.

17. However the objection may be made that he who vows with a private vow gives his body to God as to the act of the vow; therefore, he cannot give his body to his spouse for the contrary act; for one no less transfers from oneself what one vows to God immediately than one transfers what one gives to him through the medium or a human vicar.

18. But it will be said that God did not thus want power over the body to be given immediately to him, so that the following giving to a spouse would be simply null; but he wanted it thus to be about a giving made to himself through mediation of man.

19. But where does this come from? Scripture does not seem to contain this and that will of God.

20. Another reason [Richard of Middleton, *ibid.*], because he who makes a solemn vow gives himself in possession to him to whom he vows; he who vows simply does not, but as it were makes a promise.

21. But this is worth less than the second [n.15], because everything intrinsic to a vow as it regards an act of will whereby one obligates oneself by vowing, and transfers ownership of oneself to another (because it is through one’s own will that one is owner and transfers ownership) – everything, I say, is equal on this side and on that; so there is a giving here no more than there, nor a promise there more than here.

22. If a fourth reason be set down [Richard of Middleton *ibid.*], that transgression of a solemn vow is scandalous, and therefore one is bound to its observance, not only before God and oneself, but before the whole Church; the transgression of a private vow is not thus scandalous.

23. This proves nothing save that the sin here is graver than there, but the question is not about this; for not always does a graver sin take away the power to contract [matrimony].

24. Similarly, if the question were about the sin, it would seem illicit to contract matrimony after a private vow, because he simply sins mortally in contracting with the intention of consenting and consummating the carnal act; and therefore he cannot licitly contract, save with the intention of not consenting and consequently of entering Religion.

25. Also when he do consummate, he seems to sin mortally, because against his vow, although according to some [Richard of Middleton] he does not, after the first act, sin mortally in rendering it, because he is now obligated to it by a stronger bond. However, he does sin mortally in asking for it, because he has no right to this, since he has renounced such right in his vow.

26. This reason too about scandal is not compelling, because a public vow, though not a solemn one, induces scandal if the one who makes the vow ultimately transgresses it.

27. A reason, then, to be set down for this can be as follows, namely that the Church has delegitimized him who so vows; and this was reasonable because he placed himself in the power of the Church as to the opposite of that for which the contract of matrimony is. But the Church does not delegitimize him who vows privately, because he did not thus put himself in the Church's power, but because he put himself in the hand of God to keep the opposite, and he has consulted with his soul before God not to transgress it, for the Church has left him with divine judgment.

28. And if you ask why the Church has not delegitimized him, since he sins mortally by contracting matrimony save with the intention of not consummating it? I reply, the Church does not punish all evils, nor does she so prohibit them that for this reason she impose ecclesiastical penalties; and perhaps a greater evil would follow from the delegitimizing of those who vow with a simple vow than from the non-delegitimizing of them, because more frequent guilt would follow there in the carnal act, if they not wish to be continent, as is too probable about many people, unless they have their own wives whom, being content with (even if not in asking yet in rendering), they may licitly use.

29. Now the foundation for this, that it would be licit for such a one to contract with the intention of not consummating, is obtained from Christ, because Christ preferred the state of virginity and of Religion to matrimony, as is plain in the case of John; and, from his example, Macarius and Alexius and many others dismissed their wives without knowing them [sc. carnally] and adhered to Christ [d.31 n.30]. The Church, therefore, indeed Christ, rendered that state more excellent and the other inferior. And the Church regards Religion and Sacred Orders to be the same as regards the state of continence, or as regard this preeminence, because, by statute of the Church, both states delegitimize people for such contract.

II. To the Initial Argument

30. As to the argument [nn.3-5] the answer is plain, because obligation before God makes it a sin or not a sin; but on this account does it delegitimize for contracting matrimony.

Thirty Ninth Distinction

Question One

Whether Disparity of Cult Impede Matrimony

1. "After this about disparate cult" [Lombard, *Sent.* IV d.39 ch.1 n.1].
2. About this thirty ninth distinction I ask whether disparate cult impede matrimony.
3. That it does not:
Genesis 41.45 Joseph accepted the daughter of Potiphar, although however she was a unbeliever and he of a believer.
4. Again, *Exodus* 2..21, 3.25, Moses accepted the daughter of Jethro, an unbeliever, which is proved from this that when he wanted to return to Egypt Moses circumcised his son, whence she says, "you are a spouse of blood to me."
5. Further, in *Esther* 2.18 is contained that Esther married Ahasuerus, who was not a Jew.
6. Again, *III Kings* [*I Kings*] 11.1, Solomon accepted the daughter of Pharaoh, women of the Moabites, Ammonites, Idumeans, Sidonians, and Hittites.
7. Further, *I Corinthians* 7.12, "If any brother have an unbelieving wife, and she consent to live with him, let him not dismiss her;" therefore disparate cult does not destroy a marriage already contracted, nor does it per se contradict matrimony, because then the advice of the Apostle, that the brother stay with the unbeliever, would be counsel of fornication.
8. To the opposite:
Ezra 9 and 10, where a separation from foreign wives is made.
9. Again, *II Corinthians* 6.14-15, "Do not be yoked with unbelievers; what participation is there of light with darkness, or what part is there of the believer with an unbeliever?"
10. Again, Gratian, *Decretum*, p.2 cause 28 q.1 ch.9, "Let marriages remain united only of the same religion and faith."
11. And *ibid.* ch.15, "Take care, only a baptized woman is to be taken in marriage, because baptism is the first sacrament."
12. Again *Deuteronomy* 7.2-4 [Richard of Middleton, *Sent.* IV princ.1 q.1: "As is contained in *Deuteronomy* 7, the Lord commanded the sons of Israel not to join in marriage with Amorites, Canaanites, Perizzites, Hivites, and Jebusites"].

I. To the Question

13. Here two things are to be looked at: first how an unbeliever can contract or have a marriage, second how a believer can with an unbeliever.

A. How an Unbeliever Can Contract Marriage

1. The Opinion of Some and Rejection of It

14. About the first it is argued [Richard of Middleton, *ad loc.*] that an unbeliever cannot, because there cannot be the good of faith there on the unbeliever's part, because he is not faithful to God; therefore not to his neighbor either.

15. Second because on his part there is not the good of offspring because, as far as is in him, he would educate his offspring in his own rite, and so irreligiously.

16. Third because there is not the good of the sacrament there [cf. d.31 nn.17-18], because an unbeliever, from the fact he does not have the first sacrament, is not capable of the others, as is proved in Gregory IX, *Decretals* III tit.43 ch.1 [with glosses].

17. These arguments do not move [me].

The first one does not because faith, that is, faithfulness, can be preserved without the faith by which there is belief in God, and this can unbelievers keep with unbelievers and conversely, as is obtained from Augustine, *Epistle 47 to Publicola* n.2. For this does not follow: he does not want to keep the faith with God by which the Christians are called believers, therefore he does not want to keep faith, that is, faithfulness, with his neighbor. First because this does not follow: he does not want to keep what is more perfect, therefore he does not want to keep what is less perfect; second too, because he cannot attain by natural reason to observance of this faith as he can of that.

18. The second reason does not move, because an unbeliever wants to educate offspring, insofar as he can know by natural reason that offspring are to be educated; therefore you cannot get more [from this reason] save that there is not the perfect good of offspring there, namely, that offspring be educated in the cult of God; and no wonder, because the educator does not know that offspring are to be thus educated.

19. The third reason too does not move, because to no matrimonial contracts preceding the Gospel Law was annexed a sacrament properly speaking; nor would it have been annexed to the contract in the state of innocence, if man had always remained in it, as was said above d.26 nn.51-58; nor yet would anything then have been lacking of the perfection that belongs to the contract of matrimony.

20. A contract, then, of matrimony could exist between unbelievers, though not the sacrament of matrimony, because this sacrament belongs only to the New Law and has its efficacy from the passion of Christ, as do also the other sacraments of the New Law. Hence if Christ had not suffered this sacrament would not have existed, even in the state of innocence if Adam had not fallen; because although God could have conferred grace on the matrimony and the contract in the state of innocence, and have made a sacrament of such contract, yet it would not have been a sacrament as it now is, because now it has efficacy from the passion of Christ, which then it would not have had.

21. Also, these reasons [nn.14-16], if they were valid, would prove that there could not be a contract with heretics, and yet it is not denied that a Catholic can contract with a heretic.

2. Doubts and their Solution

22. But there are two doubts that cause difficulty.

One, how can an unbeliever give his body to another, since he does not do this relying on the approval of the Divine Law because he does not know it, and no one can simply give, or at least not licitly give, save in virtue of the approval of the superior lord?

23. A second doubt is: since matrimony essentially includes indissolubility, how does an unbeliever contract matrimony since, however, it is dissoluble afterwards? For if one of the spouses be converted to the faith without the other, he can depart. And this reason the Master touches on in the text [Lombard, *Sent.* IV d.39 ch.5 nn.3-4, ch.6 n.2], saying that a matrimony of this sort is not ratified though it is legitimate.

24. But to the first of these [n.22] it can be said that God, after the fall, licensed everyone generally for such exchange, not only because of the first end, namely because of the duty, but also because of the second, namely as a remedy [cf. d.32 n.8, d.26 n.77]. And then those who use this exchange, although they do not attend to what the exchange has licensed (because they do not know the Law of God), do not sin; just as in the case of other licenses, though one may not know that one has been licensed, yet provided one not know that what one is doing is illicit, one does not sin. It is probable too that, from the beginning, by virtue of the divine license or precept, the use of contracting became fixed even among unbelievers, who received it in accord with a certain custom derived from their fathers. And though the first unbelievers did not want to follow the fathers in the faith which is in God, yet they did imitate them in this [sc. matrimonial contracts]; and no wonder, because this is of the law of nature secondarily, as was said above [d.26 nn.13, 31]; and so it was very consonant with the minds of individuals. Let it also be that they would not have transferred [the contract] licitly in any way, yet they would have transferred it, by the fact that the superior Lord conceded the transferring of it to everyone, not only to believers but also unbelievers. Thus, therefore, on the part of the superior Lord, the transfer was perhaps licit, and at least some transfer was – and on the side of the contracting parties it was firm and just, though not complete, yet not unjust, if they observed the conditions that natural reason dictated were to be observed.

25. To the second doubt [n.23]: the matrimony was ratified, unless anywhere a stronger bond were to supervene, with which bond this matrimony could not stand. Of this sort is a new obligation to God through reception of the faith, when the other spouse not want to remain without impediment to the faith of the former, to which faith one is more bound than to the conjugal bond. The matrimony, then, while the same conditions in the extremes remained, was ratified; but it was not ratified for the time when a stronger bond supervened, to which the observance of this [matrimonial] bond would be repugnant.

B. How a Believer Could Contract a Marriage with an Unbeliever

26. About the second article [n.13].

It is one thing for a matrimony to exist between certain persons, or for a contract to be made simply and absolutely, and another thing for it to exist licitly and honestly.

27. In the first way it is necessary to say that between a believer and an unbeliever there can be a matrimony, and also in the second way.

28. Both are proved from the saying of the Apostle [*I Corinthians* 7.12] that a believing man may not dismiss an unbelieving wife who agrees to live with him. For if there were not a matrimony, the Apostle would be persuading to fornication; likewise, if this were not done licitly and honestly, the Apostles would not counsel it.

29. In this way, then, is it plain how there can be a matrimony between a believer and an unbeliever. And the five reasons brought forward for the first article [nn.14-16,

22-23] can be brought forward against it; but their solution is plain above [nn.17-19, 24-25].

30. Can it really be contracted then [sc. a matrimony between believer and unbeliever]?

31. I reply that it can, as far as is of divine right, because from that right is no more found that the contract be null than that an obligation from a prior contract be null, because (without supposing a new impediment) he who can belong to another can give himself to another.

31. But by the positive law of the Church simply it cannot, because the Church delegitimizes a believer, not simply, but in respect of an unbeliever, as is plain in the authority brought forward for the opposite in Gratian, *Decretum*, p.2 cause 28 [n.10]. And the Church has ordained this rationally, because this cannot be done honorably or fittingly.

And for this are some of the reasons brought valid that were forward for the first article. For it is not honorable that a believer contract with someone where the complete good of the offspring, which is education to the true cult of God, is lacking [n.18]; nor is it honorable that a believer contract with a matrimonial contract to which the sacrament of the Christian faith is not annexed [n.17]; nor is it honorable that a believer contract matrimony where there not be the good of the sacrament, that is, indissolubility, because the marriage of Christians is of a nature to have this good [n.19].

32. Nor yet does the Church delegitimize such an unbelieving person because he is not in the bosom of the Church, but the fault is the cause of delegitimization, not the person in whom is the fault. But in the first person, who is in the bosom of the Church, there is a delegitimization from contracting with an unbeliever. Hence every believer is delegitimate with respect to any unbeliever.

33. But if you ask why then does the Apostle [n.7] urge that a matrimony contracted between unbelievers is to be observed after the conversion of one of them (for if it be honorably kept because of some good end previously contracted, then it could honestly be contracted for the same end)? – I reply: the cause of the Apostle is plain there; “the unbelieving man,” he says, “will be saved by the believing woman.” Therefore, to keep a matrimony previously contracted is an occasion for bringing an unbelieving spouse to a believing one. Hence evidently, when that cause ceases, they ought not even to remain together, as that if he does not consent to live with her who has been converted, or not without injury to the Creator, namely by blaspheming or inciting the converted one to unbelief; for so singular a familiarity with someone of a contrary sect is to be avoided, save for a greater good.

34. To the issue at hand: to contract anew with an unbeliever is not a probable occasion for expecting so great a good, namely the unbeliever’s conversion, because someone who loves marriage much would do many and great things to reach it which, once the object desired is attained, he would not be going to do; and therefore, if this person does not want at the beginning to be converted so as to be able to have a marriage with a Christian woman, it is not probable that she would afterwards gain him, but rather the reverse, that he would seem to draw her away. And therefore does the reason for so much familiarity with an unbeliever cease, and the reason for fleeing that familiarity remain. And therefore did the same Apostle, who advised the converted man to remain

with a non-converted woman, dissuade a believer from contracting with an unbeliever (as was argued for the opposite [n.9]).

II. To the Initial Arguments

35. To the arguments

I reply to the first two authorities [nn.3-4]: this positive law delegitimizing believer with respect to unbeliever did not then exist.

36. If you argue that nevertheless the natural reason then existed that is now the reason for delegitimizing – I reply: in the cases that the argument is about [n.34], it was perhaps probable that the believer would win over the unbeliever, or there was a necessity to flee something more unacceptable, with sure confidence in divine aid that the believer would not be subverted by the unbeliever; and so would it be licit today had not delegitimization by the Church been added on. Hence it is not necessary for an ordinance of the Church to be founded on necessary natural reason, but enough that it is founded on probable natural reason.

37. To the next [n.5]: union with foreign women was not prohibited in the time of the Mosaic Law save with the Canaanites, because God wanted that people to be totally exterminated, and therefore Esther did not illicitly marry Ahasuerus.

38. To the point about Solomon [n.6], I concede that he, as very bad and very ungrateful to God, not only sinned in that he accepted foreign women against the Law, even from peoples specifically prohibited in the Law, but also in the multitude of women he accepted; since indeed he had according to one text [*III Kings (I Kings)* 11.3] seventy wives as queens [other texts have seven hundred], and three hundred concubines, although however the Law specifically said about the king in *Deuteronomy* 17.17, “He will not have many wives who may seduce his mind;” which Moses perhaps specifically said because of the king’s [?or Solomon’s] foreseen malice so that, if he not be held in check, he would at least be confounded, so that others not imitate him. And what is worse, Solomon was joined with them in most ardent love, to such an extent that he made idols or temples for them for worshipping their own gods. Hence not without cause did Moses add there, “who may seduce his mind.” And all these things are made worse by Solomon’s singular ingratitude for the eminent wisdom at once conceded to him by God, so that this authority [n.6] requires no response save detestation. For I believe that if all his wives had been Jews he would have sinned mortally.

39. To the final one [n.7] the answer is plain from the second article of the solution [nn.26-34], how it is licit to keep a matrimony contracted with an unbeliever, not however to contract one, because there is not the same reason on both sides.

Fortieth Distinction

Single Question

Whether Physical Kinship Impede Matrimony

1. “Now it remains to speak of kinship etc.” [Lombard, *Sent.* IV d.40 ch.1 n.1].

2. Fortieth distinction. About this fortieth distinction I ask whether physical kinship impede matrimony.

3. That it does not:

Because matrimony seems most strictly to have been keep and to need to have been keep in the law of nature. But Cain contracted with his sister [*Genesis* 4.17], and would have contracted with her also in the state of innocence, because with someone and not with his mother, from the precept “A man will leave father and mother” [*Genesis* 2.24], namely lest union be made with them matrimonially; and there was no one else save his sister, because a daughter of Adam; therefore etc.

4. Again, friendship strengthens a house, therefore it confers strength on a marriage; but those of the same blood are attached to each other with a more special friendship than with others; therefore etc.

5. Again, it is not against any good of matrimony – this is plain from running through them; therefore etc.

6. To the opposite:

In *Leviticus* 18.6-12 many persons are excluded because of consanguinity.

7. Again the Master in the text [*ibid.*, ch.1 n.2-ch.3 n.3] and Gregory IX, *Decretals* IV tit.14 ch.8, “One should not.”

I. To the Question

8. Here I set down certain things in advance: first descriptions of certain names, second the question needs to be solved.

A. Descriptions of Certain Names

9. As to the first, let this be the first description: consanguinity is a tie between persons descending by propagation from the same physical person.

10. Second: a person from whom several descend by physical propagation is called a stem.

11. Third: a line of consanguinity is an ordered collection of persons joined by consanguinity.

12. Fourth: this line is divided into ascending and descending and transverse [lateral] lines. A descending line goes from the propagating person to the propagated persons; an ascending line conversely goes from a propagated person to those from whom he descended. And although there is the same line for ascenders as for descenders, like the road from Athens to Thebes and conversely [*Ord.* d.27 n.4; d.13 n.68], yet they are different in ascending, as father, grandfather, great grandfather, etc., and different in descending, as son, grandson etc. Transverse is when both persons descend from the same person but neither from the other.

13. Fifth: a degree is a determinate closeness of person to person or a closeness coming from physical propagation. And a degree properly is found in an ascending and descending line, because there properly is there superior and inferior as to position; but it is less proper in a transverse line. However, by taking degree generally, although he who is close to another in transverse line is not properly inferior to him (for he does not descend from him), yet he is under someone else who is of the same position or degree as

he; and so in a transverse line degrees are spoken of insofar as this one is under someone who is of the same position as himself, namely when in a like degree this one is in this line in some sort of degree and the other in that one.

14. First rule: in a straight line there are as many degrees as there are persons, minus one. The proof of this is that there are as many degrees as there are propagations, since a degree is a relation or closeness between person and person; and the persons are one more than the propagations, because the person presupposed to the whole collection is not propagated in it. Hence if Enoch was the seventh from Adam [*Genesis* 5.1-18], there are only six generations from Adam to Enoch, because Adam is set down as ungenerated.

15. Second rule: in a transverse line the degrees are computed according to greater remoteness from the stem, Gregory IX, *Decretals* IV tit.14 ch.9, ‘On consanguinity’, “According to the approved rule, by what number of degrees a man who is from the stem is more remote in distance from the stem, by that number is he also remote from anyone else in another descending line.” And the reason for this is that persons who are in a transverse line do not have closeness with each other save because they are in the stem or back to the stem; and therefore they cannot be more closely joined to each other than the more remote of them may be united to the stem.

16. As to the issue at hand there is also a rule that a degree in a descending line is stronger than in a transverse line. And the natural reason is that offspring are more joined to the parent than offspring to offspring; and therefore it is more against the law of nature to be conjoined in the first degree in a direct line than in a transverse line; for that conjunction was always against matrimony, and more the conjunction of son with mother than of father with daughter, because there is a greater irreverence.

17. Hence in *History of Animals* 9.47.631a1-7 Aristotle says that, after a blindfolded horse knew its mother and later discovered the fact, it threw itself down headlong; and it is read elsewhere about an elephant [*ibid.* 630b31-631a1, cited in Richard of Middleton, *Sent.* IV d.40 q.2], that was engineered into knowing its mother, and afterwards, when it perceived the fact, killed the one who engineered it. From which it is apparent that this is also against the law of nature, as it belongs to the brutes; hence a degree descending by propagation, and most especially of mother to son, impedes matrimony most of all.

B. Solution of the Question

18. About the second article [n.8] I say that in every law some closeness has been an impediment.

In the law of nature, as was said [n.16], only the closeness in the first degree in the descending line, from the word of Adam [*Genesis* 2.24], “a man will leave father and mother” (supply: as to conjugal union). Nor is this understood only of the immediate father, but of anyone in the direct line, so that if Adam were alive today, he could not marry another wife [sc. in the direct line]; perhaps too after the multiplication of the human race, if it had stood in its innocence, there would have been prohibition of certain further degrees; but at the beginning it could not be so, because there were no other women than sisters.

19. In the Mosaic Law there was prohibition as to certain further degrees, as is plain in *Leviticus* 18.8-18.

20. And in the Gospel Law there was at some time prohibition up to the seventh degree, as is plain from the Master in the text [Lombard, *Sent.* IV d.40 ch.1 n.2], but under Innocent III it was restricted to the fourth degree inclusively, Gregory IX, *Decretals* IV tit.14 ch.8, 'Of consanguinity', "Let the prohibition of conjugal union for the rest not exceed the fourth degree of consanguinity;" and it assigns the reason, "since in the further degrees it cannot now be observed without grave cost;" and afterwards it approves and ratifies it for the future, "Since, therefore," it says, "prohibition of conjugal union is already extended up to the fourth degree (namely by us here in the Council [Lateran Council IV, 1215]," and later, "thus do we wish it to be perpetual, notwithstanding the Constitutions published some time before this, whether by others or by us." It also revokes, in the same chapter, all "prohibitions about contracting marriage in the second and third degree of affinity, and about offspring got from second nuptials not being permitted to unite with a relative of the first father – which prohibitions brought in many difficulties and," as it says, "sometimes the peril of souls."

21. But whence is it that such or such closeness impedes matrimony simply?

I reply: in the Gospel Law no other prohibition about this from Christ is found beyond the prohibition of the law of nature; nor did Christ explicitly confirm the prohibition about this made in the Mosaic Law. But the Church has sometimes delegitimized persons in remoter degrees, but later in the fourth degree; and the reason for delegitimization [sc. up to the fourth degree and not further] was for preserving peace and friendship in the Church; for up to the fourth degree there does remain friendship by reason of consanguinity, and from then on, as it were, people begin to be extraneous and to weaken in love; and therefore was it fitting to call back the weakening friendship by another bond, namely the conjugal bond.

II. To the Initial Arguments

22. To the first argument [n.3] it is plain that that was necessary at the beginning of the human race, namely that a contract be made in the first degree, yet in transverse line, not in direct line.

23. To the second [n.4] I say that the friendship of those of the same blood is different from the friendship of spouses. The friendship of those of the same blood, especially in the direct line, is one of reverence, as to descendants in respect of superiors, and in respect of a certain rule and presidency. Conversely, the friendship of spouses is without such reverence, rather with irreverence, so much so that he who more sincerely loves his spouse more hates that reverence in her, not only from himself but from anyone else; and therefore I concede that friendship does dispose to marriage, but friendship of a different idea altogether from that which is between those of the same blood.¹¹⁹

¹¹⁹ Scotus gives no response to the third argument [n.5], perhaps because it is in effect answered by the answer to the second argument [n.23], that the friendship of those of the same blood is not the friendship required for the good of matrimony that is faith or fidelity. Or, it could be said that another good of matrimony, the good of offspring, is harmed if the parents are close relatives, because of inbreeding, whose effects must have been known in Scotus' day (they can be very obvious, in other animals as well as humans), though not the biological causes in the genes. In the case of Adam and Eve, however, on the supposition (which Scotus of course makes) that they were the first humans and were made perfect,

Forty First Distinction

Single Question

Whether Affinity Impedes Matrimony

1. “Now about affinity” [Lombard, *Sent.* IV d.41 ch.1 n.1].
2. The forty first distinction. About this forty first distinction I ask whether affinity impede matrimony.
3. That it does not.
An effect is not repugnant to its cause; but affinity is an effect of matrimony, therefore it is not repugnant to matrimony.
4. Again, then incest with a sister of one’s wife would impede conjugal union with one’s own wife, because by that incest one attains affinity with one’s wife; the consequent is false, as is contained in Gregory IX, *Decretals* IV tit.14 ch.8.
5. Or as follows: affinity would impede if it then dissolved a contracted matrimony, as it does impede contracting one; but this is false, for someone who commits incest in knowing his wife’s sister is not to be separated from his wife; therefore etc.
6. To the opposite:
Gratian, *Decretum*, p.2 cause 35 q.2 and 3, ch.3, ‘On close relatives’.

I. To the Question

A. On Notion, Degrees, and Lines of Affinity

7. Here the idea of affinity can be set down as this: a certain tie [bond] between person and person contracted from carnal union with a person consanguineous with a second. For it is always the case that, because a person carnally united is consanguineous with someone, then she, with whom he is carnally united, is made affinal with that someone and conversely. And there is as it were an exposition of the word ‘affinal’, that it is an ‘accession to the confines of’; for he who is joined carnally with someone of a certain consanguinity accedes, by this, to the confines of that consanguinity, and therefore he has a tie of access to everyone of that consanguinity.

8. To this tie degrees and lines can be assigned (as before in the case of consanguinity [n.d.40 nn.9-13]), and for all these there is one brief rule: by whatever degree of consanguinity someone is distant from someone else, by that whole degree of affinity is she, who is carnally known by the former, distant from the same person. I do not say ‘wife’, because this is not required; for not only [by carnal union] with a wife but with a concubine or prostitute is affinity with those consanguineous with that very man contracted (indeed [contracted] in incest [too]).

9. Nor is it sufficient for affinity properly speaking that she be wife, but carnal mingling is required, as is said in Gratian, *Decretum*, p.2 cause 35 q.10 ch.1, “Of fraternity,” where it is said about spouses that “if they have been one flesh, it cannot be

because made directly by God, there would be no defects in the gene pool, which would have taken time to emerge. So Cain and others of Adam’s and Eve’s children could have children together without fear of such defects.

that someone is closely related to one of them without this pertaining to the other of them;" wherein is understood that affinity is not contracted save by means of carnal mingling.

10. However, by extending affinity, it is said that it is contracted not only with a wife known carnally but also with a wife not known, where (supply) there is a matrimony but not a consummated one and, what is more, with her with whom betrothals precisely are contracted.

11. And here is to be noted that this tie, contracted with someone because of her union with someone consanguineous (and this either through matrimonial union or consent of betrothals), is commonly called the justice of public honorableness.

12. And this affinity is closeness of relationship arising from betrothals, getting its strength from institution of the Church, because of public honorableness. And about this impediment there is a rule that no one consanguineous with a husband can marry or have his wife, nor can someone consanguineous with his wife have him as husband.

B. Solution of the Question

13. To the question, then, I say that affinity simply impedes matrimony.

14. And the reason is only the statute of the Church delegitimizing the affinal, and it impedes in the same degree in which there is consanguinity; and this point indeed about affinity properly speaking is plain in Gregory IX, *Decretals* IV tit.14 ch.8, 'On consanguinity and affinity'.

15. Likewise about affinity commonly and extensively speaking, which is called the justice of public honorableness [Gloss on *Decretals*, Thomas Aquinas, Richard of Middleton *ad loc.*]: Gregory IX, *ibid.*, ch.1, "Equally, as the canons say, must one abstain from those consanguineous and proper to the wife." About this justice of public honorableness are many things found also in Gregory IX, *ibid.*, chs.1-9 or Boniface VIII *Decretals Book Six* IV tit.1 ch.1, that from espousals which are null by the law itself (or in whatever way), while they are not null by defect of consent, this impediment to matrimony arises; and it impedes contracting matrimony and destroys one already contracted.

II. To the Initial Arguments

16. To the first argument [n.3] I say that affinity is the effect of a certain preceding matrimony, and therefore it does not impede that matrimony; but it does impede another one between those between whom affinity has through matrimony been contracted.

17. To the second [n.4, and effectively the third, n.5] I say that affinity contracted through carnal union with a sister before matrimony would simply impede matrimony for the future; but, after matrimony has been contracted, the supervening affinity does not destroy it, because this would be to the injury and the prejudice of the wife, who did not demerit anything. And the reason is that many things impede what should be done that do not destroy that which has already been done. However, an incestuous man is deprived of the right of asking [sc. for the marriage debt] because of that crime; and after the death of his wife let him remain without a wife, as is said in the same place [Gregory IX,

Decretals IV tit.14 ch.8]; for an incestuous man cannot contract after the death of his wife without mortal sin. But if he do contract, it is done and it is valid by the law of matrimony.

Forty Second Distinction

Single Question

Whether Spiritual Kinship Impede Matrimony

1. "About the distinction of parental degrees" [Lombard, *Sent.* IV d.42 ch.1 n.1].
2. Forty second distinction. About this forty second distinction I ask whether spiritual kinship impede matrimony.

3. That it does not:

Gregory IX, *Decretals* IV tit.11 ch.2, 'On spiritual kinship': "If a woman or a man have ignorantly accepted [a spouse directly] from the sacred font [of baptism] etc." and there follows: "It seems to us that whether they did it from ignorance or malice they are not to be separated from each other, nor ought one of them to take away from the other the debt [of matrimony]."

4. To the opposite:

Ibid.: "We command that, insofar as it has been established that the woman of the aforesaid man had raised the daughter from the sacred [of baptism] before he has betrothed her to be his wife, you are to celebrate [make public] a divorce between them."

I. About Spiritual and Legal Kinship

5. I reply:

Spiritual kinship is a certain bond contracted, or a certain close kinship contracted, from dispensing or conferring of the sacraments, and especially of baptism and confirmation because, as is contained in Boniface VIII *Decretals Book Six* IV tit.3 ch.3, 'Of spiritual kinship', the last chapter, "From the giving of the other sacraments (supply: other than baptism and confirmation) a spiritual kinship in no way arises that may impede or dissolve matrimony." And about this and its degrees diffuse treatment is found in Boniface VIII *Decretals Book Six* IV tit.3 ch.3.

6. As to the question asked, I say that if the kinship precede the matrimony, it simply impedes it, as is plain in the chapter alleged for the opposite [n.4, Gregory IX, *Decretals* IV tit.11 ch.2]. But if it follow the matrimony, it does not destroy it, as is plain in the alleged chapter [*ibid.* ch.1]. And the reason for the first is only the statute of the Church delegitimizing the persons in that case.

7. Connected thereto is also this to be noted, that legal kinship impedes matrimony, discussion of which is contained in Gregory IX, *Decretals* IV tit.12 ch.1, 'On legal kinship', "If in any way she has by adoption begun to be my sister, as long as the adoption between me and her remains, nuptials cannot stand." And the gloss on that chapter [of the *Decretals*] says what is true, whether legal kinship be contracted through

arrogation¹²⁰ or through adoption: “We are said to arrogate him who is possessed of his own right and who passes through arrogation into our power. And arrogation happens by authority of the prince, but adoption through any magistrate, nor does the one adopted pass into the power of the one adopting, but remains in the power of his father. And both the adopted and the arrogated are called adoptive sons; and between adoptive and natural or legitimate brothers [siblings] matrimony is impeded as long as the adoption lasts, as is here said [in the *Decretals*].”

8. The authorities pro and con [nn.3-4, 6] are solved, because the one is speaking of kinship that precedes matrimony, the other of kinship that follows it.

II. About Impediments that Simply Impede Matrimony

9. From these points I bring together the impediments again, those to be sure that simply impede matrimony [cf. d.36 nn.6-17]. And I call an impediment simply one after which, if matrimony has been attempted, nothing is done (and I call an impediment not simply any prohibition because of which matrimony is illicitly done, but if it is done it is not invalid).

10. Now impediments simply are taken either from the nature of such contract or from a superadded statute of the Church.

A. About Such Impediments from the Nature of the Contract

11. If in the first way, then either from the conditions necessary for the contract, or from the conditions necessary on the side of the contracting parties. On the part of the contract, because its nature is that it is a giving of power over body for power over body of the contracting parties, and in perpetuity. Therefore what impedes such voluntary giving impedes the nature of this contract.

12. Now of such sort is, on the part of the will, involuntariness from fear that can befall a constant man, which fear comes from sufficient certitude of an impending evil that one should, according to right reason, more avoid than not contracting with this woman. Such is the evil of death, of major mutilation, of perpetual imprisonment, of servitude, of defilement, and the like. And this impediment is spoken of in d.29 [nn.27-31].

13. And involuntariness from defect of preceding knowledge (since indeed knowledge of the thing willed is required for the voluntary, *Ethics* 3.3.1111a22-24) is either from total lack of intellectual knowledge, or with some sort of knowledge but defective knowledge, because erroneous.

If in the first way, such madness impedes the voluntary while it lasts, and so impedes this contract. If however he who is mad undergoes lucid intervals, he can, during the time of a lucid interval, contract [matrimony] and, if he has contracted it, he can in the

¹²⁰ *Digest of Justinian* I ch.7, “The name of adoption indeed is general, and it is divided into two kinds, one of which is likewise called adoption, the other arrogation [full adoption]. Sons of families are adopted, those who are possessed of their own right [legally adult] are arrogated... For general adoption happens in two ways: either by the authority of the prince or by command of the magistrate. By authority of the prince we adopt those who are possessed of their own right, which species of adoption is called arrogation...by command of the magistrate we adopt those who are in the power of a parent.”

same way ask [for the debt], and the debt is to be rendered to him – but not at a time of madness, because he does not then know how to ask by virtue of his right, but he is then like a brute; then too it would for the other be a danger to their person to render the debt.

14. Now if there be some knowledge, but erroneous because with some deception, a triple deception impedes simply, because each one is about what is necessarily required for a contract. First is error of person; second error of worse condition (as of servitude); third error of mutual giving (as that she gives believing he can give back or can exchange with her, and he does not give back, though he speak words in deceit of spirit to extort from her what he lusts). And this triple error was spoken of in d.30 [nn.9-12].

15. Now the penalty for this last error, which namely is deceit in the contract, is that he truly fulfill what he is fallaciously simulating, because he is bound to render to this woman that for the rendering of which she made exchange with him. And therefore in the forum of conscience it is to be enjoined on him that he truly contract with her.

16. But if he has already contracted with her truly and cannot, consequently, fulfill it with her, he is to be penitent about the impossibility but to procure, as much as he can, a restitution of the equivalent, namely so that by him be rendered to the woman power over the body of another man equivalent to his own body as far as concerns this contract, or at least make satisfaction in other things according to the judgment of a good man.

17. But in the contentious forum, if the exterior contract be proved deceitfully made by him, he should be compelled to keep it as a true contract. But if he have contracted with another in the meantime, the Church will command him still to keep to the first; but in the forum of conscience the opposite will be said, because the second is his true wife, not the first.

18. And therefore he must uphold the sentence of the Church by keeping the truth of the divine Law, and let him impute to himself that so great a penalty remains over him because of this so great fraud that he has committed – because, too, this contract is obligatory for other goods, as keeping faith and indissolubility and taking up and educating offspring, if it happen (which three things are called the goods of matrimony [d.31. n.18]).

19. And generally, in every contract, he who contracts under a condition opposite to the contract does nothing; therefore against the idea of this contract is an opposite condition repugnant to any good of matrimony. And so there are three impediments arising from a triple condition opposed to the contract – against the three goods of matrimony; and these were spoken about above d.31 [*ibid*].

20. Now on the side of the contracting parties is required that they be able to give the power over their bodies. But he who is simply impotent for union cannot give this power, because he does not have it. Impotent also by divine Law [is he who], because he is obligated by another bond of matrimony, cannot give power over his body because his body is not now his but his spouse's.

21. Thus, therefore, impotence simply and matrimonial tie to another impede matrimony on the side of the contracting parties. And the impotence is spoken of in d.34 [nn.16-28], how one kind is natural and one by occasion, and neither, if not perpetual, impedes simply.

22. Now natural impotence in the man is through frigidity or lack of the necessary part; or in a woman by constriction simply, which 'simply' I state in contrast to

constriction relative to someone. By occasion is through sorcery, and this either in respect of anyone or in respect of some determinate person. And to this impotence is reduced also the impediment of childhood, because although there not be perpetual impotence there, yet there is for that age no potency there, and so none can be given; and this impediment of childhood is spoken of in d.36 [nn.45-49].

23. So, therefore, we have on the part of the contract three impediments in kind: namely by fear, by defect of knowledge, and by emplacement of repugnant condition. And on the side of the contracting parties there are two in kind: impotence simply and impotence according to justice, because tied to another.

24. And specifically the first impediment [sc. by fear] can be multiple thus, how many the evils are that are justly feared. The second impediment is triple, according to a triple error, and a fourth according to defect of use of reason. The third impediment contains under it three things repugnant to the three goods of matrimony. The fourth impediment contains a double natural impediment, namely frigidity and mutilation of the man, and a single impediment of the woman, namely restriction simply (for frigidity in a woman does not simply impede, as neither does sterility); and one general to both sexes, namely childhood, and this general one contains under it impotence by occasion in both sexes, provided however it is permanent. The final impediment stays undivided; and the reason for this impediment is plain from d.33 [n.20], where it is said that in the Gospel Law bigamy is not licit, nor is it licit to dismiss a wife; therefore in no way while she lives, whether dismissed in fact or not dismissed, is it licit to contract with another.

B. About Such Impediments by Statute of the Church

25. By statute of the Church there are impediments only on the part of the persons, because the Church has determined nothing about the form and matter of this contract, but has only delegitimized certain persons, making them not capable of this contract: either then because of their closeness, or because of their special association with the divine cult, or because of the enormity of some crime one should be horrified at.

26. In the first way has the Church delegitimized those of the same blood in the fourth degree and under; and those affinal in the same degree, and this either properly speaking, namely whose affinity is contracted by carnal union of someone consanguineous with the woman, or those, in an extended sense, whose bond was contracted not by carnal union but only through matrimony or betrothals, which is called the justice of public honorableness. And these impediments were spoken of: in d.40 [nn.9-21] about the first distinction, in d.41 [n.15] about the second and third distinctions. About this last impediment there is Boniface VIII *Decretals Book Six* IV tit.1 ch.1, "From betrothals pure and certain, provided they are not null by defect of consent, arises an effective impediment for impeding and destroying consequent betrothals or matrimonies, but not for dissolving preceding ones, namely the impediment of the justice of public honorableness."

27. Along with this too is a certain closeness that is as it were a mixed carnal and spiritual one, of which sort is spiritual kinship and legal kinship, and these were spoken of in d.42 [nn.5-7]. And about this is Boniface VIII *ibid.* tit.3 ch.1, "Much more between a baptized woman and he who received her from baptism [=the sponsor], or between the same baptized woman and the sons of the one who received her and the wife known

carnally before reception by the same man, indeed also between the receiver and father of the baptized woman and the mother, is it clear that a spiritual kinship is by law contracted in baptism; and this kinship impedes the contracting of matrimony, and destroys a matrimony already contracted. And the same things that are said about the receiver are also to be reckoned about the baptizer. By confirmation too, or anointing on the forehead, is a spiritual kinship contracted in the same ways, which kinship simply impedes contracting of matrimony and destroys one contracted afterwards.” “But persons other than those aforesaid from baptism or confirmation are, we have decreed, not impeded from contracting matrimony, nor is a matrimony they have contracted afterwards destroyed.

28. *Ibid.* ch.2: “Spiritual kinship is contracted through the catechizing that precedes baptism, by which kinship the contracting of matrimony is impeded; however, by that kinship is not at all severed a matrimony contracted afterwards.”

29. And *ibid.* ch.3, “If several have come to the receiving of an infant from baptism, a spiritual kinship is contracted that afterwards impedes contracting matrimones and dissolves those contracted. As to confirmation additionally is, in this respect, the same judgment to be held. But from the giving of the other sacraments a spiritual kinship in no way arises that would impede or dissolve a matrimony.

30. And there is an order to these closenesses: for consanguinity is a purely carnal closeness; affinity arises from purely carnal closeness and from carnal union; and the justice of public honorableness arises from carnal closeness and matrimonial and betrothal contract; spiritual kinship arises from carnal closeness and reception or giving of the sacrament of baptism or confirmation; legal closeness from carnal closeness and from another bond according to law, by adoption of course.

31. Because of special association with the divine cult has the Church delegitimized him who has solemnly vowed continence, and him who has received Sacred Orders. The first was talked of in d.38 [nn.7-26] and the second in d.37 [nn.19-22].

32. Now this impediment from solemn vow (if however a handing over of the power of body for keeping chastity be done there to the Church herself or to a prelate, in whose hand the vow is made, and thereby can he not give that power over his body for the conjugal act, because he does not have it) – this impediment can be reduced to the nature of a contract, as is also that about someone tied to matrimony.

33. But if such vow not so deprive him that he not have power over his own body, then by statute of the Church delegitimization and invalidation is not only because one has handed oneself over to the Church for such act, but because Christ, by calling away John from nuptials [d.31 n.30], has preferred the vow of continence to the conjugal bond; and therefore justly has the Church delegitimized him who is in a higher degree from accepting a lower degree, or from apostatizing.

34. Finally has the Church delegitimized persons justly because of the enormity of a twofold crime only:

Because of the enormity of infidelity the Church has delegitimized a believer for contracting matrimony, not simply, but in respect of an unbeliever; and this was spoken of in d.39 [nn.31-32].

35. The other enormous crime is adultery along with contrivance in the death of the legitimate spouse, or with pledging faith about contracting matrimony after the death of the legitimate husband, and this impediment was spoken of in d.35 [n.6].

36. Thus in general, therefore, are persons by statute of the Church delegitimized by a twofold crime and a twofold attachment to the divine cult, and by a closeness of consanguinity, by a bond of affinity and by the justice of public honorableness, by kinship too, spiritual and legal.

37. And these impediments are touched on in these verses [cf. d.36 n.9]:

Error, condition, vow, kinship, and crime
Other in cult, force, Orders, tie, honor
If affinal, if perhaps impotent,
These forbid marriage make; made do they stop.

38. But in these verses all the impediments are contained without any rational order. Therefore they can be explicated in due order and more in particular in these verses:

Force; person, slave, giving mistook; mad too;
Added condition robs marriage goods three;
Frigid, constricted, child, defect, bewitched,
Spouse of another – joint gift all prevent.

Vow, Orders, twin cults, adulterous spouse,
Kinship religious, legal, and carnal,
Affinal, honor – does precept forbid.

39. These first four verses contain the impediments that are repugnant to the nature of the matrimonial contract. The first line contains five in particular, the second three, the third five, the fourth one. And so there are fourteen impediments. After these is added at the end of the fourth line “joint gift all prevent” – understand that in a contract of matrimony the aforesaid are all the obstacles.

40. The three other verses contain the impediments by statute of the Church: the first contains four, the second three, the third two, and so there are nine. And this is what is said at the beginning of the third line [end of the line in the translation] “does precept forbid,” namely by precept of the Church do they impede matrimony.

41. And so there are in particular twenty-three impediments simply.

42. Now the other common verses [n.37] only contain twelve, but under ‘error’ must be understood a fourfold impediment in particular; under ‘condition’ a triple impediment about the conditions added against the three goods of matrimony. Hence, he who refers ‘error’ to error of person, and ‘condition’ to error of condition, shows himself ignorant enough in canon law. ‘Vow’ is as it stands; ‘kinship’ is understood for carnal and spiritual and legal kinship; ‘crime’ for adultery with giving of faith or contrivance in the death of a legitimate spouse. And it could sometimes be distinguished, according to what was said in d.35 [nn.6-12], because sometimes the former two of the three and sometimes the latter two are combined [sc. in impeding], and sometimes one of them impedes; but this impediment is not distinct in these verses by a more distinct expression.

43. The other impediments are not distinguished save the last, which contains five specific impediments according to the other verses [first line thereof].

44. Nor is it a wonder that the Church has applied so much care in ordering matrimony, because the community of Christians uses matrimony, through whose use too the Christian people is multiplied. And therefore should it thus be ordered, because in its contract and use may be avoided the things that get in the way of charity either toward God or toward one's neighbor. And the things that are fitting to honorableness should be kept, so that thus may honorable Christian matrimony fittingly signify the blessed union of Christ and the Church, of which the Apostle says [*Ephesians* 5.32], "This is a great sacrament; and I mean in Christ and the Church."

45. This union now is by faith and some sort of love, but in the fatherland it will be by vision and perfect enjoyment of the Spouse, who has "neither spot nor wrinkle," with the Spouse "fair above the sons of men," [*Ephesians* 5.27, *Psalms* 44/45.3], to whom be honor and glory for ever and ever. Amen.