

**Ordinatio III, d. 39, the single question: "Is all perjury a mortal sin?"**

1 Concerning the thirty-ninth distinction I ask whether all perjury is a mortal sin.

2 Arguments for the negative:

Sometimes someone makes an oath that it would be illicit to carry out: Case 22, question 4, "In malis."<sup>1</sup> And what is illicit in and of itself does not become licit through an oath, so it remains illicit after the oath. And thus by carrying out what he swore, he sins mortally; therefore, he does not sin mortally by refraining from carrying it out. For in the Christian law no one is in a state of perplexity, such that he sins mortally whether he does a certain thing or refrains from doing it (which is what it means to be in a state of perplexity). And yet by refraining from carrying out what he swore, he commits perjury; therefore, this instance of perjury is not a mortal sin.

3 Moreover, it is more serious to swear by God than by the Gospel—Case 22, question 1, "Si aliqua causa fuerit"<sup>2</sup>—as it is more serious to swear by the author than by his work, just as it is more serious to swear by the temple than by its gold (for "the temple that sanctifies the gold" [Matthew 23:17] is greater than the gold that is sanctified by the temple), and this in terms of sacredness.<sup>3</sup> Therefore, if it is a mortal sin to commit perjury, to commit perjury against God is the greatest mortal sin; so it follows that ordinary people are sinning mortally all day long, since they think nothing of swearing by God even when asserting something false or something doubtful.<sup>4</sup> That seems harsh.

4 Moreover, not every promissory oath<sup>5</sup> necessarily obligates, according to Case 22, question 4, throughout: "It is better not to make good on a foolish promise than to commit a crime."<sup>6</sup> Therefore, perjury in such a case is not a mortal sin.

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<sup>1</sup> Gratian, *Decretum* pars 2 causa 22 q. 4 c. 5.

<sup>2</sup> *Ibid.*, q. 1 c. 11.

<sup>3</sup> That is, in terms of the sacredness (*reverentia*) of that by which someone swears. See n. 45 for a parallel expression that makes the meaning here clearer.

<sup>4</sup> The edition adds "that is not certain," which NYQ omit.

<sup>5</sup> See n. 33 for Scotus's definition. Cf. Thomas Aquinas, *Sent.* III d. 39 q. un. a. 3 qc. 1 in corp.: "There are two kinds of oath: assertoric and promissory. A promissory oath concerns something that the oath-taker expects to be done in the future, either by himself or by another; an assertoric oath, by contrast, is made in order to confirm a present or past truth."

<sup>6</sup> Gratian, *Decretum* pars 2 causa 22 q. 4 c. 1, and likewise through c. 2-23.

5 Proof of the antecedent:

Look up the discussion of coerced oaths, *Extra*, “On swearing oaths.”<sup>7</sup>

6 In the case of reluctant oaths as well it is clear that the oath-taker does not intend to obligate himself. Now<sup>8</sup> no one obligates himself unless he intends to obligate himself, according to *Extra*, “On swearing oaths,” *Petitio*, the gloss of Innocent IV,<sup>9</sup> where it is said that “if someone swears five times not to stand against someone else, he can stand against him the sixth time, notwithstanding his oath to the contrary, in the cause of the Church and the commonwealth.”<sup>10</sup>

7 As for reckless oaths, there is this argument:<sup>11</sup> if the oath-taker were to carry it out, that would lead to a worse outcome (22, question 4, *Si quis*)<sup>12</sup>; therefore, it would be a greater evil to carry it out.<sup>13</sup>

8 There is a further argument for this conclusion in the case of these two kinds of oath—reluctant and coerced—that relies on the analogous case of marriage. For coerced or reluctant (that is, feigned) consent does not obligate someone to marriage: *Extra*, “Concerning things done by force or out of fear,” *Si abbas*,<sup>14</sup> and *Extra*, “Concerning betrothals,” *Cum locum*.<sup>15</sup>

9 On the contrary:

Exodus 20: “You shall not commit perjury; rather, give to the Lord your God what you have sworn.”<sup>16</sup> And from the Psalms [75:12]: “Vow, and make good your vow.”

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<sup>7</sup> Gregory IX, *Decretales* II tit. 24 c. 8, c. 21, c. 2.

<sup>8</sup> Reading *autem* (PBNYQ) for the edition’s *enim*.

<sup>9</sup> Gregory IX, *Decretales* II tit. 24 c. 31; gloss in *Decretales Gregorii IX cum glossis* II tit. 24 c. 31; Innocent IV, *In quinque libros Decretalium commentaria* II rubrica 24 c. 16. The exact words quoted by Scotus do not appear anywhere in this work of Innocent IV.

<sup>10</sup> Cf. Richard Middleton, *Sent.* III d. 39 princ. 2 q. 1 arg. 2 in opp.

<sup>11</sup> Reading *De iuramento incauto probatur: quia* (NYQ) for the edition’s *De iuramento incauto probatur quod*.

<sup>12</sup> Gratian, *Decretum* pars 2 causa 22 q. 4 c. 6, “Si aliquid.”

<sup>13</sup> Cf. Richard Middleton, *Sent.* III d. 39 princ. 2 q. 3 in opp.

<sup>14</sup> Gregory IX, *Decretales* I tit. 40 c. 2, applied to marriage by the gloss in *Decretales Gregorii IX cum glossis* I tit. 40 c. 2. Cf. Richard Middleton, *Sent.* III d. 39 princ. 2 q. 2 arg. 1 in opp.

<sup>15</sup> Gregory IX, *Decretales* IV tit. 1 c. 14. Cf. Richard Middleton, *Sent.* III d. 39 princ. 2 q. 2 arg. 1 in opp.

<sup>16</sup> This is actually Matthew 5:33, with “the Lord your God” interpolated from Exodus 20:7 (in place of Matthew’s “the Lord”).

## I. Reply to the question

10 In this question we must examine the definition of oath; second, on that basis, we will conclude that perjury is a mortal sin; and third, we will look at the different kinds of oaths and determine in what way particular kinds of oaths are sins.

### A. The definition of oath

11 On the first topic, I say that an oath is an assertion that a particular human utterance is true, an assertion of the utmost authority, in keeping with the words of Hebrews 12: "An oath is final in every dispute."<sup>17</sup> For human beings, knowing that they are mendacious and ignorant and consequently can deceive and be deceived, cannot place unqualified trust in what human beings say. And for that reason they developed a mode of assertion in which they bring in an additional witness, one who is truthful and knowledgeable, who can neither deceive nor be deceived. And this is accomplished by swearing: for in swearing I bring in God, who knows the truth and cannot lie, as a witness to what I assert.

### B. Perjury is a mortal sin

#### 1. Answer

12 From this the point at issue concerning perjury follows, since to bring God in as a witness to something false is to do irreverence to God: either by bringing in God as a witness who does not know the truth and thus is not omniscient, or by bringing him in as one who is willing to testify to what is false and thus is not altogether truthful. In either way irreverence is done immediately to God, contrary to the commandment of the first table, "You shall not take the name of your God in vain" [Exodus 20:7]. And so in either way, if it is done deliberately, there is mortal sin.

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<sup>17</sup> See Hebrews 6:16: "For human beings swear by something greater than themselves, and in all their disputes an oath is final for confirmation."

## 2. Two points of contention

13 But here there are two points of contention. First, does a lack of deliberation excuse one from mortal sin? Second, does someone who brings God in as a witness, in the way described above, to something that he believes is true, though in fact it is not, or to something about which he has only an opinion (though he assents to that opinion more than he does to the opposite), sin mortally?<sup>18</sup>

### a. The first point of contention

14 As to the first of these, it is generally conceded<sup>19</sup> that a single indeliberate act of perjury is not a mortal sin.

15 But committing perjury habitually is a mortal sin. And this can evidently be proven from the fact that a habit generated from several acts inclines to a more serious act than the previous acts were.

16 But against this: if the first act of perjury is not a mortal sin, then neither is any other such act, even if it is done from some habit, since the inclining habit cannot make an act more serious. Suppose someone were to acquire a weighty habit from acts of incontinence and then swiftly repented. If after his repentance he had some movement of incontinence, though his weighty habit inclines him to that, it is nonetheless not a mortal sin in him; indeed, it is not morally<sup>20</sup> more serious than it would be in someone else who had no such habit.

17 This is confirmed by the fact that the habit cannot be more serious [than the acts to which it inclines]. Even assuming that a habit can *be* serious [in its own right], given that it cannot be seriously blameworthy, properly speaking, except through its acts, it follows that since the acts from which the habit is generated are venial, the habit does not add any

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<sup>18</sup> Conjecturing *tamen magis assentit quam opposito* for the edition's *tamen magis assentit opposito*. (Q has *et magis assentit illi parti pro qua iurat*.) The edition has Scotus asking about someone who swears that p when (a) he has an opinion concerning p and (b) assents to ~p more than to p; but such a case is obviously mortally sinful by the reasoning already given. Instead, Scotus must be asking about someone who swears that p when (a) he has an opinion concerning p and (b) assents to p more than to ~p; the question is whether it is mortally sinful to appeal to God as a witness to something about whose truth one is less than certain. (By definition, opinion is belief with reservation, "assent with suspicion of the opposite.")

<sup>19</sup> Bonaventure, *Sent.* III d. 39 a. 1 q. 3 in corp. and ad 4; Richard Middleton, *Sent.* III d. 39 princ. 3 q. 2 in corp.; Giles of Rome, *Sent.* III d. 38-40 q. 3 in corp.; Richard Fishacre, *Sent.* III d. 39 q. 2 in corp.

<sup>20</sup> Reading *moraliter* (Q) for the edition's *notabiliter*.

seriousness to the acts elicited from it so as to make those acts mortal sins.<sup>21</sup>

18 So it can evidently be said that a habit or custom has nothing to do with the question at issue. Rather, perjury—when there is full consent—is contrary to a commandment of the first table; consequently, it averts one immediately from the ultimate end, and thus there is nothing in the definition of mortal sin that it lacks.

19 But what if the perjury, however often it is committed, is done without deliberation? In order for an act to be meritorious, it must be fully human, and thus done from full deliberation; and exactly the same thing is required for an act to be demeritorious (for God is not readier to punish than to forgive). So it can be said that that indeliberate perjury, even if it is repeated again and again, is not a mortal sin.

20 Still, as I said earlier in the material on the virtues [d. 33 n. 77], the virtuous person's deliberation is brief (so brief that he does not even appear to deliberate), because he has great prudence, which enables him to deliberate in a practically imperceptible amount of time. In the same way, someone could, on the basis of a habit opposed to prudence, acquire such facility in deliberating readily about the opposite in a practically imperceptible amount of time; and that deliberation, proceeding from the habit, would be sufficient for the resulting act to count as a sin, just as the analogous deliberation on the part of a good person would be sufficient for the resulting act to count as meritorious.

21 For this reason I do not distinguish, for purposes of whether something counts as a mortal sin, between the rarity or frequency of the perjury, but between deliberation and the lack of deliberation, such that when deliberation accompanies the perjury it is a mortal sin (whether it is a single act of perjury or habitual perjury), and lack of deliberation excuses (whether once or any number of times).

#### b. The second point of contention

22 Regarding the second point of contention, I say that the one to whom the oath is made understands the oath (on the basis of either positive law or common custom) as an unqualified assertion of what is sworn or else not as an unqualified assertion but as a persuasive consideration in favor of what is sworn.

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<sup>21</sup> More literally: "the habit will not bring about any mortal seriousness in the acts elicited from the habit."

23 In the first case I say that someone who swears to something that is in any way doubtful (that is, something that is not unqualifiedly certain and true), and does so deliberately, sins mortally, because he brings in God as a witness to confirm what he asserts is unqualifiedly certain and true, when it is not in fact unqualifiedly certain.

24 And this is how we should understand any sworn testimony in a case in which the kind of sentence that is customarily given should not be given unless the testimony is asserted as unqualifiedly certain.<sup>22</sup> For example, a sentence of death should not be given except for a crime that is certain, so someone who swears that this defendant is guilty when he is not certain—however probable his conjecture that the defendant is guilty may be—and swears it in this sort of forum, where it follows from either positive law or custom that the defendant will be condemned to death, sins mortally. Very similar considerations apply to any forum in which someone who is convicted on the basis of sworn testimony will as a result be condemned as unqualifiedly guilty or as infamous in the eyes of the law: for in such a situation not only is irreverence done to the name of God, contrary to a commandment of the first table, but also the testimony is a destructive lie, because it harms one's neighbor [cf. d. 38 n. 23].

25 And if you say, "It is useful to the commonwealth—otherwise the wicked would grow too numerous," God replies, "Carry out justly what is just" [Deut. 16:20]. For there are certain evils that are not to be punished by human beings but should be left to divine vengeance: namely, all those in which a human being as such cannot sufficiently reveal the truth in the way that it needs to be revealed in order for a punitive sentence to be justly imposed. And in these cases it is not only the witnesses who are culpable. So is the judge: if he knows that witnesses make a practice of testifying to things they merely believe, then he ought not impose the sort of sentence that it would be right to impose if guilt were proved unqualifiedly in his presence; for given this practice he knows that guilt has not been proved in his presence in a way sufficient to justify imposing such a punishment.

26 If, by contrast, it is established by positive law or custom that one who swears is held to the standard not of certainly but of belief, because what is sworn is taken as something

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<sup>22</sup> More literally: "And in this way ought to be understood all the oaths of those who swear something in a judicial proceeding [*iudicio*] for which the sort of sentence that is customarily given ought not to be given there [meaning, in that proceeding] unless it is asserted to be unqualifiedly true."

believed, not as something unqualifiedly certain,<sup>23</sup> then the oath-taker does not sin when he infers on the basis of persuasive indications that one alternative is likelier than the other. This is the view taken in the *Decretals*, “On scrutiny in ordination,” the single chapter<sup>24</sup>: the response is given<sup>25</sup> that “as far as human frailty permits one to know, he both knows and testifies that the ordinand is worthy of the burden of this office,” to which the lord Pope replies, “we do not believe that anyone sins in giving such a response, so long as he is not speaking contrary to his own conscience, because he is not asserting unqualifiedly that the ordinand is worthy, but that as far as human frailty permits one to know, he ought to regard the ordinand (whom he does not know to be unworthy) to be worthy.”

27 So in such promotions, whether to positions of dignity attained through election or ordination, or even in other organizations (for example: in universities, promotions to a professorship [*magisterium*]; in a religious order, to prelacy; or to other such acts), if it is an accepted custom that the declarations of respondents—given under oath, offered with solemn assurance, or made in fulfillment of a promise—should not be understood to indicate anything more than belief “as far as human frailty permits one to know,” and that the presiding officer does not know of any unworthiness in the candidate, then all their responses ought to be understood in accordance with that general custom, and the respondents do not sin in any way. (Granted, it would be safer in such cases to speak with some qualification, as in the passage quoted earlier from the *Decretals*: not unqualifiedly, but “as far as human frailty permits.”)

28 So in these cases “good-will is extended and hatred is kept in bounds,” as the juridical maxim has it.<sup>26</sup> For in hateful things it is right for sworn testimony to state the truth—the *certain* truth—strictly, since otherwise the sentence of condemnation that will be given afterward will not be rightly given on the basis of such testimony. In matters of good-will it is sufficient for the sworn testimony to state what one believes to be true, especially in cases where there is a custom or positive law in the organization of saying what one

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<sup>23</sup> “one who swears . . . not something certain”: *iurans non tenetur de certitudine sed de credulitate quia iuratus habetur pro credito non simpliciter pro certo* (Q). The edition has *iuratus non teneatur deponere de certitudine sed tantum de credulitate*.

<sup>24</sup> Gregory IX, *Decretales* I tit. 12 c. un.

<sup>25</sup> Reading *respondet* (QPSZ) for the edition’s *respondet dominus papa*. It seems unlikely that Scotus intended to represent the pope as talking to himself.

<sup>26</sup> Boniface VIII, *Sextus Decretalium* V tit. 12 ‘De regulis iuris’ reg. 15.

believes, because on the basis of the truth to which testimony has been given on such terms the presiding officer can promote the candidate to such-and-such a rank.

29 But in every case, whether it concerns matters of good-will or hateful things, someone who swears to one thing when he actually believes that the opposite is more likely to be true, as well as someone who swears to something about which he is unqualifiedly in doubt and in his heart does not assent to one alternative any more than he does to the other, sins mortally in so swearing, because he brings God in as a witness to something he ought to be certain about but is not in fact certain about in either way.

## 2. An objection

30 Someone might object to the claim that perjury is against a commandment of the second table [n. 12] on the grounds that the Master<sup>27</sup> evidently holds that perjury is a kind of lie and thus contrary to a precept of the second table, “You shall not utter false testimony against your neighbor” [Exodus 20:16]. One can reply that in perjury there is a twofold sin: a lie, as the material element of the sin, and the taking of God’s name in vain—that is, not merely for no useful purpose, but irreverently and contrary to reverence. The first pertains to the second table but the second pertains formally to the first table, because that is where irreverence is forbidden.

31 There can also be perjury without a lie. For example, suppose someone who is unqualifiedly uncertain swears to the alternative about which he has doubts<sup>28</sup>; perhaps he would not be lying in making the assertion, because he does not have the opposite in mind. Or at any rate, in a case in which the oath-taker is bound to be certain, he commits perjury if he is not certain; and yet if he were to assert it without swearing, believing it more than its opposite, he would not be lying.

32 So it is perilous to have an oath frequently on one’s lips, because in many utterances without an oath one would not sin, where if one added an oath one would indeed sin—and sin seriously, if it were done deliberately [cf. n. 21]. For this reason the Savior’s counsel in Matthew 5:37 is valuable: “Let your yes be yes and your no, no.”

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<sup>27</sup> Peter Lombard, *Sent.* III d. 39 c. 3 n. 1-2.

<sup>28</sup> The case envisioned has to be of someone who is not certain whether *p* or  $\sim p$  is the case but thinks *p* is the case and swears accordingly, though this is not the most natural reading of the Latin (and no variant readings give any help here).

C. The different kinds of oath, and in what way particular kinds of oath are sins

33 Concerning the third topic I say that a human statement is either about past or present things, whose truth is determinate, or about future things, whose truth is uncertain and indeterminate. A statement about the past or present is called “assertoric” (extending the notion of assertion to include both affirmation and negation), whereas a statement about the future, when it is within the power of the oath-taker,<sup>29</sup> is called “promissory.” Accordingly, since an oath can be an assertion of either kind of statement, there are two kinds of oath: assertoric and promissory. Both establish an obligation. An assertoric oath does so in that the oath-taker is obligated to tell the truth because he brings in such a witness to his assertion. A promissory oath does so in that the oath-taker is obligated to bring it about<sup>30</sup> that what he says is true. And because an assertoric oath obligates only at the time at which it is made, and a promissory oath is said to be an obligation insofar as it has to do with the future, it is by appropriation that a promissory oath is called obligatory, because it obligates one to carry out in the future what one has sworn to do.

34 These two species of oath are comparable to the two species of obligations in sophisms, *positio* and *petitio*: *positio* obligates the respondent to uphold as true what is posited, *petitio* to carry out in deed what is asked for.<sup>31</sup>

35 But here there is a point of contention. In a promissory oath, is the character of the oath presupposed, and, that having been weighed, a suitable witness is brought in to confirm what is said, or is it instead the veracity of the witness that is presupposed, so that the character of the utterance is considered secondarily, subordinate to the testimony of the witness? If the first were true, it would evidently be enough for the oath-taker to have the intention *at the time he swears* to carry out what he swears to do in the future, even if he changes his mind later. The second is evidently more consonant with the common view, because it is said that in the case of a promissory oath someone remains obligated until he

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<sup>29</sup> Reading *iurantis* (BNYQ) for the edition’s *promittentis vel iurantis*, “promising or swearing.”

<sup>30</sup> Reading *faciat* (BNYQ) for the edition’s *fateatur*

<sup>31</sup> Cf. Walter Burley, *De obligationibus* (ed. Romulad Green, private circulation), 2.01, “*petitio ponit actum exerceri, qui ponitur in enuntiabili*”; 2.02: “*Et petitio obligat ad actum obligati faciendum, et positio solum obligat ad sustinendum, et in hoc differunt positio et petitio. . . . petitio obligat ad exercendum actum expressum in enuntiabili, sed positio semper obligat ad sustinendum aliquid.*”

fulfills his oath.

36 There is no need for any further discussion of assertoric perjury in particular, beyond what has already been covered under the heading of perjury in general [cf. nn. 12, 18–21].

37 But as for promissory or obligatory perjury, I say that such perjury can be reluctant or reckless or coerced, or free of all these inappropriate conditions.

38 *Reluctant* perjury is when the oath-taker swears he is going to do something, but even in that very act of swearing intends the opposite and does not intend to obligate himself to what he swears to do. Such a person sins mortally in that act of swearing, because he brings God in as a witness that he is resolved to carry out his oath, when in fact he intends the opposite. Nonetheless, after the oath he does not remain obligated, because in private obligations someone who does not intend to obligate himself is not obligated. Nor does it follow that he gains an advantage from his sin,<sup>32</sup> just because he would be obligated if he had not sworn reluctantly. For there is no advantage in gaining a mortal sin, and if he had not sworn reluctantly, he would not have sinned mortally. Nonetheless, someone who does not swear reluctantly would be bound by his oath, whereas someone who does swear reluctantly is not: and this state of being bound<sup>33</sup> is not as damaging as the damage that someone incurs through that reluctant oath, because in that latter act he sinned mortally.

39 An oath can be called *reckless* in two ways.

The first is that it concerns matter that is altogether illicit: for example, someone swears that he will do something contrary to a commandment, such as swearing that he will kill someone or commit adultery with someone. Such an oath does not obligate the oath-taker to fulfill it, in such a way that after the oath he ought to carry out the act. Nonetheless, when he swore the oath, if he did not have such an intention, he sinned mortally, because he brought God in as a witness to something false; and if he did have such an intention, he sinned mortally, because willing to sin mortally is sinning mortally. In either case, therefore, he sins mortally in such an act of swearing. But afterward he ought not fulfill his oath, because he ought not add sin to sin. For it is not the case that because he swore something illicitly, something that was illicit becomes licit for him: a mortal sin does not make his

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<sup>32</sup> Reading *peccato* (NYQ) for the edition's *dolo*, "reluctance."

<sup>33</sup> "state of being bound" = *tentio* (BNQ). The edition reads *intentio*, "intention," but the argument is clearly that being bound by an oath (*tentio* being the noun corresponding to the verb *teneretur*, "would be bound," earlier in the sentence) is less detrimental than being in a state of mortal sin.

condition freer.<sup>34</sup>

The second kind of reckless oath concerns matter that is licit in and of itself, but not licit for the oath-taker: for example, suppose someone abjures works of perfection and thereby resists the movement of the Holy Spirit. Keeping such an oath would lead to a worse outcome, and therefore<sup>35</sup> afterward one ought not keep the oath. For although it is licit, in an absolute sense, not to do works of perfection, it is not licit to have a settled will never to do works of perfection, since that would be to have a settled will contrary to the movement of the Holy Spirit.

So in the case of these two oaths, the reluctant and the reckless (in both ways discussed above), it is clear that someone does not remain obligated after his oath to carry out what he swears; rather, in that very act of swearing someone sins mortally.

40 One could identify another kind of reckless oath: when someone swears he will do something that he cannot in fact do. If, when he swears, he thinks that he can do it, one should evaluate this case in keeping with what was said in the section on oaths in general: if he can carry it out in the future, he is bound to do so; but if he can't, yet when he made his oath he believed he could, he is excused in matters of good-will [cf. n. 28].

41 As for *coerced* oaths, where the coercion is such as to affect a man of steady character, there are various views. See my discussion in Book IV [d. 29 q. un.].

42 A promissory oath in which none of these three conditions (reluctance, recklessness, and coercion) is present establishes an obligation for the oath-taker never to have a will opposed to what he swore, though if he postpones fulfilling the oath on account of circumstances that make postponement seem appropriate, he does not sin. Rather, he first becomes a perjurer when he has a will not to fulfill what he has sworn, because it is at that point that he first wills God to have been a witness to something false.

## II. Replies to the initial arguments

43 The reply to the first argument [n. 2] is obvious: "If you have made an immoral vow,

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<sup>34</sup> NYQ omit the last clause.

<sup>35</sup> Reading *et ideo* (Q) for the edition's *nec*.

change your decision.”<sup>36</sup> Yet in making that [initial] decision one sins mortally.

44 To the second argument [n. 3] I say that, other things being equal, the greatest oath is to swear by God, since it is not licit to swear by anything else unless God is in that thing in some distinctive way (for example, “by the Gospel,” because God is distinctively revealed in it; “by heaven,” because God dwells there in a distinctive way; “by the Church,” because God is worshiped there in a distinctive way). Yet the custom that demands that some oaths be made with greater solemnity than others is a reasonable one, and it is presumed that things done with solemnity are never done without deliberation.<sup>37</sup> Therefore, the Church<sup>38</sup> has caused people to be afraid to swear by such things unless they do so solemnly, and consequently with deliberation and when the truth is to be asserted without qualification.<sup>39</sup> By contrast, people swear by God commonly and flippantly, and frequently without deliberation.

45 I say then that swearing by God is the most serious, but if someone does so indeliberately, as compared to someone who swears on the Gospel, there can be mortal sin in the latter case but not in the former—not because of the sacredness of that by which someone swears, but because there is deliberation in the latter case but not in the former.

46 You might object, “Why then is someone who commits perjury against the Gospels infamous, but someone who commits perjury against God is not?” I reply: infamy does not always follow from the seriousness of the fault, but from the public character of the crime. Now the law requires that one take one’s oath on the Gospels deliberately and publicly,<sup>40</sup> and so someone who transgresses such an oath is presumed to be a violator of the faith,<sup>41</sup> and thus it is reasonable for him to be held in infamy. Such a presumption cannot be made in the case of someone who flippantly commits perjury against God.

47 In reply to the last argument [n. 4], it is clear that a promissory oath obliges, and that

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<sup>36</sup> Gratian, *Decretum* pars 2 causa 22 q. 4 c. 5.

<sup>37</sup> Reading *Conseutudo tamen rationabilis hoc exigit ut quaedam iuramenta fiant cum maiore sollemnitate quam alia, et de factis cum sollemnitate praesumitur quod nunquam fiant sine deliberatione* (Q). The edition gives the same sense with somewhat different wording and adds, “other, less serious acts, can be done indeliberately,” which QZ omit.

<sup>38</sup> Reading *Ecclesia* (NYQ) for the edition’s *Deus et Ecclesia*, “God and the Church” (though the edition nonetheless keeps the singular verb with its plural subject).

<sup>39</sup> Cf. Jerome, *In Matth.* I 5, 34-37; Augustine, *De sermone Domini in monte* I c. 17 n. 51; Gratian, *Decretum* pars 2 causa 22 q. 1 c. 8 et c. 5.

<sup>40</sup> Cf. Gratian, *Decretum* pars 2 causa 3 q. 9 c. 20; Gregory IX, *Decretales* II tit. 20 c. 7-8.

<sup>41</sup> Cf. Gratian, *Decretum* pars 2 causa 22 a. 1c. 3, 17; q. 4 c. 5, 23; q. 5 c. 10.

it does not oblige one to carry out the act one has sworn to perform [n. 39].