



**R. P. Ferdinandi De Castro Palao, Legionensis Soc. Iesv,
Sacræ Theologiæ Professoris, Et sanctæ Inquisitionis
Qualificatoris & Consultoris; Operis Moralis, De Virtvtibvs,
Et Vitiis Contrariis, In ...**

Continet Tractatvs De Conscientia, De Peccatis, De Legibvs, De Fide, Spe,
Et Charitate

**Castro Palao, Fernando de
Lugduni, 1669**

§. 1. Qui possint legem interpretari authentice

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et nisi. in. i. n. i. vers. 3. idem tenet. lib. 1. Barbarii consil. 2. n. 12. vers. ego sequitur. lib. 4. Cardini consil. 5. n. 4. D. illud statutum Feltini. in. 19. vers. alius. causis. de. sibi. Ex quibus omnibus videatur inferri non posse Episcopum abrogare constitutio-nes factas in Synodo decaniensi. nisi ipsi Synodus consentias. si tamen expresse Gallego. Mar. Vg. supra.

10 Nihilominus probabilis certe posse Episcopum inconsulta Synodo constitutions synodales abrogare, sed si videtur expedire (ratõ tam id expediri) quia colligitur ex Naturâ, sum cap. 2, §. 5, num. 7, & cap. 5, n. 4 de simonia Azor illum referente lib. 3, stat. cap. 1, §. 5, q. 3, sancti B. 8, de mar. disp. 17, y. 3, 3. Barbo de pofet. Ep. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 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11 Neque obstant argumenta contraria.

Ad primum nego habere votum decisum cleros ibi congregatos, eis non leue indicium est solum Episcopum constitutions subscribere, abique via clericorum mentione.

Ad secundum concedo Episcopum esse patrem Synedi, & caput illius, & illius superiorum habentem iurisdictionem legitimationem, & coercitionem, quam non habet Decanus respondeat ad Capituli; solum illi conceditur potestas congregandi Capitulum, proponendi, & retolendi, quod pro maiori parte factum deciderit.

Ad tertium negamus Episcopum rectati constitutionibus sy-
nodalibus alio modo, ac rectatur suis constitutionibus à se factis
quibus solum ex quadam d. censia obligatur.

Ad quartum respondeo cum Coraciem, *decisissimum, Faro
magis decim. 34, n. 3, pag. milii 31.* negando statutum factum
de contento aliquorum contrarium in contradictione, quando con-
tentus non expolitatus, ut necessarius, & quando contentus
non tribuit aliquid statuens, sive tribuit contentus venientes
ad habitandum in aliquo loco, eo quod illis immunita
concedatur, si venerant aduentus enim illorum, et quia que-
dam illorum donatio, qua facta reuocari non potest statutum, vi-
bent tractat *In liquido semel numero 1. r. ex quo habet
de decreto ab ordine factum.* At in supradicta Synodo, ne
que contentus clericorum, qui ibi congregantur, et necessarius
neque aliquid Episcopo tribuant, aut recipiant; sed solu-
se habente, ficut populus qui legem Principis acceptat, ve-
li cuius Regis consiliarii, qui consilium praebent Regi, illamque
instruunt in lego ferenda, a quibus tamen Rex non necel-
lenti dependet; neque in constitutione legis, neque in il-
lis abrogatione. Sic est dicendum de Episcopo in Synodo dic-
tata.

P V N C T V M III

De interpretatione legis

I nterpretatio nihil aliud est, quem declaratio legis ad illum ca-
lum esse, vel non esse extensam. Dupliciter autem haec fieri pos-
sunt, vel ab ipso legislatore, vel a viis doctis. Si haec a legislatore
quatenus talis est, vocatur interpretatio authentica. Si haec a viris
doctis, vocatur doctrinale declaratio, de quibus glossa in *L. 1. de in-
terpretatione*, *f. de legib. Sylloge*, *verbis in expresso n. 1.* Tabula
na. Angel. Sac. & alii Summistes ibi. Decius. & Panorminus cap. 1. de
populare. Ut autem cognoscas, quando lex per interpretatione
nem collet, oportet examine.

Qui possint legem interpretari, & quo casu interpretatio illa licita sit.

Secundò que regule seruandæ sint in interpretatione facienda.

§. I.

Qui possint legem interpretari authenticè

- 1 Solus conditor legis, vel illius successor, aut illorum superiorum potest.
 - 2 Propositum obiectio. Soluietur. Declaratur hanc interpretationem publicandam esse, sicut & legem.
 - 3 An declaraciones Cardinalium circa Tridentinoi decreta viri legi habent? Preponit non habere.
 - 4 Si publicata sint, vim legi habent.
 - 5 Si publicata non sint, iuris de illis authenticis confit, non habent vim legis. Qui censemant,
 - 6 Probabiliter videtur oppositum.
 - 7 Indicibus inferioribus non licet legem authenticam declarare.

Respondeo solum conditionem legis aut illius superiorem & lucisforem eam interpretari posse: quia totus ille est, qui potestatem haber obligandi per illam legem, ac proinde induci ex eius declaratione obligationem confit ex l. sin. Cod. de legibus, ibi, *leges condens s.l. Imperatoris concessum s.l.* Et leges interpretari sole dignissimum imperio esse oportet, l. in treasury f. de praescriptulis, quod cap. sive l. 1, quod cap. et cap. alterum, de sententiis excommunicis, & alius quoque referuntur à glossa in reg. contraria, ut reg. iur. 6. Azor tom. 1. lib. 5. c. 16. q. 16. Salas de leg. dispat. sect. 2. *Sicut lib. 6. t. 2. p. 2.*

2. Dices mentem cuiuscumque sibi soli notam esse; ergo solus, qui condit legem, potest illam certe, & infallibiliter declarare. Ergo non successor, neque eius superior. Hi enim solum illius mentem coniectari possunt.

Respondo fuscolum, ut superiorem legislatoris, cum legem aliquam declarat authenticę, non tam declarat intentionem personalem primi conditoris, quam sensum, in quo debet esse decep̄ti recipi, & obseruari. Et licet huiusmodi sensus fortis sit extramenus primi conditoris, non solitus, quominus dies possit illius legis declaratio, qui in illa legi fundatur. Debet autem haec declaratio publicari ea solemniter, quæ tria; non erit authentică neque legis obligationem habebit, sed volum exīs declaratio do-
cimētis, scilicet adiutoriis, consilioriis, &c. &c.

Dixi, solum conditorem legis, cuius successorem, aut superioriem posse legem interpretari authenticae, quia nullus alius in actu superioris legibus habet potest in Constitutione sic omnes.

Et dubitari potest primò de congregatiōe Cardinalium de signata ad declarandum Concilium. Secundò de iudicib⁹ in fieri ibi.

3. Circa primum de congregations Cardicallium extat Bulla
7. Sixti V. edita anno 1588. quæ incipit *In mensa*. In qua post
quam sibi Pontificis referunt potestam congregandi Concilium,
et res fidei definiendas, subiungit. *Cardinalibus vero proposita
et interpretatione, et executioni Concilii Tridentini, si quando
in his quæ de morum reformatione, disciplina, ac moderatione, &
Ecclesiasticis iudiciorib; alijs, quæ a humana statuta sunt, dubia
aut difficultas emerget, interpretandi facultatem (nec super
tamen consilis) imperatur. Ex quibus verbis confitit supradicta
congregationi commissionem esse hanc facultatem interpre-
tandi leges Concilii Tridentini: illa tandem conditione, vi sum-
mus Pontificis confutare. Hinc ergo oritur dubium, an declara-
tiones huius sanctæ congregations, quæ postea citerunterum
viam legis habeant, vel talem sive quadam declaratio es doctrinales,
magis ponderis & authoritatis?*

Videtur quidem, ut doctrinæ habendas esse. Primo, quia
est ad hanc congregatio Pontificum constitutum: vt testis
Salas disp. 2.1. sec. 1. pag. 506. ubi ait: Illud vero ex declaratio-
nibus ipsius, & manu scriptis patet, quod congregatio non
semper, sed in tunc casu, & in gravioribus & difficultioribus du-
bitum sumnum Pontificem constitutam soleret. Si ergo non feruntur
conditiones, sub sua potestatis declaratio illi est concessa
non debet censeri eius declaratio vim legis habere. Secundum,
quia huiusmodi declaratio[n]es sive inter eum pugnant, vt notauit
Suarez tom. 4. in 3. p. disp. 2. n. 506. Ergo nulla est authentica, quia
enim ex illis, si autem interpretatio non prior: alia non
succederet secunda illi contraria. Non secunda, quia non ha-
bent potestatē derogandi legem, sed interpretandi factam.
Ergo nulli illarum declaratio[n]um est necessaria standum.
Tertio, si declaratio[n]es huius sancte Congregationis vim la-
gis habent, deberent selemittere publicari, sicut & communiter
dictum est de declaratione authentica ipsius legislatoris: et
haec declaratio[n]es nec typis mandantur, nec a Pontifice man-
dantur publicari. Ergo signum est rim legis non fortis. Quarto,
qui multitudine legum, & obligacionum vitanda est, quo
sieri possit: ut si declaratio[n]es Cardinalium vim legis hab-
rent, innumeræ essent leges Ecclesiasticae, propter innumerum
responsa huius sancte congregationis. Ergo dicendum est se-
lum esse declaratio[n]es doctrinales: & ita tenet Sanchez libro de
matrib. disp. 2. n. 506. circa finem. Vasquez item sentire v-
detur 1. 2. de f. x. 77. cap. ultim. Nanari relatus à Salas dispi-
ctus legibus, sec. 9. numero 4. docet his declaratio[n]ibus non et
standum.

4. Pro resolutione aduentum est nos loqui posse de his declarationibus, an eorum promulgantur, vel facta illarum promulgatione. Et quidem si aliquis sicut solemniter promulgare, certe potest dubium vim legis habere, quia concurrent in eis omnes conditiones que pro legis constitutione sunt requisite, scilicet conditiones et promulgatio.

et potestas promulgandi.

Neque obstat, si dicas potestatem eius datam ad declaratio-
nem doctrinalem, non legiulariam: ut sicut quidam vir de
fussum tacito nomine relata est Emanuel Rodig. 1. tom. 9.
regul. 11. art. 2. Quia ad hanc doctrinalem declarationem non
indigebant Cardinales potestate concessa. Ergo dicendum
est potestatem pro declaratione legiularia illis datam suu-
rum, eisdem congregato censuit has declarationes, tam vi-

habere, ac si à Romano Pontifice emanarent, propterea refert Nicol. Garcia tract. de benefic. in prefat. ad Lectorem, Salas de legibus disp. 21. sec. 11. Bonacina disp. 1. quæst. 1. parv. 8. n. 4. Sed si à Pontifice declaratio suum legum promulgata sint, eam legis habent in omnibus sententiis. Ergo etiam haec declaratio fuit promulgata. Neque aduersus hanc conclusionem ostendit superiores rationes, quia in his declarationibus, quæ publicantur, presumi non potest omissione fuisse consilium Pontificis, si necessarium erat. Neque aliqua propagantur, & contraria eas, nam per subsequentem declaracionem sollebat, sicut lex posteriori precedentem contraria abrogare procederet.

At si publicetur non sint, etiam autenticæ de illis contentes, plures Doctores tenent vim legis non habere, sic docet Bonacina disp. 1. quæst. 1. p. 8. n. 4. vero secunda pars. Sunt etiam generaliores de omni declaratione facta à Principe lib. 6. cap. 3. num. 3. Lotca 1. 2d. disp. 18. appendice, circa finem. Salas disp. 21. sec. 1. n. 63. & idem indicat disp. 21. sec. 12. coroll. 1. fine.

Mouenut, quia publicatio est de essentia legis, ita ut declaratio Principe, si vim legis habere debeat, indiget publicationem. Ergo etiam haec declaratio. Quod si objicias publicationem esse regulissimum ad legis constitutionem, non ad illius declaracionem, quia declaratio cum ipsa legi à principio inest. Ista fidei, ff. iiii. iiii. fcc.

Respondeo: Upwardi Doctores declaracionem claram, & evidentem inesse ipsi legi à principio: non autem declaracionem re dubia, & ambigua, & pro qua sunt variae opiniones: hoc enim declaratio, ut omnino sequenda sit, publicari debet, si quidem ex publicatione legis non inferitur. Stare enim optimè postlex cum contraria declaratione. Deinde si objicias Romanum Romanum sequi omnino declaratio. Cardinalium, etiam promulgata solemniter non sint, ut constat ex pluribus decisionibus Rotae, quas referunt Salas illa disp. 21. sec. 2. Emanuel Rodriguez, & Bonacina supra respondent id fieri, quia iudicant maximi ponderis, & authoritatis esse, ut veritas, non quia vim legis habeant. Fatoe haec sententiam probabilius esse, illoque statim posse, dum aliud à Pontifice non definatur.

6. Verum probabilis, & secutio censio has declaraciones vim legis habet, & astrigete in iudicio, & extra, cum authenticæ de illis constat per breve Pontificis, vel per monitorium auditoris Cameræ, vel per epistolam alieatum Cardinalis suo filio muniantur, vel per transumptum authenticum ex registro congregatio parte citata: quia huiusmodi publicatio videtur laius in harum legum declaratio ex sua, & consuetudine. Nam licet illa publicatione non statim multis inungescat, paulatim in moltiorum noticijs devenit, & de se apta est devenire: quod videbitur sufficiens ad obligacionem inducendum, sic docent Emanuel illa q. 11. art. 2. Salas alios referens disp. 21. sec. 1. fine. Garcia in prefat. de beneficiis.

7. Circa secundum dubium de iudicibus inferioribus, an illi licet authenticæ declarare leges superioris?

Respondeo: nullo modo licere declarare, raliter, quod eorum declaratio legit, ac ipsa lex, qui nullib[us] constat datum illis esse eam potestare. Bene tamen poterunt secundum rationem Doctorum scilicet interpretari, & secundum illam interpretationem iudicium facere, præcipue si Princeps consuli non potest, sic Emanuel qq. regul. q. 11. art. 1. Salas disp. 21. sec. 1. & tradit. Sylvestr. verbo interpretatio, quæst. 2. Ade, in rebus facilimis, & minutoribus credendum est inferioribus Prelatis habere potestatem declarandi legem, non solum doctrinaliter, sed etiam authenticæ: quia alia nulla legis obsequio perfecte introducetur, si passim recurrerent effici ad Principem. Quæopter Constantinus Imperator Plotianus scriptio in l. 1. Cod. de relationib[us], in Cod. Theodosiano, super pacis, que iuridica sententia decidit non possunt, non tam debet confundere maiestatem, ne occupantes solitas, interrumpas omni litigioribus, legitimam maneat arbitriu[m] à sententia pronoscendi, sic Emanuel Rodriguez, & Salas supra. Quod si dico habere verum, quando agitur de interest partium, & necessaria est interpretatio ad deciderandam licet: possunt enim tunc Prelati inferioribus legem, propter probabilitus videbuntur, interpretari, & cogite, ut partes hanc interpretationem sequantur.

§. II.

An cuilibet licet legem doctrinaliter interpretari? Vbi de episcopis.

Cuilibet licet hac interpretatio.

Pluribus placet non esse licitum à verbis legis deuiriare.

3. Huius licet episcopis non solum in causa, in quo obseruantia legis iniqua est, sed etiam in quo est difficultas.

4. Causa in hac interpretatione debet non minus esse probabilis

5. An, quando prohibetur à lege eius interpretatio, posse fieri haec doctrinaliter? Proponitur dubitandi ratio.
6. Solum censetur prohibita interpretatio frivola, & contra mentem legis.
7. Aliquando etiam prohibetur interpretatio typis mandata, & ex professo.

1. **F**erd omnes Doctores conuenient, cuilibet licet hanc interpretationem, si eam faciat iuxta regulas, & sensus Doctorum non proprio cerebro innotus; cum enim lex semper ambiguitatē in sua significatio concinet, neque legislator de facili consuli potest, necessarium erat, ut Doctribus darent facultas hanc interpretationem faciendi. *L. vni. Cod. de professis. lib. 1. ff. de origine iuriis 1. ff. si certum petatur, 1. si negotium, ff. de primis legi credi, & colligitur fatus ex cap. 2. de priuilegiis, in 6. & ex proximo decess. 6. & Clement. in fine, & alius in locis. Regulas autem, quibus hanc explicatio facienda est, postea subiiciuntur.*

2. Dicitur autem duplex est. Prima, an licet cuilibet contra verba legis hanc interpretationem facere? quod est inquirere, alicun sit uti episcopis, seu emendatione legis vniuersaliter loquentis ob aliquas speciales circumstantias?

Aliquis videatur non esse licitum à verbis legis deuiriare, nisi quando effet iniuria illius observatio, sic videatur tenere D. Thomas 2. 2. quæst. 110. art. 1. & ibi Caetan. Sotus lib. 1. de iustitia. quæst. 6. & 8. Cordoba 4. 2. p. 5. 9. n. 8. Ratio est, quia episcopis est emendatio legis in eo casu, in quo lex peccat, ut constat ex Aristotele, communiter recipio, s. ethic. c. 10. Sed lex non peccat, cum non obligat ad aliquid iniquum. Ergo nequit emendari, nisi quando iniquum efficeri obdebet.

3. Nihilominus tenenda est communis sententia, à qua nec D. Thomas dissentit, non solum licitam esse uti episcopis, in casu, quo obdet legi effectori iniquum, sed in casu, quo effet nimis graue, & difficile, propter aliquod graue damnum inde resultans; quia iam tunc peccat lex, si ad rem ita difficultem velit obligare, legum enim Dei suave est, & onus eius leuis. Ergo nunquam leges censentur ita duram obligationem imponere. Optime interpretari quis potest non habete legistatem tunc voluntatem obligandi: si haec enim ratione ieiunia Ecclesiastica interpretatur non obligare, si exgratia labores; neque preceptum audiendi Missam, si dannum gracie honoris, vitz, aut rei familiis inde timeas. Sic latè Svat. lib. 6. cap. 7. n. 9. & seqq. vbi extendit doctrinam, non solum quando sequitur graue damnum ex obseruancia legis in rebus acquisitiis, sed etiam in acquirendis; quia lucrum cessans iustum, & graue, damno, moraliter loquendo, æquiperatur, ut constat ex L. vni. C. de sententiis, que pro eo, quod inreversi, preferuntur, in fine. Quare si ex obseruancia legis, v.g. festi, amitis occurrentem occasionem magni lucri, ab obseruancia festi cedate poteris, & iuste interpretaris ibi nolle legistatem obligare.

4. Adcedendum temen est in hac interpretatione facienda, caufam excusantem debere esse ad minus probabilem; vel quia probatur Doctribus, vel quia summa ratione solicitur, iuxta dicta de sententiis probabili. Posita autem hac probabilitate, recte poteris interpretari illo in casu te obligatum non esse. Major difficultas est, quando hanc probabilitatem non attingit excusans causa, sed hæc dubius, an causam illum comprehendere voluerit legislator. Cui difficultati dicendum est: si consuli potest superior, non posse contra legis verba facere, quia iam habet remedium deponendi dubium; si vero dubius sis, an poterit superior comprehendere, & verbis legis comprehensum sit, regulariter verbis legis est staudum: neque licitum tibi erit interpretari non esse obligationem, quia lex possidet. Sic Salas alios referens disp. 21. sec. 1. p. 35. Vide quae dicta sunt de dubia conscientia, p. 8. & seq.

5. Secunda difficultas est. Quando per aliquam legem prohibetur eius interpretatio, an licet tunc Doctribus interpretationem doctrinaliter facere? Ratiocinio dubitandi est, quis illa prohibito aliquem effectum habere debet, sed non potest habere alium, nisi hanc interpretationem prohibeat. Ergo haec censetur prohibita. Minorem probabo; quia interpretatio authenticæ, & necessaria, & que vim legis habet, iam ipso iure, & ratione naturali erat omnibus extra legi statorem prohibita. Interpretatio autem frivola, & inanis per se ipsam est excludens. Refutat ergo, ut solum interpretatio probabilis, & doctrinalis prohibebatur.

6. Respondeo, regulariter loquendo, quoties in aliqua lege prohibetur interpretatio, solum prohibetur interpretationem frivolam, & que est contra mentem legis. Sic docet Salas disp. 21. sec. 1. p. 36. Saa verbis, interpretatio, in utraque editione, n. 5. quod colligitur ex Trident. sess. 4. decreto de usu sacrorum librorum; vbi prohibetur fieri interpretatio contra eum sensum, quem tenet, & tenet sancta mater Ecclesia, quare si quis præter consentium Patrum, non ramen illi contrarium Scripturam interpretetur, hinc prohibitionem non adueratur, sic Bagne 1. p. 9. art. 10. dub. 6. Azor 1. p. lib. 8. cap. 1. quæst. 3. & approbatur ad August. Bartoloi in remissionib[us]. Conculc illo in loco. Neque obstat

R. 4. hanc