

PERTINACITY

Canon 2200.1: "When an external violation of the law occurs, in the external forum the existence of malice (*dolus*) is presumed until the contrary is proved."

In the case of the crime of heresy: "The **very commission of any act which signifies heresy**, e.g., the statement of some doctrine contrary or contradictory to a revealed and defined dogma, **gives sufficient ground for juridical presumption of heretical depravity**... [E]xcusing circumstances have to be proved in the external forum, and **the burden of proof is on the person whose action has given rise to the imputation of heresy**. In the absence of such proof, **all such excuses are presumed not to exist.**" (McKenzie, *The Delict of Heresy*, CU Canon Law Studies 77, [Washington: 1932], 35.)

The reason such presumptions exist in the law, explain Abbo and Hannon, is that "in the ordinary case man acts knowingly and freely." (*The Sacred Canons*, [St. Louis: 1960], 2:788)

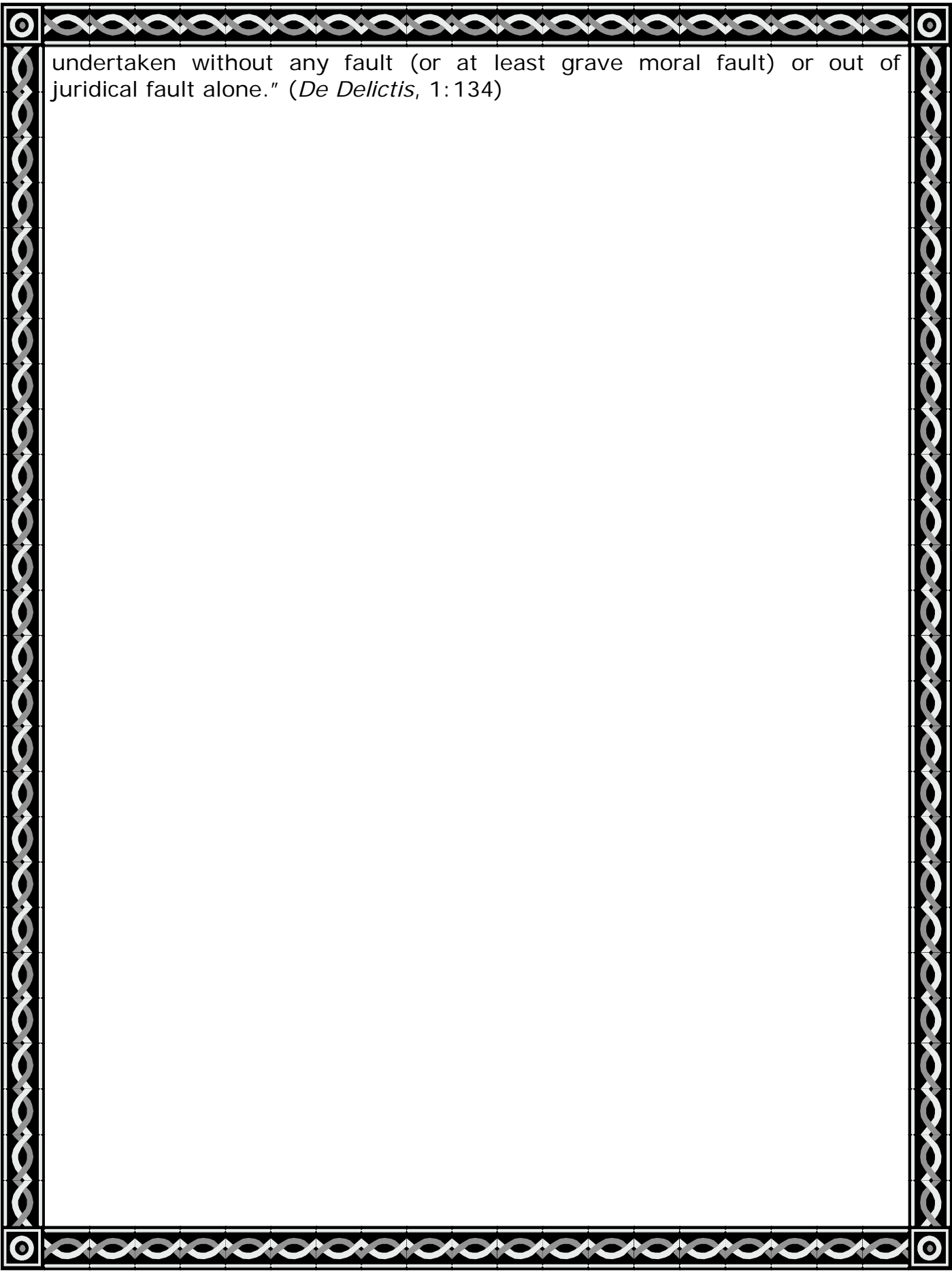
As regards the defense of ignorance, "If the delinquent making this claim be a cleric, his plea for mitigation must be dismissed, either as untrue, or else as indicating ignorance which is affected, or at least crass and supine... His ecclesiastical training in the seminary, with its moral and dogmatic theology, its ecclesiastical history, not to mention its canon law, all insure that the Church's attitude towards heresy was imparted to him." (*Ibid.*, 48)

McKenzie's teaching conforms to the general principle laid down by the canonist Michels:

"'Given an external violation of the law, criminal intent (*dolus*) is presumed in the external forum, until the contrary is proven.' [canon 2200.2]

"This is obvious. For in the external forum one acts based on the way things ordinarily happen and externally appear. And indeed ordinarily, each person of sound mind customarily acts reasonably and freely, fully knowing and deliberately willing whatever he really does.

"Here the law rightly presumes that a violation of a law takes place **deliberately and freely**, and thus with criminal intent, until from concrete external circumstances the violation of the law is proven to have been



undertaken without any fault (or at least grave moral fault) or out of juridical fault alone." (*De Delictis*, 1:134)