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Argument

A peasant girl, who was dumb and deaf from birth, was sexually used by her parent, and when this man fell into the hands of justice, he was condemned to the ultimate punishment. The question was asked whether the daughter too ought to be condemned to the same punishment, or whether she ought to be absolved because of the natural weakness of her intellect. D. Angelus Colius of Sienna, a most learned doctor, communicated her history to me. In accordance with the demand of justice for the truth he set down some observations in writing to us, and so from the careful deliberation of this man we have set out the arguments which follow.

Summary

1. For the most part those who are dumb and deaf from birth are capable of understanding many things which other people understand, although more imperfectly and more slowly.
2. Those who are dumb and deaf from birth accomplish by means of gestures more each day in any form of learning than beasts with hearing accomplish throughout their whole life.
3. Those dumb and deaf from birth comprehend many things which beasts are not able to comprehend.
4. Whether those dumb and deaf from birth ought to be punished for crimes, or not.
5. Those dumb and deaf from birth are not prohibited from marrying.
6. Those who are dumb and deaf are able to understand the nature and purpose of the sacrament of matrimony, just as are those who are below the age of puberty.

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7. Those who are dumb and deaf should no more be absolved when they commit a crime than foreigners should be excused when they commit a crime while they are staying in unfamiliar territory, even although they do not speak the language. See num. 15.
8. All those who are dumb and deaf come before the law on an equal footing with children and the insane.
9. Those who are dumb and deaf are deemed to have no greater intelligence than the beasts themselves possess.
10. Man is distinguished from beasts by speech and knowledge.
11. Those dumb and deaf from birth are in worse case than those blind from birth.
12. Beasts do not act from choice or virtue and in them virtue and vice have no place, so too they have no place in the deaf and dumb.
13. Some beasts do not mate with their parents and understand conjugal fidelity. See the numbers which follow.
16. The dumb and deaf differ among themselves in their greater or lesser completeness of understanding. See numbers 17, 18, 19 and 20.
21. Which of those who are dumb and deaf should be punished in the case of crimes, and in the case of which crimes, provided that they are undoubtedly not minor misdeeds.
1. Even if those who are dumb and deaf from birth do not have complete and perfect use of their intellect, it seems it should not be thought that they are to be compared to beasts, as some have wanted to do, since from the nature of the human intellect

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with which even they are endowed, they are capable of some things which only humans are capable of and beasts are not; indeed, although such dumb and deaf persons differ among themselves in the greater or lesser completeness of their intellect, it sometimes happens that some of them may accomplish as much in every way as the rest of men achieve without a handicap, comprehend everything and learn very thoroughly by comprehending whatever can be understood by others. Moreover, as to this question of distinguishing which of them falls into the lesser category and which the greater, I shall disclose the criteria at the conclusion of the discourse. Generally, however, for the benefit of saying something now, it seems that all the dumb and deaf of the latter kind understand, for example, the infamy of the sexual act and reverence for a father, and so with these two principles joined together it will be easy to put forward an argument that the case is a most shameful one and the act of sexual intercourse with one's own father must be expiated with due punishment.

2. Nor is lack of hearing in any way a hindrance in this situation, because apart from the fact that both concepts are instilled in us by nature, we see that even the beasts themselves understand them, as will be explained below. Add the fact that because of the capacity of the human intellect, loss of hearing is easily mitigated through gestures and experience, a fact which is very evident since a person who is deaf and dumb from birth is taught more by gestures in any discipline whatsoever each day than a beast learns in a year, notwithstanding the fact that the beast hears its master's voice; therefore, not through hearing, but from the ability of the human intellect, in which, as I said, the above mentioned deaf and dumb are not lacking,

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they are taught and comprehend whatever other people whole in body are capable of comprehending with their hearing and the gift of speech; that this may be even more obvious, turn your attention to those dumb and deaf persons who have learned human speech through the work of a certain monk who teaches them, as I have reported elsewhere from Vallesius; from this it is easily deduced that lack of hearing does not hinder discourse of the intellect, and thus those dumb and deaf from birth will have their own inborn use of reason, as does the rest of mankind, and they will comprehend very easily what things should be avoided and which are to be pursued, likewise which acts are considered worthy of punishment and censure and which are worthy of reward and praise, and on this account without doubt they will be fit for punishment and reward.

3. In addition, even if we concede that those dumb and deaf from birth do not have, as do the rest of mankind, complete use of reason, yet it can in no way be denied that they have much more complete use than the beasts, not only, I may say, in respect to those things which are presented by the external senses and about which the estimative faculty afterwards makes observations in its own way, but also in respect to those things which are drawn from forms not perceptible to the senses and from which discourse is fashioned in man and which beasts cannot comprehend. Since, therefore, for the most part beasts understand reverence for parents, most especially in respect to the act of sex, as we will show, and further since in this very act some beasts practise conjugal fidelity, how much more will those dumb and deaf from birth, who are endowed with human intelligence, who are able to draw insensible forms from the sensible and hence to form concepts in the

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mind and discourse from concepts, comprehend all these principles, and thus it follows that they understand very clearly that vice is to be avoided and virtue is to be sought, since they are very well able to distinguish between acts of virtue and those which are contrary to virtue, and so, for example, without any difficulty they know how to distinguish between what it is to venerate parents and what to inflict injury upon them, and consequently, just as in the first instance they pursue an act of virtue, so in the second instance they shrink from an act against virtue, and thus they are deemed to be fit for rewards and for punishment; and not without reason do we see this established by masters of jurisprudence 4. that when those who are dumb and deaf from birth commit a crime (if they appear sound of intellect to the extent that their condition allows), they ought to be punished, especially if there are witnesses and the accused themselves confess their crimes by nodding *from Bald. & with many others Farinac in Pract crimin. quest.98. num. 160 & following.*

5. Furthermore, if those who are dumb and deaf are considered capable in law of other acts for which perfection of understanding is required, such as establishing testimony *I Diferetis C. qui Testam. fac. pos.* and drawing a conclusion *I. Item quia ff.de Pactis. ubi Gloss.* and what is of even more importance, for the sacrament of matrimony according to the general opinion, concerning which see especially *Brunell. de spons. & matrim. concl. 14. num. 1 & to this is added I mutus ff .de lur. dot.etc. cum apud despons. per Farinac. ubi 5. num. the same.and Sachez also maintains this opinion de Matrim lib. 1 quest. 8. num.12.,* it must not be said that the dumb and deaf are wholly lacking complete human understanding, otherwise these acts would not be permitted to them in law, and most especially they would

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not be seen as fit to contract matrimony, since for this act it is necessary that they comprehend the nature and purpose of the sacrament, otherwise they contract it in vain. *Sanchez see above num. the same.*, but in order to understand this nature and purpose some perfection of understanding is necessary, therefore they are not lacking in perfection of understanding of this kind, and indeed there is much less need of perfection in comprehending the gravity and infamy of the crime in this case, namely carnal union with one's own father, which by the very dictates of nature is detestable, therefore the girl who is the subject of this inquiry was sufficiently capable of understanding the enormity of this crime, and since this understanding did not hinder her and she did not hold back, she certainly ought to be judged guilty of this same crime, just as her father was, and should suffer the well deserved punishment.

6. Add to this the fact that since those dumb and deaf from birth are admitted to matrimony, then there is no need of much difficult discourse in order to comprehend the nature and purpose of this sacrament, which is clear since even those below the age of puberty, whose intellect has been compared to that of those who are dumb and deaf, are admitted to matrimony, provided that they are capable of intent, and since greater and more perfection of discourse is required to understand the purpose of matrimony than to understand the unnatural sin of coitus with one's own parent, which as we have so often emphasized even beasts understand, as we will clearly demonstrate, it is certain that this girl, dumb and deaf from birth, was capable of understanding the depravity of the crime, and notwithstanding this she willingly appears to have fallen into sin and thus is

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deemed worthy of punishment; certainly it cannot be denied that other girls dumb and deaf from birth are modest and abstain from licentious association with men and from speaking through gestures as if from some shameful act, which certainly would not happen if they did not recognize the value of virtue which is diminished by commerce with men; how much more then we must say that they understand the wickedness of carnal union, especially with one's own parent?

7. Further, if because of their defective hearing those dumb and deaf from birth are exempt from punishment for their crimes, for the same reason foreigners moving to some region or other ought to be excused since they do not understand the language of this region, and yet they are by no means exempt, especially in the most serious cases; therefore, when they commit a crime, those who are deaf and dumb should never be pardoned on the grounds that they cannot understand human speech, especially in very serious offences, as in our case; for in the same way foreigners can be informed through gestures what to do and what not to do, when they do not understand the language of a region, and so according to law they ought to suffer punishment for any crimes of omission and commission.
8. Nor is it an objection that those dumb and deaf from birth in law (*as I said elsewhere lib. 2. Tit. 1. quest. 8. num. 20 from several citations there*) proceed on an equal footing with children, the senseless and the raving mad, and for that reason they cannot understand the seriousness of crimes, and thus are not considered capable of evil intent nor consequently of punishment, because in law, as such persons are equal to children and the raving mad, they have understanding insofar as those matters which are regarded with favour in civil society are concerned, but not in

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respect to crimes, on account of which they should not be punished, especially those persons who are more effective in discourse, and who seem capable of some kind of evil intent; for when intent occurs, then also culpability goes along with it and has a punishment associated with it, since punishment is imposed because of culpability *D. Thom. 2. 2. quest. 108. art. 4.*

9. However, it can be suggested further that those who are dumb and deaf from birth not only appear to be comparable to children and the mindless, but it should be affirmed that they have no greater aptitude for understanding than have the beasts which are without reason; 10. for it is clear that there are primarily two attributes by which man is particularly distinguished from beasts, namely knowledge and speech, and those who are deaf and dumb are completely deprived of both, indeed on account of their lack of the sense of hearing they can attain neither speech nor knowledge, for no one can instruct them in the necessary principles because of their deafness, *Nec ratione docere ulla, suadereque surdis, Quid sit opus facto, [And not by any method to teach or persuade the deaf what needs to be done] as Lucret. says lib. 5. de Rer. nat.,* and so an impediment remains on account of the natural imperfection of their intellect, which thus is unfit for understanding those concepts which the human intellect is properly accustomed to comprehend, and which the irrational beasts themselves are completely unsuited to comprehending; whence, if indeed beasts are unfit for these things, as beasts are thought to be, but beasts are not fit for any punishment of crimes, therefore, these too should not be punished for crimes.
11. Indeed, that there are dumb and deaf of this kind, not fit to comprehend any kind

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of learning or instruction, is clear from actual experience, from which we see that they are in a much worse condition than those who are blind from birth, since if they are taught some skills, those blind from birth also obtain some sorts of knowledge, for very many of them do acquire knowledge, and we certainly know notable preachers, poets and other men instructed in every kind of knowledge by those born blind. Indeed, some people even observed that a certain blind sculptor who stayed here in the past imitated any kind of image, examining the size and shape by touch alone. Concerning him there is mention of training for no other man, following *D.Iohannes Narius Florentinus in suo Lucretis prepolitissimo commentario lib. 4. not far from the beginning*. But this ought not to be wondered at in persons born dumb and deaf, on the contrary, as far as learning goes there is mention of no such thing with respect to the dumb and deaf and those born dumb and deaf.

12. Furthermore, the dumb and deaf are not seen as being able to act from choice as long as they are compared to beasts, which do not act from virtue, from choice determined by understanding, and from free will in those matters which concern faults and virtues, and therefore they are fit for neither punishments nor rewards; in the same way those dumb and deaf from birth in respect to those acts which pertain to faults and virtues ought not to be thought of as acting from virtue or from choice, and thus they are not deserving, nor are they capable of deserving either rewards or punishments, and for this reason it seems this girl must be absolved.

A much stronger argument urges the consideration that even if we grant that the dumb and deaf from birth are able to comprehend and understand all those things which exist materially and which are comprehended at least by the other senses,

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hearing excepted, yet it is certain they can fashion for themselves no form of abstract concepts in respect to them, through which they may understand these things; since, because the proper forms of things are considered necessary for understanding, or at least the forms of other things, from which understanding of abstract concepts may occur, yet there is no form which can be understood by the dumb and deaf as it can be understood by the rest of men, who also comprehend abstract concepts of other forms through certain similarities, it is certain that those dumb and deaf from birth cannot in any way understand abstractions, since they cannot, as can other men, be taught through instruction to understand those similar forms through which abstract concepts are understood, and thus a person dumb and deaf from birth will certainly not be able to comprehend reverence for a father and the foulness of the act of lust, and will not be able to understand these two things joined together, certainly not that the foulness of the act of lust with one's own father must be condemned and must be especially shunned, since comprehension of abstract concepts is required for understanding, and they can conceive no form of these abstractions from which they could form concepts and thus engage in discourse and draw forth true conclusions, and so since those dumb and deaf from birth cannot use reasoning through the aforesaid forms, it must be said that on account of this imperfection of understanding they are not fit to suffer any punishment for crimes, since there is no evil intent in them, and since this is absent, all culpability is also absent, as has been said elsewhere.

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13. Notwithstanding these arguments, a contrary opinion strongly suggests, one which we have urged so often concerning the beasts, namely that some, more capable of forming judgements and which approach the capacity of human ability on this account, recognize reverence for parents and the foulness of the act of lust, and therefore they do not mate with their parents; even further, some of them preserve chastity and recognize conjugal fidelity, and at no time do they depart from these concepts, and although it can be conceded that these and similar acts by animals happen from natural instinct, nevertheless, in respect to those who are dumb and deaf, it must be said that they likewise ought to succumb to every base act from natural instinct, yet through natural instinct they can recognize the foulness of the crime, as the beasts do, for which reason they abstain from it, and so it certainly seems that they should be punished in when they commit these crimes.

Indeed the fact that beasts, as has so often been said, comprehend these things which we have mentioned, is very clear from the natural historians; for they certainly recognize that a horse does not mate with its parents, and so, as is reported by *Aelian lib. 4 de hist. anim. cap. 7*, although sometimes a stallion has been forced to mate with its mother through trickery, when they have realized this, both rush headlong at each other and kill themselves. The camel displays the same reverence towards its parents for it does not mount its mother; and so, again according to *Aelian lib. 3. de hist. anim. cap. 47*. in the same way when a camel realized that it had been forced through trickery to penetrate its mother, it killed its handler. As for the chastity and conjugal fidelity which turtle doves and doves preserve with their mates, this is clear from *Arist. lib. nono de Hist. Anim. cap. 1. &*

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eod. Aelian. lib. 3. de hist. anim.. cap.44, and concerning a similar chastity observed by the kingfisher mention is made by *Plutar. in lib. de indust. Animal.* and concerning the chastity of elephants *Aelian lib. 8. de Animal. cap. 17 & after others Mattid in lib. 2. Dioscorid. de Mat. Med. cap. 50*. Indeed it is even attested by their modesty that some beasts understand very clearly the foulness of the sexual act, since they never come together openly but withdraw into secluded places that they may escape the sight of any other animal; thus of the elephant *Arist. lib. 5. de Histor. Anim. cap 2. & Aelian ubi proxime*, and of camels likewise *Arist. ibid.* which do not allow anyone to stand by present while they are mating except the herdsmen who *Aelian lib. 6 de animal. cap. 60* says also withdraw during the mating. Indeed, if these things are true, as also many other instances of this kind which anyone can inquire about in the authors cited above and others, it cannot now be doubted that those dumb and deaf from birth are easily able to understand acts of virtue, especially those which pertain to matters of sexual love and other natural actions, as something good and honest and pursue them and can easily understand contrary acts as something evil and dishonourable and flee what is worthy of punishment; and thus in our case it seems we must conclude that this girl must be most severely beaten just as her father was, since she was able to comprehend through sufficient discourse that to engage in sexual acts with her own father was a matter of enormous and supreme evil and deserving of severe punishment and yet did not abstain.

14. But nor were these arguments seen to bring about the opinion that punishment should be passed over on these grounds, since all the charges seem to admit a

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response which was in agreement as to those things which were said in the last section about beasts. Certainly to the statements that some beasts are able to recognize the foulness of carnal union with one's parents and that others are familiar with the preservation of conjugal fidelity and never violate this, the response is that these matters are not sufficiently understood and are refuted by every day proof of their falseness; and that even if these arguments are absolutely true that they do not affect anything. That some things are not sufficiently understood is clear, since those very same writers on natural subjects report these instances and so, although Aelian says that horses do not mate with their parents, yet according to *Arist. lib. 6. de Hist. Anim. cap. 23.*, to whose information experience lends support, it is clear that horses mate their mothers and daughters; and the same appears to have been asserted of camels and other animals, if there are any whose similarities are discussed. The same response should be given concerning the chastity and conjugal fidelity of turtle doves, doves and kingfishers, and indeed I would have said this claim is a misleading fabrication made by writers on nature, and they do not express this view just in one instance but very many similar instances. How greatly, I ask, has the purity and chastity of bees been celebrated, concerning which I have spoken at length elsewhere *lib. 4. tit. 2. quest. 3.* ; for as I said there, Plutarch by no means only once made especial mention of this and others have also, in fact *Virgil lib. 4. Georg.* praised this virtue, and before these also *Aristot. lib. 3 de Gener. Anim. cap. 10.* mentioned this, and concerning the same virtue *Pallad. lib. 3 de re Rust. cap. 15.* looks for a chaste and pure custodian of bees. This conclusion, however, is called in doubt by *Columell. de re Rust. lib. 9. cap. 75.* & *Scalig. in Cardan. exert.*

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185 & after him and from him others. Licet, de Spent. vin. ort. lib. 4. cap. 57.

completely dismisses this idea of the chastity of bees, and other more recent, less credulous writers for the most part do not accept these wondrous qualities

15. But even should we concede and allow as true whatever authors affirm concerning the above arguments, it is certain these animals do not act from any preexisting knowledge and for the sake of virtue, but rather from natural instinct only; but it is a very different thing to act from virtue and to act from natural instinct, since no animal can act from virtue unless it comprehends the end to which it directs its own action and on account of which it acts; on the contrary indeed, to act from natural instincts is to be without any understanding of the end, nor is there any freedom of action in this activity as there is in an act of virtue, and thus from such an act, performed from the instinct of nature, an animal should suffer no punishment, nor from that act which may be against the instinct of nature, for if no understanding of the end is found in an action performed according to natural instinct, none also can be found in an action which maybe contrary to natural instinct. Finally, to what was mentioned concerning foreigners who do not understand the language of a region, it must be said that this is not a similar case; in fact it is very different, since foreigners have perfection of intellect, and indeed with gestures and experience they can immediately be instructed in such a way that they easily comprehend what is customary to do or not do in that region, and along with the rest what things are most to be avoided as the most heinous crimes; however, the situation is not the same for those who are dumb and deaf, for whom there is not only a hearing impediment, on account of which they cannot understand or learn

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speech, but there is present in addition an imperfection of intellect on account of which they are lacking right discourse, and thus they cannot act either from virtue or contrary to virtue, since they do not sufficiently understand the end of their own actions.

16. Indeed for the sake of truth it seems it must be said that in our case we ought to agree on the adequacy of the intellect of the girl in question, since it should be evident that those dumb and deaf from birth differ a great deal among themselves as far as the perfection of their intellect; I have established several categories according to the greater or lesser perfection of intellect, and since the whole fault of the imperfection lies with the instruments themselves and these afflicted instruments can manifest in four ways, four categories should rightly be established in such cases.
17. Therefore, in the first category we will place those in whom without doubt the instrument of the intellect, the brain, notably and consequently the principal parts, is defective and damaged, perhaps consequently even the acoustic or auditory nerves, (for even without injury of these, as the result of a natural abnormality of the brain in its own substance a man could remain mute from weakness of intellect and lack of ability to learn, indeed I have not thought it absurd to affirm this) and I have said rightly that they ought to be compared to beasts in respect to the use of reason and it must be asserted that they are absolutely incapable of reward or blame.
18. The second category consists of those who indeed have a brain with the principal parts well constituted by nature, endowed with due proportion and perfection, but with some injury close to the beginning of the acoustic nerves and in the auditory

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nerves themselves which bring sensible forms to the brain; in these persons it is agreed there appears a certain imperfection of human intellect, on account of which they comprehend some things, but more imperfectly than seven year old boys, and because of the hearing impediment they do not learn to speak, nor do they ever have greater capacity than those same seven year olds in comprehension, if they understand anything with their confused and disturbed cognition, and especially in understanding those things which pertain to acts of virtue or acts contrary to virtue, to fault, and especially to reward and punishment, honour and censure, and thus evil intent can occur neither in those in this category nor in seven year old boys, and consequently they are capable neither of blame nor punishment, except perhaps sometimes in the case of most heinous crimes.

19. The third category of those dumb and deaf from birth follows and includes those who will not learn to speak, not because of any defect of the brain, the instrument of intellect itself, but because they are deprived of hearing on account of a flaw and lesion of the acoustic ducts and nerves, and they are quite capable of comprehending the matters mentioned above which are demonstrated to them, and indeed they are also endowed with evident cognition of the intellect, and although more feebly than those who are placed in the fourth category, but better than those named in the second category, they are capable of comprehension and are able to understand a number of things which neither beasts nor the other dumb and deaf mentioned above are able to comprehend; because in them the brain has much more space, the lesion of the sensory nerve is located that much further from the principle part of the brain; for the closer the injury, the more likely it is for the brain to

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be damaged. Therefore, those in this category are without doubt capable of evil intent and thus they can act from virtue and from wickedness and in some measure earn reward and punishment on account of their own actions, although in their case the reason for their imperfection of understanding must also be considered, since they are not able to be fully educated because of their hearing impediment.

20. Finally the fourth category includes those dumb and deaf who have no flaw in the brain or the auditory nerves, but who have no hearing on account of the interposition of a rather thick covering in front of the membrane which they call the timpanum, and because of this impediment they do not learn speech. I have mentioned this type of deafness elsewhere, from *Hieron. Fabric. de org. Audit. part. 1. cap. 4. lib. 2. quest. Medico. leg. tit 1. quest. 18. n. 6*. To these should be compared those who in infancy become deaf on account of an accident, such as a fall, a crash and a great clamour and an unexpected blow, as from the blast of a bombardment, and also from a serious illness, such as the cases recited in *Guillelm. Fabritius Hildan, obs. Chirurg. cent. 3. observant. 5.6. &7*. For these cases do not learn to speak because of deafness contracted in infancy, although by nature they have no flaw in their brain as they have none in their other instruments, which he recounts happened in the case of a certain boy who became seriously ill in his eighth year and who recovered but with his hearing irreparably damaged *id Fabrit. cent. 5. obser. 26*. Even if that boy had already previously learned to speak, because of the strength of the disease when he became deaf he also became dumb forever, since he could no longer learn to speak. These persons, moreover, since they have, as I have said, the instrument of intellect free of every flaw, can reason

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no more imperfectly than all other men, if they can be taught by a person with hearing; for I understand that monk, whom I mentioned in the place cited from *Valles. lib. de Sacr. Philosoph. cap. 3* was able to teach men like these to speak.

21. Since, therefore, these persons most of all come close to the perfection of the human intellect, they will consequently be capable of any evil intent, just as they are capable of reward and punishment, since they can act from virtue and from wickedness. These certainly ought to be punished for their crimes no differently than those who are unblemished, especially in the case of atrocities, for perhaps in other cases, some reason is to be found for their imperfection, whatever in the end that may be. And so I come to an end concerning the sufficiency or the insufficiency of understanding of this girl, and concerning her malice and evil intent, a judge can easily decide whether she ought to be condemned to the ultimate punishment on account of the atrocity of her crime, or, on the contrary, whether in her situation compassion ought to be considered.