

TRANSLATOR'S NOTE ON CITATIONS.

1. *Bible*.—The references made in the original to the Vulgate are given in the translation in terms of the English Authorized Version of the reign of James I.

2. *Canon law books*.—The references in the translation are given in the following abbreviated manner: (a) *Decretum, pt. i*, by number of Canon and number of *Distinctio*, e. g., can. 6, Dist. 96: (b) *Decretum, pt. ii*, by number of Canon, number of *Causa*, number of *Quaestio*, e. g., can. 41, C. 7, qu. 1: (c) *Decretales*, by *X* (for *extra Decretum*) then number of book, title and chapter, thus *X, 5, 6, 6*: (d) *Liber Sextus*, by the number of book, title and chapter, followed by "in *VI*," thus 5, 2, 19 in *VI*.

3. *Civil law books*.—The references in the translation are to Mommsen's edition of the *Corpus Juris Civilis*.

In addition to the above-named books the author cites or refers to the writings of the following:

Adrian VI, Pope.	Fitzralph, Richard, Archbishop of Armagh.
Almain, Jacques.	Gandavensis (<i>i. e.</i> , of Ghent), Henricus.
Altissiodorensis (<i>i. e.</i> , of Auxerre), Gulielmus.	Gerson.
Ambrose, St.	Hostiensis (Henry of Susa, Cardinal, Bishop of Ostia).
Anconitanus (<i>i. e.</i> , of Ancona), Agostino Trionfi.	Hugo, <i>see de Sancto Victore</i> .
Andrez, Joannes.	Lombard, Peter.
Angelus of Chiavasso.	Luther, Martin.
Antoninus, St., Archbishop of Florence.	Natalis, Herveus.
Aquinas, St. Thomas.	Ovid.
Archbishop, the, <i>see Antoninus</i>	Paludanus, Petrus.
Aristotle.	Panormitanus (<i>i. e.</i> , of Palermo), Nicolo Tudeschi.
Armachanus (<i>i. e.</i> , of Armagh), <i>see Fitzralph, Richard</i> .	Parisiensis (<i>i. e.</i> , of Paris), Gulielmus.
Augustine, St.	Sallust.
Baptista de Salis.	de Sancto Victore, Hugo.
Bartolus.	Scotus, Duns.
Bernard, St.	Sylvester of Prierio.
Cajetan, Cardinal (Thomas de Vio).	Terence.
Cicero.	Tertullian.
Conrad.	de Torquemada (Turrecremata), Juan.
Dionysius Areopagiticus.	Vergil.
Durandus.	Waldensis (<i>i. e.</i> , of Walden, Essex), Thomas Netter.
Eymerici, Nicholas.	

(The Title-Page of the Edition of 1696)

THE RELECTIONES IN MORAL THEOLOGY OF THE
VERY CELEBRATED SPANISH THEOLOGIAN,
FRANCISCUS DE VICTORIA,

comprised in two volumes, in the order shown overleaf,

Formerly published at Ingolstadt, and now,
because of the lack of copies and the nobility of their contents,
revised and furnished with a twofold index by the toil of

JOHANN GEORG SIMON, J. U. D.,
Counsellor and Professor of Halle.

"A work of the utmost utility alike to jurisconsults and to theologians." [Conring]

COLOGNE AND FRANKFORT,
At the cost of AUGUST BOETIUS.
1696.

(Overleaf of the Edition of 1696)

VOLUME I.

- I. On the Power of the Church, part 1.
- II. On the Power of the Church, part 2.
- III. On Civil Power.
- IV. On the Power of the Pope and Council.
- V. Part 1, or on the Indians lately discovered.
- VI. Part 2, or on the Law of War.
- VII. On Marriage.

VOLUME II.

- VIII. On the Increase of Charity.
- IX. On Temperance.
- X. On Homicide.
- XI. On Simony.
- XII. On the Magic Art.
- XIII. On the Obligations of a man attaining the use of reason.

[Of the above, only Relectiones V and VI are pertinent to the objects of this work and the others are therefore not included.]

TO THE CHRISTIAN READER, GREETING¹:

It having been decided to reprint here, at Ingolstadt, these thirteen *Relectiones* of Franciscus de Victoria, who was by far the most learned theologian of the highly flourishing University of Salamanca within the memory of our fathers, I undertook the task of correcting them at the instance of certain doctors, who, on account of the celebrity of his reputation, were glowing with fervent admiration of so great a man. Now in this business so entrusted to me, I see that there are a few items concerning which it is worth while that you have an accurate account: these are, the amount of labor and toil expended by me in correcting and preparing the publication; the character and greatness of the man who composed these *Relectiones*; and the amount of advantage and profit which the perusal of them will bring even to Germans, who seem to be somewhat strange to the gymnastic and scholastic form of discussion therein employed.

Well, reader, you will scarcely believe how much labor we have expended on this business, unless either you make a careful comparison of this edition of ours with the Lyons and Salamanca editions or realize in some fashion by our description the character of each of these editions. For I had at first the use of the Lyons edition only, in clearing the blunders from a good part of the first volume, and the printer had already finished striking off the first five sheets of it, when, beyond my hope and belief (for I did not think such a thing existed here), a copy of the much more correct Salamanca edition came into my hands in the manner following: The Reverend Father Gregorius Rosephius, a preacher of Augsburg,² when on a visit to us, had perceived the extremely wearisome nature of the task, which I had undertaken in correcting the Lyons copy (I seemed indeed to be cleansing the Augean stable), and had noticed that some of the passages pointed out by me were hopelessly corrupt, and by his courteous intervention with the well-born gentleman, Marcus Fugger (on whom the desire of the public welfare had such a hold), he procured me the loan, from the well-known library of the Fugger family, of a copy of the Salamanca edition. How faulty and corrupt the Lyons copy was, I would rather that you, my reader, should learn from the Letter to the Reader, which Brother Alonso Muñoz placed at the beginning of the Salamanca copy, than from me. A part of that Letter it has seemed advisable to insert in this, because it, too, contains the praises of the author, and because some of the disciples of that most erudite man are mentioned by name there.

¹This preface, which Simon prefixes to his edition, is a copy of the preface to the edition which appeared at Ingolstadt in 1580, and is in the form of a letter "To the Christian Reader" from the editor, who describes himself as "one of the Doctors of Sacred Theology at Ingolstadt." The black figures in the inside margin of pages 115-187 indicate the corresponding pages of the Photographic Reproduction included in this edition. The pages of the Photographic Reproduction corresponding to pages 105-114 are unnumbered in the original. ²Or some other "Augusta."—TRANSL.

"When, honest reader, I was busy at Salamanca, trying to help Brother Domingo Soto with the correction of the proof of the fourth volume of the *Sententiae*, then in the press, there appeared a little book with a most imposing title, but containing countless horrible misprints, absurdities which were disgraceful and insulting to the author as well as to the whole theological school. It made one aghast to behold in the tiny body of so small a book so unbelievable an off-scouring of close-packed blunders, and ashamed and sorrowful that rascals should seem to have such license towards the master-pieces of most distinguished men, and with impunity, too. This was the title of the book: "The Relectiones of the Reverend Father, Brother Franciscus de Victoria, of the Order of Preachers, formerly Primary Professor of Sacred Theology in the University of Salamanca." You observe how fair and full of promise the inscription is; and indeed for this, in Pliny's words, its bail could be forfeited.

"When, then, at Salamanca I came across this very book, newly issued from the press, I began to read it with the utmost avidity, and I had barely cast my eyes upon the first page that presented itself, when, lo, there lighted on my very eyes some impious error on the topic of Simony, which stirred my spleen marvelously. I made no tarrying, however, the matter being one which could easily be detected by anyone of even moderate learning; I go on, and the farther I went, the more mistakes I kept finding, and even some mutilations. Perceiving that the thing was by no means to be borne, I laid it before the very Reverend Fathers, Brother Domingo Soto and Brother Melchior Cano, who prompted me to take on myself my present charge, namely, the correction of that book according to the most exact copies. Master Franciscus Sanctius, Canon of the Cathedral of Salamanca and Moderator of the chair of Moral Philosophy in the gymnasium likewise of Salamanca and therefore administer of the Holy Inquisition in the business of examining books for admission or rejection, learnt of this. He came to Brother Domingo Soto to discuss the matter with him, and at the suggestion of the same Franciscus I was summoned and received afresh from the twain the injunction "to adorn this Sparta."

"Now, although I was aware how unpleasant a business it was, how hard and wearisome the affair, how inglorious the labor of correcting and restoring the monuments of others, especially those so ulcerous, so altogether deranged, so piteously (I had almost said) and hostilely regarded, as these were, yet, moved by the authority of my preceptors as well as induced by love of a very fine work and of its author, Victoria, who was also my dearest of teachers, I put my shoulders under a burden which I have loved."

And then at the close of the same letter Muñoz adds this paragraph:

"Enjoy, then, in your good fortune the fruits of our vigils and toil, whereby it has come to pass (without boasting) that instead of the muddy work, not to say the mud, of yore, you have something clean and clear, and gilded and resplendent all over, as you will easily discover by experiment, if, wherever the book be opened, you will make a comparison and will consider the difference between this book, which we are handing to you, and the book which we have corrected, namely, the one which Jacques Boyer struck off at Lyons in the year of our Lord 1557. Before it none was printed, and after it no other printers have ventured to reprint it, fearing (howsoever small it is) this our diligence, of which they are not unaware."

From this, my reader, you will perceive, without any words of ours, how faulty and corrupt was the Lyons edition, and how much more correct is that of Salamanca (of the year 1565, to wit). But I do not know by what

ill-chance it has happened that into this Salamanca edition, so clean, so clear, so gilded, have crept blunders and faults neither few nor trivial. It labors at times under the same faults as the Lyons edition; sometimes under faults of its own, which needs must be corrected either by reference to the Lyons edition or in some other way. What, then, my reader, was I to do, there being so many faults even in the Salamanca copy, in which I had placed my hopes of correcting the other copy? Was I to make a transcript of the whole of the Salamanca copy (for the well-born man who had loaned it to us had stipulated that it was not to be entrusted to any printer or have any marks made on it) and send the transcript to the printer to be printed? But I had no leisure for that, and if I had had, it would not have helped towards a correct edition of the work because of the faults and blunders, which, we have said, had crept into the edition in question. Was I to correct the whole of the Lyons text, just as I had corrected it in part, before I had that of Salamanca, and so corrected give it to the printer? That, too, was impracticable, because the former was blemished by many more and graver faults than the latter, and because, unless we corrected the former by the Salamanca text, we should seem to have borrowed the last-named to no purpose.

Accordingly I settled the matter as follows. From the place where the printer had stopped printing (he happened to have stopped after the fifth sheet, usually marked by the letter E) I and a wise colleague, whom I had joined with me, made a very careful collation of the two texts, and to the best of our ability, corrected that of Lyons, which was to be sent to the printer, by that of Salamanca, wherever the latter had no obvious error. But wherever a serious and manifest fault occurred in the Salamanca text (for I thought that I could rely on my own judgment in the removal of the more trifling blunders) I took counsel with the most skilful theologians and philosophers, in order that the fault might be corrected by the common judgment of many, after considering in the two copies all the words and opinions of the author, which seemed to conduce to an understanding of his mind. It happened sometimes that all of us together could hardly find a principle or method for the restoration of some corrupt passage. Let any incredulous person take the two editions and read just one passage in the "Relectio on the Increase of Charity," about No. 10, and if he can extract therefrom the sure meaning of the author while retaining the identical words, then he may indeed charge us with falsehood or ignorance.

When, then, on this principle we had collated the two editions right to the end, we carefully corrected by the Salamanca text the five sheets also, which, we have said, had been struck off, in order that nothing might be wanting for the absolute and complete expurgation of the entire work. As we could not remove from these sheets themselves the errors which occurred in them, we noted them at the end among the rest of the Errata.

This indeed was a big and tedious task, but bigger and more tedious was that which we undertook, in regard of the whole work now emended according to the Salamanca text, of simply correcting, repurging, and illustrating it with scholia throughout. This was the more toilsome and difficult in proportion as the two editions were more corrupt and as the author—owing to the strength of his very acute intelligence, which, according to the wont of highly learned men, he directs upon the matters before him—seems less careful of his words, less mindful of order or of the things initially propounded for discussion. Hence it happens that sometimes he might appear to use an overconcise and scholastic mode of discourse; sometimes, to omit answering arguments which have been propounded; sometimes, to give one answer to many things at the same time; sometimes, when discussing a mooted question or refuting an argument, to insert questions and doubts which he meets upon his way; sometimes, to omit altogether some of the questions to be discussed, which he has propounded at the beginning of the *relectio* (as is evident in the “*Relectio on Marriage*” and the “*Relectio on Temperance*”).

Nor did our labor stop here, but in the third place we had to go over the whole work after it was in type, both to make a complete alphabetical index and to correct the misprints. While attempting to accomplish this latter task, we bestowed equal diligence upon the former, so that we have left in this edition of ours a text much more correct than had previously been published, by the removal of a large number of faults and blunders, which either had come in afterwards or had not previously presented themselves. Of these, a few indeed, but the more important, however, we have noted down among the Errata at the end of the book. From this, my reader, you will understand that not all the errors noted at the end of the book are due to either the carelessness or ignorance of the printer, but they may have crept in (especially in the first five sheets, because we did not have the Salamanca copy) either because of the corrupt state of both the editions which we used or even because of our own inability to make an exhaustive scrutiny and examination. We have, however, left untouched not a few passages, which seemed susceptible of emendation, had we labored on them, because they ran in that way in both editions or at any rate in the Salamanca edition and in order that no one might charge us with excessive freedom in the correction of another's work.

About the author of these *Relectiones*, I have ascertained this much: that he lived in the reign of the Emperor Charles V, King of Spain; that he belonged to the Order of St. Dominic; that he was a shining light and ornament of that Order; that he flourished especially in the praise accorded to a very acute intelligence, to judgment, and to sound doctrine, and in the number and glory of his most learned disciples (some of whom are very well-known because of their published books, such as Melchior Cano and

Domingo Soto); further, that his universal authority was so great and his name so outstanding that he seemed to his hearers a second Pythagoras; that he was reckoned by the most learned theologians and philosophers to be the alpha and prince of the theologians and philosophers of his day, and that (I) *the Catholic Sovereigns of Spain brought to him cases affecting their conscience (such as (a) that of the conquered provinces of the New World, and (b) that of the divorced wife of the King of England, both of which are discussed in this book), desiring instruction on these matters from him especially, with the result that he himself, relying on this very authority, of which he was not unaware, gave the freest judgment, just as the principles of his conscience demanded, in the causes of Sovereigns and even (II) of the Supreme Pontiff. When I carefully consider this, I am wont to doubt which of the two is the more praiseworthy: in this man, a certain freedom of speech, buttressed by his authority and surpassing erudition, or, in the Sovereigns of Spain and even in the Supreme Pontiff, a singular moderation of mind and a desire to learn and uphold justice and truth. Hence it comes about that with equanimity, aye, pleasure, they silently allow themselves to be chided by this learned man and to be rebuked (when the principle of the doctrines which he had to deliver so requires).* For those extremely wise Sovereigns bear in mind what another Sovereign has left in writing: “The righteous shall rebuke me in compassion and shall upbraid me; but the oil of the sinner shall not fatten my head.”¹

Wherefore it is an injustice for the heretics of our day to ridicule the monastic orders everywhere on the ground that they are rude and unlearned and flatterers alike of Popes and princes. Surely, if these heretics be compared with our Franciscus de Victoria, they will neither be worthy of the name of theologian nor found to say or write aught in conformity with truth, but in everything to fawn on princes. Now how great a debt the University of Salamanca, and therefore Spain, owes to this man, the aforementioned Alonso Muñoz, in a Letter to the Most Serene King Charles of Spain, testifies in the following words:

“The whole of Spain owes much to this excellent man, for, while he has deserved well of it on many grounds, he has especially done so in respect of this, that whereas Theology among the Spaniards lay in confusion and covered with dust, or rather with mud, tattered and torn, dumb and almost tongueless, it was restored by his exertions alone to clarity, splendor, and its native beauty, to purity and dignity, comeliness, grace, and soundness, as if in virtue of a tardy postliminy. In witness of the truth of this are not merely the *centuriae*,² but also the *Iliads*³ of his disciples, whon his school has poured out in all directions.”

*The part between these asterisks is marked as a quotation in the original.—TRANSL.

¹Ps. 140 (Vulgate).

²Such as were compiled by people like the Magdeburg centuriators (whom the writer would naturally dislike).—TRANSL.

³Reading *Iliades* for *Yliades*. *Iliades* has a way of being used in Greek as equivalent to a vast string of things, e.g., *Iliades κακῶν*.—TRANSL.

Now, my reader, lest the word *relectio* be unfamiliar to you, you should realize that at Salamanca it meant a kind of theological exercise not very unlike those disputations which are known to have been in vogue in the days of our ancestors in the most celebrated universities under the name of *quodlibeticae quaestiones*. The seemingly more difficult of those *quaestiones*, which had been discussed in the daily prelections of a whole year, were also reconsidered in these *relectiones* in a public assembly of the most learned, and by the same doctor, so that they might be much more accurately decided than theretofore and receive as it were the finishing touches. And since our author was, beyond controversy, the prince of theologians of that time, especially among the Spaniards, you will perceive that whatever conclusions have been arrived at after discussion in these *Relectiones* have all been tested and weighed by the judgment of the most learned theologian, as if in the scales of the most skilful goldsmith, and that, therefore, they ought to adjudged much more solid and firm than the things superficially discussed by the heretics of today, men, forsooth, devoid of learning and judgment.

Now, although these *Relectiones* may seem suited to the bent of Spaniards rather than of Germans, seeing that the former prefer to cultivate a gymnastic and concise manner of theologizing and the latter a sedate and rhetorical manner, yet if we look at both the manner of disputation and the fruits of the learning handed on in these *Relectiones*, it seems that they will bring much advantage and profit to Germans. For if we attentively consider that from the time when the waves of false opinions and heresies began here to buffet the ship of the Church, Theology has been denuded by almost everyone (fearing, perhaps, the insults directed by heretics against the philosophers and theologians of the School) of the protection and arms of the philosophical and theological school and been called back into a rhetorical, or rather, a grammatical mode of reasoning, and that for this reason either those who have thus approached sacred literature with unwashed hands have made no further advance in that pursuit than has been made by a clever grammarian or rhetorician or that, because they are ignorant and unaccustomed to the exercises of disputation and judgment, wrong opinions have either been begotten or defended, we shall, above all, be led into that opinion (into which Cicero testifies that he was led in a similar case) and come to think that theological doctrine is not of much good to the Christian Republic without eloquence, but that eloquence without doctrine brings very often over much hurt, never any good. And so if anyone (to use the words of that same Cicero with little alteration) omits those most befitting and unerring studies of theology and divine doctrine and spends all his energy upon the exercise of speech and writing, he is being bred to be useless to himself, a dangerous citizen of his country and a parricide of his Mother Church. He, however, who so arms

himself with eloquence as to be incapable of fighting against the good of his country and the doctrine of the Church, but able to fight in their behalf, will in our view be a man of the highest usefulness alike to his own and his country's interests, the best-affected citizen, and the dearest son of his Mother Church.

I have mentioned these matters, my reader, not because I think that, in their mode of transmitting theology, either this Franciscus de Victoria and the other Spaniards are deficient in grace or in faculty of speech or the Germans are devoid and destitute of solid doctrine (for I know both that this Victoria in his *Relectiones* is eloquent to the limit of his theme and that other Spaniards, especially when they are pleased to drop the scholastic habit of speech, can both speak and write with polish, and also that no small number of Germans have been perfectly trained in the doctrines of philosophy and theology, but because I think that German theologians will best consult their own country's interests, if they studiously conjoin the solid and scholastic kind of theologizing, such as is that of this Victoria and of the Spaniards in common, with that sedate and rhetorical kind, which they themselves generally adopt.

Further, the fruits of these *Relectiones* are both abundant and manifold, and both they who are teachers of others and all other persons will be able to gather them. This indeed we can make plain by reference to the *Relectiones* one by one.

In the first *relectio* it is shown that there are in the Church two distinct powers, the ecclesiastical and the civil, and that the former is stronger than the latter; accordingly, the false doctrine of the Lutherans and of those who equate the two powers or subordinate the ecclesiastical to the civil is overthrown.

In the second *relectio*, which also bears the title "On the Power of the Church," two dogmas of the heretics are refuted; the one, that the strictly ecclesiastical and spiritual power is initially and of itself existent in the whole of the Church universal in the same way as the civil power is in the civil State; and the other, that all Christians are priests, and all equal, and that there is no order and are no certain grades in ecclesiastical power.

In the third the necessity, origin, and force of the civil power and its authority are so established and confirmed that the pernicious dogma of Luther, which has brought destruction to an almost innumerable number of simple folk, falls to the ground of itself.

The fourth *relectio* contains a very fine discussion "On the Power of the Pope and Council," which, though it may seem of less use to those engaged in strife with heretics or tainted with heretical practices, is nevertheless useful and fruitful even for them. For, while the scope of the general power alike of the Pope and of the Council is explained, at the same time the sovereignty of the power and authority of each, but in its own measure, is

asserted. Now, if the authority of the Supreme Pontiff and Councils were established and were in the ascendancy among the Germans, it would obviously result both that no sects would be propagated among them and that all heresies would be dispelled, not otherwise than darkness before the rays of the sun.

The fifth *relectio* is entitled "Of the Indians" (that is, of the barbarians of the New World commonly called Indians). Now, although this appears to be the answer given by the author to the Catholic Sovereigns of Spain, it nevertheless contains many things useful and wholesome for everyone who is in a case the same as or like to that in which those Sovereigns were. Among these things are: how a person in doubt on any matter of conscience ought to take the advice of those who are learned and wise in that kind of matter; how he ought to follow what they have laid down, even if, as may happen, they are in error; and how many unlawful, how many lawful, titles there may be, by which those Sovereigns might claim to reduce foreign provinces and populations into their power. After a careful discussion and settlement of these points, the conscience of those concerned is openly taught what to abstain from doing in this business and what to do.

In the sixth, "A Further Relectio on the Indians, or on the Law of War," much, and this useful, instruction is delivered, which ought to be observed by kings and princes, in order that they may make or wage war in a lawful manner, and by all other persons, in order that they may in lawful manner serve as soldiers under their own or a foreign prince. Meanwhile a refutation is given of that dogma of the heretics, that it is not lawful for Christian princes to fight either with other Christians or with the Turks.

In the seventh, which seems to be the author's answer in the cause of the Queen of England who had been divorced by the King, her husband, a strenuous attack is made upon that false dogma of the Lutherans that all the degrees forbidden in Leviticus 18 and 20 are still forbidden by divine law. The heretics, further, get a shrewd knock, when it is convincingly shown in this *relectio* that matrimonial causes are rightly and properly brought before ecclesiastical judges.

The eighth, in which the topic is "The Increase and Decrease of Charity," contains a discussion pertaining indeed rather to the school of theologians than to a public assembly or to other folk, yet one very helpful to these same theologians, both in the sharpening of their wits and in its harvest of very beautiful and genuinely theological matter. We may also add that here there is a condemnation of that conjecture of the heretics that all righteous persons are equals in charity and grace before God and that, as Luther asserts, the ever Blessed Virgin, the Mother of Christ, in no respect surpasses any woman from the midst of the people.

The ninth contains a varied and interesting disputation "On Temperance," which will probably be pleasing to most folk here because of the controversy about the pleasures of the table. Those barbarians, the cannibals, are here condemned, and those who sacrifice men to God. There is also a defense of the Carthusians, who perpetually abstain from flesh, and of other religious, who seem to shorten their days by other forms of abstinence. We should have had in this *relectio* more numerous defenses against heretics, had not the author absolutely passed over one or another of the *quaestiones* propounded at the beginning.

The tenth, in which there is a discussion "On Homicide," is of use in many ways; but more conclusions are arrived at in it than we can set out in summary form.

The eleventh, containing a discussion "On Simony and the Punishment of Simoniacs," may seem to be not only useful, but even necessary here, where this stain is so inveterate and so wide-spread as scarcely to be reckoned a vice. Nor are the heretics free from this vice, though cut off from the body of the Church.

Not less useful and necessary is the twelfth, in which there is a disputation "On Magic," seeing that we have often heard by sure report, nay, we assuredly know, that, after the new Gospel had been introduced by Martin Luther, it obtained such a hold especially in the regions of the North that, in proportion as the doctrine of Christ was gradually failing and dying away in the minds of men, so Magic was gradually gaining in strength, with the result that, when the former was quite extinct, the latter seemed to reign alone with her partner, Heresy. Nor are the Anabaptists and Calvinists altogether destitute and devoid of this Magic and of the Pythoness' breath, nay rather they breathe that breath in their words, writings, manners, face and eyes.

In the last *relectio* a topic is treated which is most worthy of a Christian, namely, what are the obligations of everyone on first arriving at the use of reason. For what more befitting can be taught or learnt by a man, and especially by a Christian, than the condition or manner, in which he should turn himself to God as his ultimate end and highest good, for the enjoyment of which he has been created?

It is now your part, Christian reader, to receive with gratitude and pleasure this work—on the correction of which we have bestowed so much toil and time, which has been lucubrated by such and so great a man, and which contains doctrine so sure and solid, so useful and necessary—and by reading it and meditating on it rouse your zeal for the knowledge of the highest things. It will be an abundant recompense to us, if by reading it you become both wiser and better. Farewell.

At Ingolstadt, on the day of St. Lawrence, Martyr,
in the year 1580.

A POEM TO THE READER IN PRAISE OF THE WORK
BY AN UNKNOWN AUTHOR.¹

What a number of things, O reader, this book, small as it is, contains—laws, Popes, and sacred theologians.

ANOTHER EXTEMPORANEOUS POEM COMPRISING AS BRIEFLY AS POSSIBLE
THE SUBJECTS OF BOTH VOLUMES.²

What are the powers of Holy Mother Church and of the Popes this book teaches; what is the power of the Fathers when duly assembled in their Great Council; at the same time, too, the civil laws and the laws of war (for even Mars is not lawless); and it treats of the lawful bed and marriage of men. This, Franciscus de Victoria, is the first part of thy work, and that is so far, too, the cost of our gratitude for thy deed.

What a delight of piety and how fair a virtue it is to have abstained from good things and to impose a law on luxury, but how great an impiety to pollute the hand with human blood, and to take away a life, which, once lost, is irrecoverable either with gold or prayers or an abundant price! Alas, he must carry a hard flint in his breast, who goes against his own entrails with the dread sword. Nor does the pious Church sell for a price its prebends, but gives them free to well-deserving persons, and she drives off evil spirits, nor may any of her affairs prosper by magic arts, arts summoned from the one³ dungeon of the abyss. In the last threshold of the book, too, Victoria, worthy of eternal life, teaches the conduct which befits those who come to the true use of reason.

Nor are slight thanks thine for so great a work, who art so ready to bring forth both from darkness and from rust the writings of so great a man, because, if God is propitious to the daring, thou shalt live eternally, and after paying the debt of death thou shalt live, and God will place thy soul, when freed from the body, in the ethereal heaven, and thou shalt appear among the gods. Only go on in thy well-deserving and spare not thy hard toil.

¹This is a literal prose translation of a laudatory poem, which Simon reproduces after the preface. It probably appeared in the Ingolstadt edition (1580), which Simon professes to reproduce. It also appears in the edition of Muñoz (1565) and it may be that Muñoz was its author.

²This is a literal prose translation of a laudatory poem, which Simon reproduces after the first laudatory poem. It probably appeared in the Ingolstadt edition (1580), which Simon professes to reproduce.

³Reading *uno for uni*; but the latter may be an extemporized genitive, "the dungeon of the one abyss."—TRANSL.

THE FIRST RELECTIO

OF THE REVEREND FATHER, BROTHER FRANCISCUS DE VICTORIA,
ON THE INDIANS LATELY DISCOVERED.

The passage to be discussed is from St. Matthew's Gospel: "Teach all nations, baptizing them in the name of the Father and Son and Holy Spirit," last chapter.

SUMMARY OF THE FIRST SECTION.

1. How a person in doubt on any matter, to obtain safety of conscience, should consult those whose business it is to give instruction in such matters.
2. After one in doubt has taken such advice he ought to follow what the wise have laid down, else he will not be safe.
3. Whether one in doubt ought, consistently with safety of conscience, to follow the advice given by the wise in a doubtful matter when they lay down that to be now lawful which in other circumstances is unlawful.
- 303 4. Whether the Indian aborigines before the arrival of the Spaniards were true owners in public and in private law; and whether there were among them any true princes and overlords.
5. Examination of the error of those who assert that persons living in mortal sin can not have ownership of anything at all.
6. Mortal sin does not preclude civil ownership of the true kind.
7. Whether ownership is lost by reason of unbelief.
8. The divine law does not make heresy a cause of forfeiture of the heretic's property.
9. Whether heresy causes loss of ownership by human law.
10. A heretic incurs the penalty of confiscation of his property as from the date of the commission of his offense.
11. But although the heretic's offense is patent, the fisc may not seize his property before condemnation.
- 304 12. Even though condemnation issues after the heretic's death, confiscation of property dates back to the time of the commission of the offense, no matter who is vested with the property.
13. Sales, gifts, and all other modes of alienation by a heretic are void as from the date of the commission of the offense, etc.
14. Whether a heretic before condemnation is the owner of his property in the forum of conscience.
15. A heretic may lawfully live of his own property.
16. A heretic may make a gratuitous conveyance of his property, as by way of gift.
17. A heretic whose offense has rendered him liable to process may not convey his property for value, as by way of sale or dowry.
18. In what case a heretic may lawfully alienate his property for value.
19. Barbarians are not precluded by the sin of unbelief or by any other mortal sins from being true owners alike in public and in private law.
20. Whether the use of reason is a pre-requisite of capacity for ownership.
21. Whether a boy can be an owner before he has the use of reason.
- 305 22. Whether a person of unsound mind can be an owner.
23. Inasmuch as the Indian aborigines were not of unsound mind, they are not precluded from being true owners on the pretext of unsoundness of mind.
24. These aborigines were true owners alike in public and in private law before the advent of the Spaniards among them.

“Teach all nations, baptizing them in the name of the Father and Son and Holy Spirit” (*St. Matthew*, last chap.). This passage raises the question whether the children of unbelievers may be baptized against the wishes of their parents. This question is discussed by the doctors on the fourth book of the *Sententiae*, dist. 4, and by St. Thomas, *Secunda Secundae*, qu. 10, art. 12, and *Tertia Pars*, qu. 68, art. 10. The whole of this controversy and discussion was started on account of the aborigines of the New World, commonly called Indians, who came forty years ago into the power of the Spaniards, not having been previously known to our world. This present disputation about them will fall into three parts. In the first part we shall inquire by what right these Indian natives came under Spanish sway. In the second part, what rights the Spanish sovereigns obtained over them in temporal and civil matters. In the third part, what rights these sovereigns or the Church obtained over them in matters spiritual and touching religion, in the course of which an answer will be given to the question before us.

Threefold nature of this discussion.

Whether this inquiry is entirely useless.

As regards the first part, it might seem at the very outset that the whole of this discussion is useless and futile, not only for us who have no concern either to inquire whether the men in question have conducted their administration with propriety in every detail or to raise any doubts about that business or to correct any fault that may have been committed, but also for those whose concern it is to attend to and administer these matters. Firstly, this may so seem because neither the sovereigns of Spain nor those at the head of their councils are bound to make completely fresh and exhaustive examination of rights and titles which have already been elsewhere discussed and settled, especially as regards things of which the sovereigns are in *bona fide* occupation and peaceful possession; this is so because, as Aristotle says (*Ethics*, bk. 3), “if any one were to be continually inquiring, settlement would be indefinitely postponed”; and sovereigns and their advisers could not attain security and certitude of conscience, and, if they had to trace the title of their rule back to its origin, they could not keep anything they had discovered. Moreover, inasmuch as our sovereigns, namely Ferdinand and Isabella, who were the first to occupy those regions, were most Christian, and the Emperor Charles V was a most just and scrupulous sovereign, it is not to be believed that they did not make a thoroughly complete and exact investigation into everything that could affect the security of their estate and conscience, especially in such a great matter. On these accounts, then, it may seem not only useless but also presumptuous to raise any question about the matter; it is like looking for a knot in a bulrush and for wickedness in the abode of the righteous.

Lengthy reply of the author.

In meeting this objection we must bear in mind what Aristotle says (*Ethics*, bk. 3), namely, that just as there can be no questioning or deliberation about matters either impossible or necessary, so also there can be no moral investigation about those which are certainly and notoriously lawful and seemly, or, on the other hand, about those which are certainly and notoriously unlawful and unseemly. For no one can prop-

erly raise a question whether we ought to live a temperate and brave and upright life or a wicked and base life, nor whether we ought to commit adultery or perjury, or cherish our parents, and other matters of this kind. Certainly such discussion would not be Christian. When, however, some project is on foot concerning which there is a genuine doubt whether it be good or bad, just or unjust, it is then advantageous to take advice and to deliberate and to abstain from premature action before finding out and determining how far it is or is not lawful. Such is the case with matters which, when viewed from different sides, look good or bad, as happens in many kinds of barter and contract and other businesses. And in all these cases the circumstances are such that, even if the thing in question were in itself lawful, it would be sinful for any one to do it before deliberating and assuring himself of its lawfulness; and he would not be excused on the ground of ignorance, for the ignorance would manifestly not be invincible, since he does not do what in him lies to inquire into the lawfulness or unlawfulness of the matter. For in order that an act, the goodness of which is otherwise uncertain, be good, it must be done in accordance with the investigation and determination of the wise, it being (*Ethics*, bk. 2) one of the conditions of a good act that it be done in accordance therewith. Accordingly, when, in a doubtful case, the doer omits to take the advice of the wise, he is without excuse. Nay, even if we grant that the act in question is lawful in itself, yet, if there be any doubt thereon, the doer is bound to take the advice, and to act in accordance with the award, of the wise, even though they be themselves in error.

What matters call for consultation.

In doubtful matters, abstain from action until its lawfulness is ascertained: to act otherwise is to sin.

Accordingly, if anyone, without consulting the doctors, were to make a contract, concerning the lawfulness or unlawfulness of which men were doubtful, he would undoubtedly sin, even though the contract were otherwise lawful and even if the doer thought so, not, however, on the authority of the wise, but of his own inclination and judgment. And on the same principle, were one in a doubtful matter to consult the wise and they were to rule against its lawfulness and yet he were to follow his own judgment and do the thing, he would sin even though the thing were otherwise lawful in itself. For example, suppose a man is in doubt whether so-and-so is his wife and he seeks advice whether he is bound to render the marital debt or whether it is right for him to do so, or whether he may exact it from her, and the doctors reply that it is not at all right, and yet he be led by his wife's affection and his own desire to refuse to accept that reply and thinks that his act is lawful, it is certainly sinful for him to approach his wife, although such approach be lawful in itself (as it really is), because he is acting contrary to the conscience which he ought to have. For in those matters which belong to his salvation a man is bound to yield credence to the teachers appointed by the Church, and in a doubtful matter their ruling is law. For just as in the contentious forum the judge is bound to judge in accordance with what is alleged and proved, so in the forum of conscience a man is bound to base his judgment, not on his own sentiments, but on demonstrable reason or on the authority of the wise;

Consult the wise that you may know what is lawful in such matters; act in accord with their judgment.

Sinful to do anything in such doubtful matters without consulting the wise, even though the act be otherwise lawful.

else his judgment is presumptuous and exposes him to the risk of going 310 wrong, and indeed he does err in the very fact. This accords with what was laid down in the Old Testament (*Deuteronomy*, ch. 17):

"If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea, between leprosy and not leprosy, being matters of controversy within thy gates (saith the Lord), thou shalt arise and get thee up to the place which the Lord thy God shall choose, and thou shalt come unto the priests the Levites and unto the judges that shall be in those days and enquire, and they shall show thee the sentence of judgment, and thou shalt do according to the sentence which they of authority in that place shall show thee, and according to the judgment which they shall tell thee thou shalt do, not declining to the right hand or to the left."

I accordingly assert that in doubtful matters a man is bound to seek the advice of those whom the Church has appointed for that purpose, such as prelates, preachers, and confessors, who are people skilled in divine and human law. For in the Church some are eyes, some feet, and so on (*I Corinthians*, ch. 12); and in *Ephesians*, ch. 4, "And he gave some, apostles; . . . some, evangelists; and some, pastors and teachers," and in *St. Matthew*, ch. 23, "The Scribes and the Pharisees sit in Moses' seat; all therefore whatsoever they bid you observe, that observe and do." And Aristotle (*Ethics*, bk. 1) lays this down as a precept, following Hesiod, "The man who is ignorant in himself, yet does not listen to another in order 311 to know what is good, is a foolish and empty person."

It is, therefore, not enough for security of life and conscience that a man should deem himself to be doing right, but in doubtful matters he must needs rely on the authority of others whose business is therewith. For it is not enough that merchants should abstain from doing what they themselves deem wrong, if they nevertheless enter into illegal contracts without the advice of the wise. And so I do not agree with Cardinal Cajetan when he says that if a doubt arises about something which really is lawful in itself and some preachers or confessors who otherwise have authority to pronounce thereon declare it unlawful or declare it mortal sin when it is venial, yet the man who, following his own inclination in the matter, disbelieves them and determines in his own conscience that it is not a mortal sin, does not sin. As an example, Cajetan takes the use by women of paint and other superfluous adornments, a thing really not a mortal sin, but which he assumes might be pronounced a mortal sin by preachers and confessors. If, says he, a woman is so given to such adornment that she does not yield assent to them, but thinks it lawful or not a mortal sin, she does not commit a mortal sin when she 312 resorts to such adornment. Now this I declare dangerous. For in those matters which are necessary to salvation a woman is bound to yield assent to the wise and she exposes herself to danger if contrariwise she does what the wise pronounce to be a mortal sin. And, on the other hand, if in a doubtful matter a man has taken counsel with the wise and has accepted their ruling that the thing is lawful, he is safe in conscience—at any rate until he receives a second opinion and is driven to doubt or to believe the contrary by a

Let merchants take heed hereto.

Cajetan criticized.

Let women heed this.

He who follows the advice of the wise is safe in conscience so long as he has no reason for doubting or believing the contrary.

person of such authority, or by reasons of such cogency, as ought to affect his judgment. This is notorious, for he does all that in him lies and so his ignorance is invincible.

The premises, then, establish the following propositions:

FIRST. In doubtful matters a man is bound to seek the advice of those whose business it is to give it, otherwise he is not safe in conscience, whether the doubt be about a thing in itself lawful or unlawful.

SECOND. If after a consultation in a doubtful matter it be settled by the wise that the thing is unlawful, a man is bound to follow their opinion, and if he act contrary thereto he is without excuse, even if the thing be otherwise lawful.

THIRD. On the other hand, if after such consultation it be settled by 313 the wise that the thing is lawful, he who follows their opinion is safe, even if it be otherwise unlawful.

When, then, we return to the question before us, namely, the matter of the barbarians, we see that it is not in itself so evidently unjust that no question about its justice can arise, nor again so evidently just that no doubt is possible about its injustice, but that it has a look of both according to the standpoint. For, at first sight, when we see that the whole of the business has been carried on by men who are alike well-informed and upright, we may believe that everything has been done properly and justly. But then, when we hear of so many massacres, so many plunderings of otherwise innocent men, so many princes evicted from their possessions and stripped of their rule, there is certainly ground for doubting whether this is rightly or wrongly done. And in this way the discussion in question does not seem at all superfluous and so we get a clear answer to the objection. Moreover, even if it be granted that there is no doubt about the whole question, it is no novelty for theological discussions to be instituted on points of certainty. For we discuss about the Incarnation of our Lord and other articles of faith. For not always are theological discussions of the deliberative sort, but frequently they are of the demonstrative sort, that is, entered upon, not for purposes of deliberation, but of instruction.

314 But some one may come forward and say: Although there were at one time some elements of doubt in this business, yet they have now been discussed and settled by the wise and so everything is now being administered in accordance with their advice and we have no need of a fresh enquiry. To such a person I answer first, God be blessed if it is so; our discussion raises no obstacle thereto; nor would I raise any new complaints. Secondly, I assert that it is not for jurists to settle this question or at any rate not for jurists only, for since the barbarians in question, as I shall forthwith show, were not in subjection by human law, it is not by human, but by divine law that questions concerning them are to be determined. Now, jurists are not skilled enough in the divine law to be able by themselves to settle questions of this sort. Nor am I sure that in the discussion and determination of this question theologians have ever been called competent to pronounce on so grave a matter. And as the issue concerns

Three propositions deduced from the premises. Proposition I.

Proposition II.

Proposition III.

The author adapts the foregoing to the doubt raised about the Indians, and answers it.

He meets an objection.

Firstly.

Secondly.

The decision of this case is not for jurists, but for theologians.

And therefore for priests, that is, for the Church. Thirdly.

the forum of conscience, its settlement belongs to the priests, that is, to the Church. Accordingly in *Deuteronomy*, ch. 17, it is enjoined on the king that he take a copy of the law from the hand of the priest. Thirdly, in order that the whole of the matter be adequately examined and assured, is it not possible that so weighty a business may produce other special doubts deserving of discussion? Accordingly I think I shall be doing something which is not only not futile and useless, but well worth the trouble, if I am enabled to discuss this question in a manner befitting its importance. 315

The first question about the Indians.

FOURTH. Returning now to our main topic, in order that we may proceed in order, I ask first whether the aborigines in question were true owners in both private and public law before the arrival of the Spaniards; that is, whether they were true owners of private property and possessions and also whether there were among them any who were the true princes and overlords of others. The answer might seem to be No, the reason being that slaves own no property, "for a slave can have nothing of his own" (*Inst.*, 2, 9, 3, and *Dig.*, 29, 2, 79), and so all his acquisitions belong to his master (*Inst.*, 1, 8, 1). But the aborigines in question are slaves. Therefore the matter is proved; for as Aristotle (*Politics*, bk. 1) neatly and correctly says, "Some are by nature slaves; those, to wit, who are better fitted to serve than to rule." Now these are they who have not sufficient reason to govern even themselves, but only to do what they are bidden, and whose strength lies in their body rather than in their mind. But, of a surety, if there be any such, the aborigines in question are preëminently such, for they really seem little different from brute animals and are utterly incapable of governing, and it is unquestionably better for them to be ruled by others than to rule themselves. Aristotle says it is just and natural for such to be slaves. Therefore they and their like can not be owners. And it is immaterial that before the arrival of the Spaniards they had no other masters; for there is no inconsistency in a slave having no master, as the glossator on *Dig.*, 40, 12, 23, notes. Nay, the statement is expressly made in that passage of the *Digest* and it is the expressed case set out in *Dig.*, 45, 3, 36, pr., where it is said that a slave who has been abandoned by his master and not taken into possession by any one else can be taken into possession by any one. If, then, these were slaves they could be taken into possession by the Spaniards. 316

Case for a negative answer.

Case for an affirmative answer.

On the opposite side we have the fact that the people in question were in peaceable possession of their goods, both publicly and privately. Therefore, unless the contrary is shown, they must be treated as owners and not be disturbed in their possession unless cause be shown.

A distinction. If the barbarians had not dominion, different grounds that can be assigned therefor.

In aid of a solution I am loath to recall to notice the numerous utterances of the doctors on the nature of dominion. I have set them out at length when commenting on Restitution, 4, dist. 15, and on *Prima Secundae*, qu. 62, and I pass them by here for fear they should lead me to omit things of greater moment. And so let me pass them over in order to observe that, if the aborigines had not dominion, it would seem that no other cause is assignable therefor except that they were sinners or were unbelievers or were witless or irrational. 317

FIFTH. Now, some have maintained that grace is the title to dominion and consequently that sinners, at any rate those in mortal sin, have no dominion over anything. That was the error of the poor folk of Lyons, or Waldenses, and afterwards of John Wycliffe. One error of his, namely, that "no one is a civil owner, while he is in mortal sin," was condemned by the Council of Constance. This opinion was also held by Armachanus (bk. 10, *Adversus errores Armenorum*, c. 4) and in the Dialogue, *Defensorium pacis*; and Waldensis wrote to controvert him in his *Doctrinale antiquitatum fidei*, vol. 1, bk. 2, ch. 81 and 82, and vol. 11, ch. 3. Armachanus relies on the fact that such dominion is reprobated by God: "They have set up Kings but not by me; they have made princes and I knew it not" (*Hosea*, ch. 8); and then is added the indictment, "Of their silver and their gold have they made them idols that they may be cut off." And so, says he, such persons have no lawful dominion in the eyes of God. It is certain, however, that all dominion is by divine authority, for God himself is the creator of every- 318 thing, and none but they to whom He has given dominion can have it. Now it is not agreeable to reason that He should give it to the disobedient and transgressors of his commandments, just as human princes do not give their property, such as towns and strongholds, to rebels, and if they have given it to them, they confiscate it. But we ought to judge about divine things through the medium of human things (*Romans*, ch. 1). Therefore God does not give dominion to the disobedient. And in token hereof God at times removes such from their exalted position, as in the cases of Saul (*I Sam.*, ch. 15 and 16), and of Nebuchadnezzar and Balthazar (*Daniel*, ch. 4 and 5). Again (*Genesis*, ch. 1), "Let us make man in our own image and likeness that he may have dominion over the fish of the sea," etc. It appears therefore that dominion is founded on the image of God. But the sinner displays no such image. Therefore he has no dominion. Further, such a one commits the crime of treason. Therefore he deserves to lose his dominion. Likewise, St. Augustine says that the sinner is not worthy of the bread he eats. Also, the Lord had given our first parents dominion over paradise and then deprived them of it because of their sin (*Genesis*, ch. 1). Therefore, etc.

Error of the Waldenses, Wycliffe, and Armachanus about the first ground, i. e., sin.

In favor of the doctrine of Armachanus and the others named.

Argument 1.

Argument 2.

Argument 3.

Argument 4.

It is true that both Wycliffe and Armachanus speak without distinguishing and seem to be speaking rather of the dominion of sovereignty which belongs to princes. But because their reasoning applies equally to all dominion, they seem to have in view all kinds of dominion generally. And that is how Conrad (bk. 1, qu. 7) understands their teaching, and Armachanus is sufficiently clear in that sense. Those who would follow their teaching may, therefore, say that the barbarians had no dominion, because they were always in mortal sin. 319

SIXTH. But against this doctrine I advance the proposition that mortal sin does not hinder civil dominion and true dominion. Although this proposition was established in the Council of Constance, yet Almain (4, Dist. 15, qu. 2), following Ailly, bases an argument in favor of it, on the fact that a person already in mortal sin who finds himself in extreme need

The author replies by this proposition. Almain's reasoning set out and rejected.

would be in a dilemma, inasmuch as he must eat bread, and if he can not own any himself he takes another's. Therefore he can not escape mortal sin. This reasoning is, however, unsatisfactory, in the first place, because neither Armachanus nor Wycliffe seems to be speaking of natural dominion, but of civil; and, secondly, the consequence is denied, it being retorted that in case of necessity a man could take what is another's; and, thirdly, he is in no dilemma, because he can repent. The argument, therefore, must be differently framed.

The author's reasoning or proof 1.

First, if a sinner has not civil dominion (which is what they seem to be speaking of), he, therefore, has not natural dominion; but the consequent is untrue; therefore, etc. I prove the consequence; for natural dominion is a gift of God, just as civil dominion is, nay, more so, for civil dominion seems an institute of human law. Therefore, if for an offense against God a man loses civil dominion, he would for the same reason lose his natural dominion also. But the falsity of the consequent is demonstrated by the fact that the man in question does not lose dominion over his own acts and over his own limbs, for a sinner has a right to defend his own life.

Proof 2.

Secondly, Holy Scripture often names as kings those who were wicked and sinners, as appears in the case of Solomon and Ahab and many others; but one can not be a king without having dominion; therefore, etc.

Proof 3.

Thirdly, I employ against the opposing party their own argument: Dominion is founded on the image of God; but man is God's image by nature, that is, by his reasoning powers; therefore, dominion is not lost by mortal sin. The minor is proved from St. Augustine (*De Trinitate*, bk. 9), and from the doctors.

Proof 4.

Fourthly, David called Saul his lord and king even when he was persecuting him (*I Sam.*, ch. 16, and elsewhere). Nay, David himself sinned at times, yet did not lose his kingdom on that account.

Proof 5.

Fifthly (*Genesis*, ch. 49), "The sceptre shall not depart from Judah, nor a leader from between his feet, until he that is to be sent shall come," etc.; yet there were many bad kings; therefore, etc.

Proof 6.

Sixthly, spiritual power is not lost by mortal sin; therefore not civil, for it seems much less assuredly to be founded in grace than spiritual power is. Now, the antecedent is obvious, because a bad priest consecrates the Eucharist and a bad bishop consecrates a priest, beyond all doubt. Although Wycliffe denies this, Armachanus admits it.

Proof 7.

Seventhly, it is not at all likely, seeing that we are bidden to obey princes (*Romans*, ch. 13; and *I Peter*, ch. 2: "Be subject to your masters, not only to the good but also to the forward"), and not to take what belongs to another, that God meant that there should be any uncertainty as to who were true princes and owners.

Proof 8.

And, in sum, this is a manifest heresy. And in the same way that God makes His sun to rise on the good and on the bad and sends His rain on the just and on the unjust, so also He has given temporal goods alike to good and to bad. Nor is this subject discussed, because it is in doubt, but in order

that from one crime, to wit, from this insensate heresy, we may learn the character of all heretics.

SEVENTH. Now it remains to consider whether at any rate dominion may be lost by reason of unbelief. It might seem to be so, on the ground that heretics have no dominion, and therefore other unbelievers have not, inasmuch as their condition is not better than that of heretics. The antecedent is evident from the chapter *cum secundum leges* (5, 2, 19, in vi), where it is ruled that the goods of heretics are confiscated by the very fact. My answer is in the following propositions: The first proposition is that unbelief does not prevent anyone from being a true owner. This is the conclusion of St. Thomas Aquinas (*Secunda Secundae*, qu. 10, art. 12). It is proved also, firstly, by the fact that Scripture gives the name of king to many unbelievers, such as Sennacherib and Pharaoh and many other kings. Also by the fact that hatred of God is a graver sin than unbelief; but through hatred, etc. Also, St. Paul (*Romans*, ch. 13) and St. Peter (*I Peter*, ch. 2) enjoin obedience to princes, all of whom at that time were unbelievers, and slaves are there bidden to obey their masters. Also, Tobias ordered that a kid which had been taken from the Gentiles should be restored as having been stolen (*Tobias*, ch. 2); now, this would not be the case, if the Gentiles had no ownership. Also, Joseph made all the land of Egypt tributary to Pharaoh, who was an unbeliever (*Genesis*, ch. 47). The proposition is also supported by the reasoning of St. Thomas, namely: Unbelief does not destroy either natural law or human law; but ownership and dominion are based either on natural or on human law; therefore they are not destroyed by want of faith. In fine, this is as obvious an error as the foregoing. Hence it is manifest that it is not justifiable to take anything that they possess from either Saracens or Jews or other unbelievers as such, that is, because they are unbelievers; but the act would be theft or robbery no less than if it were done to Christians.

The second ground for loss of dominion is now considered; the question is whether it is lost by unbelief. The author gives some propositions in reply. Proposition I proved from Scripture.

And by reason.

Corollary.

Proposition II.

EIGHTH. But because heresy presents peculiar difficulties, let a second proposition be: From the standpoint of the divine law a heretic does not lose the ownership of his property. This is generally accepted and is notorious. For since loss of property is a penalty and no penalty is ordained by the divine law for that condition, it is clear that from the standpoint of the divine law property is not forfeited on the ground of heresy. Further, this proposition is evident from the first proposition. For if ownership be not forfeited on the ground of any other unbelief, it follows that it is not forfeited on the ground of heresy, seeing that no special rules upon this point are enacted about heresy in the divine law.

NINTH. But what about human law in this regard? Conrad, indeed (bk. 1, qu. 7, con. 2 and 3), seems to hold that a heretic by the very fact loses the ownership of his property, and so in the forum of conscience he ceases to be capable of dominion. Hence he infers that a heretic can not alienate and that any alienation made by him is void. This is proved by the afore-mentioned chapter *cum secundum leges*, wherein the Pope premises that for certain crimes wrongdoers by the very fact lose the ownership of

their property by civil law, and the Pope rules that the same is to hold for the crime of heresy. And Joannes Andreae seems to hold the same opinion, in his comment on the afore-mentioned chapter *cum secundum leges*. And it seems to be had from the law *Manichaeos* (*Cod.*, 1, 5, 4), whereby heretics are precluded from sale or gift or any dealing with their property. Also, civil laws bind in the forum of conscience, as St. Thomas teaches (*Prima Secundae*, qu. 96, art. 4).¹

Proposition III.

TENTH. Let the third proposition in the course of our exposition be: A heretic incurs confiscation of his property from the day of the commission of his offense. This is commonly held by the doctors and is the ruling in the *Directorium inquisitorum* (bk. 3, tit. 9), and also in the *Summa* of Baptista de Salis on the word *absolutio* (§ 17), and it seems settled in the afore-mentioned chapter *cum secundum leges* and in the afore-mentioned law *Manichaeos* (*Cod.*, 1, 5, 4).

Proposition IV.

ELEVENTH. A fourth proposition: Nevertheless, although the offense be manifest, the fisc can not seize the property of a heretic before condemnation. This is also generally received, and is the ruling of the afore-named chapter *cum secundum leges*. Nay, it would be contrary to the divine law and to natural law for a penalty to be enforced before condemnation has issued.

Corollary I.

TWELFTH. It follows from the third conclusion that, when condemnation has taken place, even though this be after death, the confiscation dates back to the time of the commission of the offense, no matter into whose control the property has come. This corollary is also generally admitted and especially by Panormitanus in his comment on 3, 5, 1 in vi.

Corollary II.

THIRTEENTH. And a second consequence is that every sale or gift of or other dealing with such property is void as from the day of the commission of the offense. And so, when condemnation has taken place, all such dealings are rescinded by the fisc and the property is taken by the same fisc, even without any repayment of the price to the purchasers. This, too, is generally admitted, and expressly so by Panormitanus in the passage just named, and is manifest from the afore-named law *Manichaeos* (*Cod.*, 1, 5, 4).

Proposition V.

FOURTEENTH. A fifth proposition: Nevertheless a heretic continues to be owner in the forum of conscience until he is condemned. This proposition seems to be at variance with Conrad and with the *Directorium inquisitorum* and Joannes Andreae; it is, however, the proposition of Sylvester, under the word *haeresis*, I, § 8. Adrian also maintains it, discussing the matter at some length (*Quotlibeta*, 6, qu. 2), and Cajetan seems to hold the same view in his *Summa*, under the word *poena*. The proposition is proved, first, by the fact that this deprivation in the forum of conscience is a penalty; therefore, it ought in no wise to be inflicted before condemnation. Nor am I sure whether human law could effect this at all. It is also proved by what is clear from the above-named chapter *cum secundum leges*, namely, that property is confiscated in the same way by the very

Proof 1.

Proof 2.

¹St. Thomas' Conclusio here is "Justae leges humanae obligant homines in foro conscientiae ratione leges aeternae a qua derivantur."—TRANSL.

fact of an incestuous marriage; as also when a free woman who has been ravished marries her ravisher. Nay, if any one fails to pay the accustomed dues on imported merchandise, the goods are forfeit by the very fact; as also in the case of an exporter of contraband merchandise, such as arms and iron, to the Saracens. All the details will be found in the above-named chapter *cum secundum leges* and in *Cod.*, 5, 5, 3, and *Cod.*, 9, 13, 1, and in 327 *X*, 5, 6, 6, and in *Dig.*, 39, 4, 16 (?). Aye, and the Pope expressly says in the afore-named chapter *cum secundum leges* that, just as confiscation takes place in the cases named, so he intends it to take place in a case of heresy. But no one denies that an incestuous person and a ravisher and one who supplies the Saracens with arms and one who does not pay customs remain true owners of their property in the forum of conscience. Why, then, does not a heretic also? Conrad himself treats as identical the cases named and the case of a heretic. It would, moreover, be over severe to require a man who has just been converted from heresy to give up his property to the fisc.

FIFTEENTH. It follows as a corollary that a heretic may lawfully live off his own property. These four corollaries to be noted.

SIXTEENTH. Secondly, it follows also that he can make a gratuitous conveyance of his property, as by way of gift.

SEVENTEENTH. It follows, thirdly, that if his offense can be brought before the tribunals, he can not convey his property for value, as by way of sale or dowry. This is manifest, because he would defraud the buyer, making him incur the risk of loss of both the thing and the price, should he, the seller, be condemned.

EIGHTEENTH. Lastly, it follows that, if there were in fact no risk of confiscation, he might even make a conveyance for value. Thus, if some heretic were in Germany, a Catholic could lawfully buy from him. For it would be oppressive if a Catholic could not buy land from a heretic or sell land to him in a Lutheran state; yet it would be necessary to say this, if a heretic were utterly disabled from ownership in the forum of conscience.

NINETEENTH. From all this the conclusion follows that the barbarians in question can not be barred from being true owners, alike in public and in private law, by reason of the sin of unbelief or any other mortal sin, nor does such sin entitle Christians to seize their goods and lands, as Cajetan proves at some length and neatly (*Secunda Secundae*, qu. 66, art. 8). The principal conclusion is inferred. Cajetan.

TWENTIETH. It remains to ask whether the Indians lacked ownership because of want of reason or unsoundness of mind. This raises the question whether the use of reason is a precondition of capacity for ownership in general. Conrad, indeed (bk. 1, qu. 6), propounds the conclusion that ownership is competent to irrational creatures, alike sensible and insensible. The proof consists in the fact that ownership is nothing more than the right to put a thing to one's own use. But brutes have this right over the herbs and plants (*Genesis*, ch. 1): "Behold I have given you every herb bearing seed which is upon the face of all the earth and every tree in the which is the fruit of a tree yielding seed; to you it shall be for meat

Question about the third ground: i. e., whether the Indians lack ownership because of want of reason. Opinion of Conrad.

and to every beast of the earth." The stars, too, have the right to shine for light (*Genesis*, ch. 1), "And God set them in the firmament of the heaven to give light upon the earth and to rule over the day and over the night." And the lion has dominion over all animals that walk, whence he is called the king of beasts. And the eagle is lord among the birds whence in Psalm 103 the verse about his house being their leader.¹ Sylvester (under the word *dominium*, at the beginning) is of the same opinion as Conrad, saying that the "elements exercise dominion one over the other."

And of Sylvester.

The author answers by certain propositions. Proposition I. Proof 1. The opinion of Conrad and Sylvester rejected.

I answer by the following propositions:

First: Irrational creatures can not have dominion. This is clear, because dominion is a right, as even Conrad admits. But irrational creatures can not have a right. Therefore they can not have dominion. The proof of the minor is that they can not suffer a wrong and therefore can have no right. The proof of this assumption is that he who kept off a wolf or a lion from its prey or an ox from its pasture would not do it a wrong, nor would he who shut a window to prevent the sun from shining in do the sun a wrong. And this is confirmed by the fact that, if the brutes have dominion, he who took away the grass from a stag would commit theft, for he would be taking what belongs to another against the owner's will.

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Proof 2.

Also, wild beasts have not dominion over themselves. Therefore much less over other things. The proof of the assumption is that they may be killed with impunity, even for pleasure; and so Aristotle (*Politics*, 1) says that the chase of wild beasts is just and natural.

Proof 3.

Also, wild beasts themselves and all irrational animals are more fully within the ownership of man than slaves are. Therefore, if slaves can not have anything of their own, much less can irrational animals.

Our proposition is also confirmed by the authority of St. Thomas Aquinas (*Prima Secundae*, qu. 1, art. 1 and 2, and qu. 6, art. 2, and *Contra Gentiles*, bk. 3, c. 110), to the effect that only rational creatures have dominion over their acts, the test of a man's being master of his acts being (as St. Thomas says, *Prima Pars*, qu. 82, art. 1, on obj. 3) that he has the power of choice. Hence (as he says in the same place) we are not masters of our appetite as regards its final end. If, then, the brutes have not dominion over their acts, they have it not over other things. And although this seems to be a dispute about a name, it is assuredly a highly improper and unusual mode of speech to attribute dominion to things irrational. For we do not ordinarily say that a man has dominion save over that which is placed within his control. For when we have not dominion, we speak thus: "It is not within my control," "It is not in my power." Now, as the brutes are rather moved than move themselves, as St. Thomas says (*Prima Secundae*, as above), they for that reason have no dominion.

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Sylvester's reasoning rejected.

Nor is there any force in Sylvester's remark that dominion sometimes does not signify right, but only power, in which sense we say that fire has dominion over water. For, if this is enough to confer dominion, a robber

¹This is founded on a mistranslation of the Hebrew; see A. V., Ps. 104, v. 17.—TRANSL.

has dominion over his victim even up to death, because he has power to kill him, and a thief has power to seize his victim's money. Further, as regards the statement that the stars exercise dominion and that the lion is king of beasts, obviously this is said metaphorically and by way of figure.

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TWENTY-FIRST. There might seem some doubt whether a boy, who has not yet the use of reason, can have dominion, inasmuch as he seems to differ little from irrational animals. And the Apostle says (*Galatians*, ch. 4): "The heir, as long as he is a child, differeth nothing from a slave"; but a slave has not dominion; therefore, etc. But let our second proposition be: Boys, even before they have the use of reason, can have dominion. This is manifest, because they can suffer wrong; therefore they have rights over things; therefore also they have dominion, which is naught else than a right. Also, the property of wards is not part of the guardian's property; but it has owners and no others are its owners; therefore the wards are the owners. Also, boys can be heirs; but an heir is one who succeeds to the rights of the deceased and who has dominion over the inheritance (*Dig.*, 44, 3, 11, and *Inst.*, 2, 19, 7). Also, as already said, the basis of dominion is in the possession of the image of God, and children already possess that image. The Apostle, moreover, says in the passage of *Galatians* just cited, "The heir, as long as he is a child, differeth nothing from a slave, though he be lord of all." The same does not hold good of an irrational creature, for a boy does not exist for the sake of another, as does a brute, but for his own sake.

Doubt concerning a boy, to whom dominion does not seem to belong before the use of reason is attained. Proposition II. Proof 1.

Proof 2.

Proof 3.

Proof 4.

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TWENTY-SECOND. But what about those suffering from unsoundness of mind? I mean a perpetual unsoundness whereby they neither have nor is there any hope that they will have the use of reason. Let our third proposition be: It seems that they can still have dominion, because they can suffer wrong; therefore they have a right, but whether they can have civil dominion is a question which I leave to the jurists.

Proposition III.

TWENTY-THIRD. However this may be, let our fourth proposition be: The Indian aborigines are not barred on this ground from the exercise of true dominion. This is proved from the fact that the true state of the case is that they are not of unsound mind, but have, according to their kind, the use of reason. This is clear, because there is a certain method in their affairs, for they have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the use of reason; they also have a kind of religion. Further, they make no error in matters which are self-evident to others; this is witness to their use of reason. Also, God and nature are not wanting in the supply of what is necessary in great measure for the race. Now, the most conspicuous feature of man is reason, and power is useless which is not reducible to action. Also, it is through no fault of theirs that these aborigines have for many centuries been outside the pale of salvation, in that they have been born in sin and void of baptism and the use of reason whereby to seek out the things needful for salvation.

Proposition IV. The aborigines of the New World not wholly without reason.

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Accordingly I for the most part attribute their seeming so unintelligent and

stupid to a bad and barbarous upbringing, for even among ourselves we find many peasants who differ little from brutes.

Principal conclusion deduced from the foregoing.

TWENTY-FOURTH. The upshot of all the preceding is, then, that the aborigines undoubtedly had true dominion in both public and private matters, just like Christians, and that neither their princes nor private persons could be despoiled of their property on the ground of their not being true owners. It would be harsh to deny to those, who have never done any wrong, what we grant to Saracens and Jews, who are the persistent enemies of Christianity. We do not deny that these latter peoples are true owners of their property, if they have not seized lands elsewhere belonging to Christians.

Answer to the argument on the negative side adduced in No. 4, above, where in a passage of Aristotle's Politics, bk. I, is expounded.

It remains to reply to the argument of the opposite side to the effect that the aborigines in question seem to be slaves by nature because of their incapability of self-government. My answer to this is that Aristotle certainly did not mean to say that such as are not over-strong mentally are by nature subject to another's power and incapable of dominion alike over themselves and other things; for this is civil and legal slavery, wherein none are slaves by nature. Nor does the Philosopher mean that, if any by nature are of weak mind, it is permissible to seize their patrimony and enslave them and put them up for sale; but what he means is that by defect of their nature they need to be ruled and governed by others and that it is good for them to be subject to others, just as sons need to be subject to their parents until of full age, and a wife to her husband. And that this is the Philosopher's intent is clear from his corresponding remark that some are by nature masters, those, namely, who are of strong intelligence. Now, it is clear that he does not mean hereby that such persons can arrogate to themselves a sway over others in virtue of their superior wisdom, but that nature has given them capacity for rule and government. Accordingly, even if we admit that the aborigines in question are as inept and stupid as is alleged, still dominion can not be denied to them, nor are they to be classed with the slaves of civil law. True, some right to reduce them to subjection can be based on this reason and title, as we shall show below. Meanwhile the conclusion stands sure, that the aborigines in question were true owners, before the Spaniards came among them, both from the public and the private point of view.

SUMMARY OF THE SECOND SECTION.

On the illegitimate titles for the reduction of the aborigines of the New World into the power of the Spaniards.

1. The Emperor is not the lord of the whole world.
2. Even if the Emperor were the lord of the world, that would not entitle him to seize the provinces of the Indian aborigines and to erect new lords and put down the former lords or to levy taxes.
3. The Pope is not civil or temporal lord of the whole world, in the proper sense of civil lordship and power.
4. Even if the Supreme Pontiff had secular power over the world, he could not give that power to secular princes.
5. The Pope has temporal power, but only so far as it subserves things spiritual.
6. The Pope has no temporal power over the Indian aborigines or over other unbelievers.
- 338 7. A refusal by these aborigines to recognize any dominion of the Pope is no reason for making war on them and for seizing their goods.
8. Whether these aborigines were guilty of the sin of unbelief, in that they did not believe in Christ, before they heard anything of Christianity.
9. What is required in order that ignorance may be imputed to a person as, and be, sin, that is, vincible ignorance. And what about invincible ignorance?
10. Whether the aborigines are bound to hearken to the first messengers of Christianity so as to commit mortal sin in not believing Christ's Gospel merely on its simple announcement to them.
11. If the faith were simply announced and proposed to them and they will not straightway receive it, this is no ground for the Spaniards to make war on them or to proceed against them under the law of war.
12. How the aborigines, if they refuse when asked and counselled to hear peaceably preachers of religion, can not be excused from mortal sin.
13. When the aborigines would be bound to receive Christianity under penalty of mortal sin.
14. In the author's view it is not sufficiently clear whether Christianity has been so proposed and announced to these aborigines that they are bound to believe it under the penalty of fresh sin.
- 339 15. Even when Christianity has been proposed to them with never so much sufficiency of proof and they will not accept it, this does not render it lawful to make war on them and despoil them of their possessions.
16. Christian princes can not, even on the authority of the Pope, restrain these aborigines from sins against the law of nature or punish them therefor.

It being premised, then, that the Indian aborigines are or were true owners, it remains to inquire by what title the Spaniards could have come into possession of them and their country.

And first, I shall advert to the titles which might be alleged, but which are not adequate or legitimate.

Secondly, I shall set out the legitimate titles under which the aborigines could have come under the sway of the Spaniards.

Now, there are seven titles, which might be alleged, but which are not adequate, and seven or eight others, which are just and legitimate.

The first title that might be alleged, then, is that the Emperor is the lord of the world, and in such a way that, even if it be granted that in time past there was a defect in his claim, it would by now be purged as regards

The author proposes to set out the titles, both legitimate and non-legitimate, by which the Spaniards might have seized the territory of the aborigines. The first non-legitimate title.

our present, most Christian Emperor. For, even if we assume that the Indian aborigines may be true owners, yet they might have superior lords, just as inferior princes have a king and as some kings have the Emperor 340 over them. There can in this way be many persons having dominion over the same thing; and this accounts for the well-worn distinction drawn by the jurists between dominion high and low, dominion direct and available, dominion pure and mixed. The question, therefore, is whether the aborigines had any superior lord. And, as this question can only arise with regard to either the Emperor or the Pope, let us speak of these.

Is the Emperor lord of the whole earth. For the affirmative.

Argument 1.
Argument 2.

Argument 3.

Opinion of Bartolus and the glossators, for affirmative.

Proof 1.

The first allegation to consider is that the Emperor is lord of the whole world and therefore of these barbarians also. This is supported, firstly, by the appellation, "Lord of the world," commonly given to the late Emperor Maximilian or to the present Emperor Charles, ever August. Also (*Luke*, ch. 2), "There went out a decree from Caesar Augustus that a census should be taken of all the world"; but Christian Emperors ought not to be in any worse condition than he; therefore, etc. Also, our Lord seems to have pronounced Caesar to be the true lord of the Jews. "Render unto Caesar," said he, "the things that are Caesar's," etc. (*St. Luke*, ch. 20). But it does not seem that Caesar could have this right, save as Emperor. Therefore Bartolus, commenting on the Extravagans of Henry VII, *Ad reprimendum*, expressly holds that "the Emperor is the rightful lord of the whole world." And this is also the opinion of the glossator on *X*, 4, 17, 13. So, too, the glossator on *X*, 1, 6, 34.

And they prove the allegation first from can. 41, C. 7, qu. 1, where Gregory¹ says that there is one king among bees, and in the world one 341 Emperor, and also from *Dig.*, 14, 2, 9, where the Emperor Antoninus says: "I indeed am lord of the earth," and *Cod.*, 7, 37, 3, § 1, "everything is understood to belong to the Emperor."

Proof 2.

The allegation might also be supported by the fact that Adam first and then Noah seem to have been lords of the world: "Let us make man in our image, after our likeness, and let them have dominion over the fish of the sea and over the fowl of the air and over all the earth," etc. (*Genesis*, ch. 1), and a little later on, "Be fruitful and multiply and replenish the earth and subdue it," etc.; and there is a similar pronouncement made to Noah (*Genesis*, ch. 8). But these two had successors. Therefore.

Proof 3.

Also, there is a proof in the incredibility of God's having instituted in the world anything but the best system of government: "In wisdom hast thou made them all" (*Psalms* 104). But monarchy is the best system, as St. Thomas admirably shows (*De regimine principum*, bk. 1, ch. 2), and as Aristotle seems to hold (*Politics*, bk. 3). Therefore, it seems to be in accordance with divine institution that there should be one Emperor in the world.

Proof 4.

Also, the things which are outside nature ought to imitate things natural. But in things natural there is always one governor; as in the

¹Victoria has *Hieronimus* here following the *editio Romana* of the *Corpus Juris Canonici*, which attributes this to St. Jerome.

body, it is the heart; in the soul, it is reason. Therefore in the world there ought to be one governor, just as there is one God.

1. Now, this contention is baseless. Let our first conclusion, then, be: 342 The Emperor is not the lord of the whole earth. This is proved from the fact that dominion must be founded either on natural or divine or human law; but there is no lord of the earth in any of these; therefore, etc. The minor is proved, first as regards natural law, by what St. Thomas well says (*Prima Pars*, qu. 92, art. 1, on obj. 2, and qu. 96, art. 4), namely, that by natural law mankind is free save from paternal and marital dominion—for the father has dominion over his children and the husband over the wife by natural law; therefore no one by natural law has dominion over the world. And, as St. Thomas also says (*Secunda Secundae*, qu. 10, art. 10), dominion and preëminence were introduced by human law; they, therefore, were not by natural law. Nor would there be any greater reason why this dominion should be more proper for Germans than for Gauls. And Aristotle (*Politics*, bk. 1) says, Power is of two kinds, the one originates in the family, like that of the father over his sons and that of the husband over the wife, and this is a natural power; the other is civil, for, although it may take its rise in nature and so may be said to be of natural law, as St. Thomas says (*De regimine principum*, bk. 1, ch. 2), yet, man being a political animal, it is founded not on nature, but on law.

Bartolus' opinion rejected. Proposition 1 laid down.

Proof that dominion over the whole world is not in the Emperor by natural law.

Now, as regards divine law, we do not read that before the coming of our Saviour Christ the Emperors were lords of the whole world, although in the gloss mentioned on the Extravagans, *Ad reprimendum*, Bartolus 343 adduces the passage in *Daniel*, ch. 2, about Nebuchadnezzar, of whom it is said: "Thou, O King, art a King of Kings; for the God of Heaven hath given thee a Kingdom and power and strength and glory. And wheresoever the children of men dwell, He hath given thee all." It is, however, certain that Nebuchadnezzar received his sovereignty from God by no special grant, but in the same way as other princes (*Romans*, ch. 13): "There is no power but of God"; and (*Proverbs*, ch. 8): "By me kings reign and princes decree justice." Further, Nebuchadnezzar had not a legal rule over the whole earth, as Bartolus thinks, for the Jews were not legal subjects of his.

Proof that the Emperor is not lord of the whole world by divine law. Proof 1.

How the passage in Daniel is to be taken.

Another proof that there was by divine law no ruler over the whole world lies in the fact that the Jewish nation was free from the foreigner; nay, the Jews were forbidden by their law to have any foreigner as their lord (*Deuteronomy*, ch. 17): "Thou mayest not set a stranger to be king over thee." And, although St. Thomas (*De regimine principum*, bk. 3, ch. 4 and 5) says that the Romans were entrusted with empire by God because of their justice and their patriotism and the excellence of their laws, yet this is not to be taken to mean that they had their empire by divine grant or institution, as St. Augustine also says (*De civitate Dei*, ch. 18), but that in the divine providence it befell that they should obtain the sovereignty 344 of the world. This, however, was not in the way in which Saul or David had his kingdom from God, but in some other way, such as by just war or other title.

Proof 2.

How God is said to have given empire to the Romans.

Proof 3.

This will be plain to any one who considers the titles and modes of succession whereby sovereignty and lordship in the world have come down to our own day. For, to omit everything that happened before the flood, the world was certainly divided after Noah into different provinces and kingdoms, whether this were by ordinance of Noah himself—for he survived the flood three hundred and fifty years (*Genesis*, ch. 9), and sent colonies into different regions, as appears in Berosus of Babylon—or whether, as is more likely, different family-groups by the common agreement of mankind occupied different provinces, as (*Genesis*, ch. 13) “Abram said unto Lot: ‘ . . . Is not the whole land before thee? . . . If thou wilt take the left hand, then I will go to the right, or if thou depart to the right hand, then I will go to the left.” We are, accordingly, told (*Genesis*, ch. 10) that through the descendants of Noah came diversities of peoples and countries, whether in some regions they first assumed lordship by usurpation, as Nimrod seems to have done, of whom *Genesis*, ch. 10, v. 8, says that he was the first to be a mighty one in the earth, or whether by accord of several to unite in one State they appointed a prince over themselves by common agreement. For it is sure that either in these or in other like modes sovereignty and lordship began in the world and that afterwards, either by right of inheritance or of war or by some other such title, they were continued unto our own day, or at any rate up to the time of the Saviour’s coming. Herein it is manifest that before the coming of Christ no one was vested with world-wide sway by divine law and that the Emperor can not at the present day derive therefrom a title to arrogate to himself lordship over the whole earth, and consequently not over the barbarians.

Reason for saying that after Christ’s coming, the Emperor is lord of the whole earth.

It might, however, be alleged that after our Lord’s coming there was one Emperor over the world by express grant of Christ, in that He, as regards His manhood, was Lord of the world, according to *St. Matthew*, ch. 28: “All power is given unto me,” etc., which, according to *St. Augustine* and *St. Jerome*, is to be understood as regards His manhood. Also, as the Apostle declares (*I Corinthians*, ch. 15), “He hath put all things under his feet.” Therefore, just as He left on earth one vicar in matters spiritual, so also in matters temporal, and in the latter case it is the Emperor. *St. Thomas*, too, says (*De regimine principum*, bk. 3, ch. 13) that Christ was from His nativity the true Lord and monarch of the world and that Augustus though unwitting thereof, was acting as His deputy. Now, it is clear that this deputyship was not in matters spiritual, but in matters temporal. Seeing, then, that Christ’s Kingdom, if it were temporal, was over the whole world, Augustus was, on that showing, lord of the world and so on the same principle his successors were.

The author demolishes this reasoning.

This reasoning is, however, quite inadmissible: In the first place, because of the doubt attaching to the statement that Christ as regards His manhood was temporal Lord of the world. The probability indeed is that He was not, and our Lord seems to have asserted as much in the passage: “My Kingdom is not of this world.”¹ Accordingly, *St. Thomas* remarks in this

¹*St. John*, ch. 18, v. 36.

connection that Christ’s dominion is directly appointed for the soul’s salvation and for spiritual profit, although it is not excluded in matters temporal in the same fashion as it is appointed in matters spiritual. This shows that in *St. Thomas’s* view His Kingdom was not of the same sort as a civil and temporal kingdom, but that, while He had all kinds of power, even in matters temporal, which would subserve the aim of redemption, yet apart from that aim He had none. Further, even if we grant that He was temporal Lord, it is guess-work to say that He bequeathed that power to the Emperor, there being no mention of any such thing in the whole Bible. And as regards *St. Thomas’s* statement that the Emperor Augustus was Christ’s vicegerent, firstly, he does indeed make it in the passage referred to, but in his *Tertia Pars*, where he is professedly discussing the power of Christ, he makes no mention of this temporal power.

Secondly, *St. Thomas’s* meaning is that the Emperor was Christ’s vicegerent to the extent that temporal power is subordinate and subservient to spiritual power. In this sense, of a truth, kings are the servants of bishops, just as the smith’s art is subject to the knight’s and the soldier’s, while all the time neither the soldier nor his superior officer is a smith, but is only concerned to give the smith orders about the making of armor. Again, *St. Thomas*, writing on that passage in *St. John*, ch. 18, expressly says that Christ’s Kingdom is not temporal or such a kingdom as Pilate conceived, but a spiritual kingdom, inasmuch as our Lord declares in that passage: “Thou sayest that I am a King. To this end was I born and for this cause came I into the world, that I should bear witness unto the truth.” This shows it to be a mere fiction to say that by express grant of Christ there is one Emperor and lord of the world.

A consideration which palpably confirms this is the following: If there had been any such institution by divine law, how comes it that the Empire was divided into Eastern and Western, first among the sons of Constantine the Great and then, later, by Pope Stephen, who conferred the Empire of the West on the Germans, as is held in *X*, 1, 6, 34? For the assertion that the Greeks thereafter were not Emperors is inept and ignorant, as the glossator hereon points out, seeing that the German Emperors never claimed in virtue of this grant to be Lords of Greece, and John Palaeologus, Emperor of Constantinople, was held to be lawful Emperor at the Council of Florence. Moreover, the patrimony of the Church (as the jurists themselves, and even Bartolus, confess) is not subject to the Emperor. Now, if all things were subject to the Emperor by divine law, no imperial gift or any other title could divest the Emperors of them, any more than the Pope can release any one from the power of the Popes. Also, the Kingdom of Spain is not subject to the Emperor, nor is France, as is also held in *X*, 1, 6, 34 above-mentioned, although the glossator adds out of his own head that this is not so much a matter of law as of fact. Also, the doctors agree that States, which have in times past been subject to the Empire, might be freed from that subjection by prescription; which would not be the case, if this subjection were in virtue of a divine law.

The author returns to the confirmation of his proposition. The Pope, who granted the Empire, is said to have been Leo III.

The author proves that the Emperor is not lord of the world by human law either.

Now, in point of human law, it is manifest that the Emperor is not lord of the world, because either this would be by the sole authority of some law, and there is none such; or, if there were, it would be void of effect, inasmuch as law presupposes jurisdiction. If, then, the Emperor had no jurisdiction over the world before the law, the law could not bind one who was not previously subject to it. Nor, on the other hand, had the Emperor this position by lawful succession or by gift or by exchange or by purchase or by just war or by election or by any other legal title, as is admitted. Therefore the Emperor never was the lord of the whole world.

Second proposition. As the gloss on the preface to the Digest.

2. Second conclusion: Granted that the Emperor were the lord of the world, still that would not entitle him to seize the provinces of the Indian aborigines and erect new lords there and put down the former ones or take taxes. The proof is herein, namely, that even those who attribute lordship over the world to the Emperor do not claim that he is lord in ownership, but only in jurisdiction, and this latter right does not go so far as to warrant him in converting provinces to his own use or in giving towns or even estates away at his pleasure. This, then, shows that the Spaniards can not justify on this ground their seizure of the provinces in question.

Discussion of the second title whereby the Spaniards could obtain possession of the barbarians.

A second alleged title to the lawful possession of these lands, and one which is vehemently asserted, is traced through the Supreme Pontiff. For it is claimed that the Pope is temporal monarch, too, over all the world and that he could consequently make the Kings of Spain sovereign over the aborigines in question, and that so it has been done.

The opinion of some jurists consults.

In this matter there are some jurists, who hold that the Pope has full jurisdiction in temporal matters over the whole earth, and they even add that the power of all secular princes comes to them from the Pope. This is the tenet of Hostiensis on X, 3, 34, 8; also of the Archbishop (pt. 3, tit. 22, ch. 5, § 8); and also of Augustinus Anconitanus. Sylvester holds the same doctrine, making a much more ample and liberal concession of this power to the Pope, under the word *infidelitas* (§ 7) and under the word *Papa* (§§ 7, 10, 11 and 14), and under the word *legitimus* (§ 4). He has some singular remarks on this topic in the passages mentioned, as, for example, that "the power of the Emperor and all other princes is sub-delegated as regards the Pope, being derived from God through the medium of the Pope," and that "all their power is dependent on the Pope," and that "Constantine gave lands to the Pope in recognition of his temporal power," and on the other hand that "the Pope gave the Empire to Constantine to his use and profit," nay, that "Constantine's act was really not a gift, but merely the return of what had previously been taken away," and that, "if the Pope does not exercise jurisdiction in temporal matters outside the patrimony of the Church, this is not for want of authority, but in order to avoid the scandal of the Jews and in order to promote peace"; and many other things even more empty and absurd than these. The sole proof that he gives herefor is in the passages "The earth is the Lord's and the fulness thereof,"¹ and "All power is given unto me, both in heaven and in earth,"² and the Pope

¹Psalm 24, v. 1.

²St. Matthew, ch. 28, v. 18.

is the vicar of God and of Christ, and (*Philippians*, ch. 2) Christ "for our sake became obedient even unto death," etc. Bartolus, too, seems to be of this opinion in his comment on the Extravagans, *Ad reprimendum*, and 351 St. Thomas seems to favor it at the end of the second book of the *Sententiae*, the closing words of which are by way of solution of the fourth argument, which is the last of the whole book, namely, that the Pope holds the summit of both kinds of power, both secular and spiritual, and Herveus is of the same opinion in his *De potestate Ecclesiae*.

Summary of the opinion of the aforementioned.

This, then, being laid as a basis, the authors of this opinion say as follows: In the first place, that the Pope has free power, on the footing of supreme temporal lord, to make the Kings of Spain rulers over the Indian aborigines. Secondly, they say that, even if it be assumed that he could not do this, at any rate if these aborigines refused to recognize the temporal power of the Pope over them, this would warrant him in making war on them and in putting rulers over them. Now, each of these things has been done. For, first, the Supreme Pontiff granted the provinces in question to the Kings of Spain. Secondly, the aborigines were notified that the Pope is the vicar of God and His vicegerent on earth and it was claimed that they should, therefore, recognize him as their superior, and their refusal furnishes a good ground for making war on them and seizing their lands, etc. Hostiensis, *place cited*, expressly makes this point, so does Angelus in his *Summa*.

The author replies in a few propositions.

Now, inasmuch as I have fully discussed the temporal power of the Pope in my *Relectio de Potestate Ecclesiastica*, I will put my answer to the 352 above into a few brief propositions:

Proposition I.

3. First: The Pope is not civil or temporal lord of the whole world in the proper sense of the words "lordship" and "civil power." This is the conclusion arrived at by Torquemada (bk. 2, ch. 113), and by Joannes Andreae and by Hugo, on can. 6, Dist. 96. And the most learned Innocent admits, in the above cited X, 1, 6, 34, that he has not temporal power over the Kingdom of France. And it seems the definite opinion of St. Bernard in the second book of his *De consideratione*, addressed to Pope Eugenius III. The opposite opinion seems contrary to the precept of our Lord who, (*St. Matthew*, ch. 20, and *St. Luke*, ch. 22), says, "Ye know that the princes of the Gentiles exercise lordship over them," etc. "But it shall not be so among you." And contrary also to the precept of the Apostle Peter, "neither as being lords over [God's] heritage but being ensamples to the flock."¹ And if Christ the Lord had not temporal power, as has been shown in the foregoing discussion to be more probable and as is also the opinion of St. Thomas, much less has the Pope it, he being Christ's vicar. The above-mentioned thinkers attribute to the Pope that which he has never claimed for himself; nay, he admits the contrary in many passages, as I have shown in the *Relectio* referred to. And the proof is sufficient, like that given above concerning the Emperor, for no lordship can come to him save either by natural law or by divine law or by human law. Now, it is certain that none comes to him by natural or by human law, and none is

¹1 Pet., ch. 5.

shown to come to him by divine law. Therefore the assertion is ungrounded and arbitrary.

The author refutes the arguments of the opposite side.

Further, our Lord's injunction to Peter, "Feed my sheep,"¹ clearly shows that power in spiritual and not in temporal matters is meant. It is, moreover, demonstrable that the Pope has not the whole world for his sphere. For our Lord said (*St. John*, ch. 10) that there should be "one flock and one shepherd" at the end of the age. This is sufficient proof that at the present day all are not sheep of this flock. Again, assuming that Christ had this power, it is manifest that it has not been entrusted to the Pope. This appears from the fact that the Pope is no less vicar of Christ in spiritual than in temporal matters. But the Pope has no spiritual jurisdiction over unbelievers, as even our opponents admit, and, as seems (*I Corinthians*, ch. 5) to have been the express teaching of the Apostle: "For what have I to do to judge them also that are without?" Therefore he has it not also in temporal matters. And of a truth there is nothing in the argument that, as Christ had temporal power over the world, therefore the Pope also has it. For Christ undoubtedly had spiritual power over the whole world, not less over believers than over unbelievers and could make laws which bound the whole world, as he did with regard to baptism and the articles of faith. And yet the Pope has not that power over unbelievers and may not excommunicate them or forbid their marriage within the degrees permitted by the divine law. Therefore. Also, the fact that, according to the doctors, Christ did not entrust supremacy in power even to the Apostles shows that there is no force in the consequence: Christ had temporal power over the world; therefore the Pope has it too.

Proposition II.

4. Second proposition: Even assuming that the Supreme Pontiff had this secular power over the whole world, he could not give it to secular princes. This is obvious, because it would be annexed to the Papacy. Nor can any Pope sever it from the office of Supreme Pontiff or deprive his successor of that power, for the succeeding Supreme Pontiff can not be less than his predecessor; and, if some one Pontiff had made a gift of this power, either the grant would be null or the succeeding Pontiff could cancel it.

Proposition III.

5. Third proposition: The Pope has temporal power only so far as it is in subservience to matters spiritual, that is, as far as is necessary for the administration of spiritual affairs. This is also the view of Torquemada (*as above*, ch. 114), and of all the doctors. And the proof of it lies in the fact that an art to which a higher end pertains is imperative and preceptive as regards the arts to which lower ends pertain (*Ethics*, bk. 1). But the end of spiritual power is ultimate felicity, while the end of civil power is political felicity. Therefore, temporal power is subject to spiritual power. This is the reasoning adopted by Innocent in *X*, 1, 33, 6; and it receives confirmation from the consideration that, whenever anybody is entrusted with the charge of any office, he is impliedly granted everything without which the duties of the office can not rightly be discharged (*X*, 1, 29, 1). Inasmuch, then, as the Pope is a spiritual pastor by Christ's commission

¹*St. John*, ch. 21, v. 17.

and the discharge of the duties of this office can not be hindered by the civil power (there being no lack in the provision of things necessary either by God or by Nature), it is beyond doubt that power over things temporal has also been left to him so far as is necessary for the government of things spiritual. And on this principle the Pope can infringe civil laws which tend to breed sinners, just as he has infringed the laws with regard to prescription by a party acting in bad faith, as is clear from *X*, 2, 26, 20. And on this principle also, when princes are at variance with one another about some right of sovereignty and are rushing into war, he can act as judge and inquire into the claims of the parties and deliver judgment, a judgment which the princes are bound to respect, lest those numerous spiritual evils should befall which are the inevitable results of a war between Christian princes. And although the Pope does not do this or does not do it often, it is not because he can not, as Master Durandus says, but because, for fear of scandal, he wishes to prevent the princes from thinking his motive is ambition or because he is afraid of a revolt from the Apostolic See on the part of the princes. And on this principle the Pope can sometimes depose kings and even set up new kings, as at times has been done. And certainly no one rightly calling himself Christian should deny this power to the Pope. This is the view held by Paludanus and Durandus (*De jurisdictione ecclesiastica*), and by Henricus Gandavensis (*Quodlibeta*, 6, art. 23). It is in this sense, also, that those numerous rules are to be interpreted which say that the Pope has both swords. The earlier doctors make the same assertion, as also does St. Thomas in the second book of the *Sententiae*, as above quoted.

Aye, and there is no doubt that in this way bishops have temporal authority within their bishoprics on the same principle that the Pope has authority in the world. And so they err in speech and in deed, whether princes or magistrates, who strive to prevent bishops from deterring laymen from sin by fines or exile or other temporal punishments. For this is not in excess of their power, provided they do not do it from greed or for gain, but of necessity and for profit in things spiritual. And herein we find a further argument in support of our first conclusion; for if the Pope were lord of the world, a bishop would also be temporal lord in his bishopric, seeing that within his bishopric he also is a vicar of Christ, but this our opponents deny.

Let magistrates and lay princes note this.

357 6. Fourth conclusion: The Pope has no temporal power over the Indian aborigines or over other unbelievers. This is clear from propositions I and III. For he has no temporal power save such as subserves spiritual matters. But he has no spiritual power over them (*I Corinth.*, ch. 5, v. 12). Therefore he has no temporal power either.

Proposition IV. Proof 1.

7. The corollary follows that even if the barbarians refuse to recognize any lordship of the Pope, that furnishes no ground for making war on them and seizing their property. This is clear, because he has no such lordship. And it receives manifest confirmation from the fact (as will be asserted below and as our opponents admit) that, even if the barbarians refuse to accept Christ as their lord, this does not justify making war on them or

Corollary.

Confirmation 1.

Absurdity of the opposite opinion.

Confirmation 2.

Proof 2, and with authority.

Proof 3.

Proof 4.

Third Title.

doing them any hurt. Now, it is utterly absurd for our opponents to say that, while the barbarians go scatheless for rejecting Christ, they should be bound to accept His vicar under penalty of war and confiscation of their property, aye, and penal chastisement. And a second confirmation is furnished by the fact that the ground, according to the persons in question, for disallowing compulsion, even if they refuse to accept Christ or His faith, is that it can not be evidently proved to them by natural reasoning. But the lordship of the Pope admits of this proof still less. Therefore they can not be compelled to recognize this lordship.

Again, although Sylvester discourses at great length on the power of the Pope, yet, under the word *infideles* (§ 7), he expressly maintains against Hostiensis that unbelievers can not be compelled by arms to recognize this lordship and can not be deprived of their property on this pretext. And Innocent maintains the same in *X*, 3, 34, 8. There is also no doubt that this was the opinion of St. Thomas too (*Secunda Secundae*, qu. 66, art. 8, on obj. 2); Cajetan is express thereon, in his comment on the passage where St. Thomas says that unbelievers cannot be deprived of their property, save only that the subjects of temporal princes can be deprived for reasons known to the law and rendering their subjects in general liable to deprivation. Of a truth, Saracens dwelling among Christians have never been deprived of their property on any such pretext or made to suffer any harm. Why, if this pretext be enough to justify making war on them, it is as much as to say that they can be deprived by reason of their unbelief. For it is certain that none of the unbelievers recognize this lordship. But there is no doctor even among our opponents who would allow that they can be deprived on the mere ground of unbelief. Therefore the allegation of the doctors in question is utterly sophistical, namely, that if the unbelievers recognize the lordship of the Roman Pontiff, war can not be made on them, but that it may if they do not recognize it; for none of them does recognize it.

This shows that the title under discussion can not be set up against the barbarians and that Christians have no just cause of war against them either on the ground that the Pope has made a gift of their lands on the footing of absolute lord or that they do not recognize the lordship of the Pope. This is the opinion maintained by Cajetan at considerable length, on *Secunda Secundae*, qu. 66, art. 8, on obj. 2. And the authority of the canonists to the contrary ought not to weigh much, because, as said above, these matters are to be discussed with reference to the divine law, and the majority in numbers and weight hold the contrary view, and among the latter is Joannes Andreae. Our opponents have no text in their favor. And even the weighty authority of the Archbishop of Florence is not to be admitted here, for he followed Augustinus Anconitanus, just as in other places he usually follows the canonists. What has been said demonstrates, then, that at the time of the Spaniards' first voyages to America they took with them no right to occupy the lands of the indigenous population.

Accordingly, there is another title which can be set up, namely, by right of discovery; and no other title was originally set up, and it was in

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virtue of this title alone that Columbus the Genoan first set sail. And this seems to be an adequate title because those regions which are deserted become, by the law of nations and the natural law, the property of the first occupant (*Inst.*, 2, 1, 12). Therefore, as the Spaniards were the first to discover and occupy the provinces in question, they are in lawful possession thereof, just as if they had discovered some lonely and thitherto uninhabited region.

Not much, however, need be said about this third title of ours, because, as proved above, the barbarians were true owners, both from the public and from the private standpoint. Now the rule of the law of nations is that what belongs to nobody is granted to the first occupant, as is expressly laid down in the aforementioned passage of the *Institutes*. And so, as the object in question was not without an owner, it does not fall under the title which we are discussing. Although, then, this title, when conjoined with another, can produce some effect here (as will be said below), yet in and by itself it gives no support to a seizure of the aborigines any more than if it had been they who had discovered us.

Accordingly, a fourth title is set up, namely, that they refuse to accept the faith of Christ, although it is set before them and although they have been adjured and advised to accept it. This title might seem to be a lawful one for occupying the lands of the barbarians, firstly, on the ground that the obligation of the aborigines to receive the faith of Christ results from the passage: "Whoso believeth and is baptized shall be saved, but he who believeth not shall be damned."¹ But damnation is not visited on any one except for a mortal sin, and "There is no other name given among men whereby we must be saved" (*Acts*, ch. 4). Therefore, as the Pope is the minister of Christ, at least in things spiritual, it would appear that at any rate by the authority of the Pope they can be compelled to receive the faith of Christ, and if they reject the demand to receive it they may be proceeded against under the law of war. Nay, it would seem that princes may do this on their own authority also, seeing that they are God's ministers (*Romans*, ch. 13), and "revengers [to execute] wrath upon them that do evil." But those, indeed, do evil who do not accept the faith of Christ. Therefore they can be coerced by princes.

A second argument is: If the French refused to obey their King, the King of Spain could compel them to obedience. Therefore, if the Indian aborigines refuse to obey God, who is their true and supreme Lord, Christian princes can compel them to obedience; for the cause of God ought not to be in worse condition than the cause of men. And this is confirmed, as Scotus (bk. 4, dist. 4, qu. 9) argues about the baptism of the children of unbelievers, by the fact that persons ought to be compelled to obey a superior lord rather than an inferior lord. If, then, compulsion may be employed to make these aborigines obey their chiefs, much more may it be employed to make them obey Christ and God.

Fourth title discussed.

Its lawfulness proven. Argument 1.

Argument 2.

¹St. Mark, ch. 16, v. 16.

Argument 3. St. Thomas, *Secunda Secundae*, qu. 10, art. 8.

A third argument is: If the barbarians publicly blasphemed Christ, they could be compelled by war to cease from such blasphemies, as the doctors admit and as is true. For we could take measures of war against them, if they made a mock of the crucifix or in any other way abused Christian practices by way of insult, as by jesting imitation of the Sacraments of the Church or the like conduct. This is obvious; for if they outraged a Christian sovereign, even one now dead, we could avenge the outrage; much more, then, if they outrage Christ, who is the living King of Christians. This is indubitable; for if Christ were alive in the flesh and pagans wrought an outrage on Him, there is no doubt that we could avenge the outrage by war. So, therefore, in this case. But unbelief is a greater sin than blasphemy, for, as St. Thomas asserts and proves (*Secunda Secundae*, qu. 10, art. 3), unbelief is the gravest of the sins which lie in moral perversity, because it is directly opposed to faith, while blasphemy is not directly opposed to faith, but to the confession of faith. Unbelief cuts at the root of turning to God, that is, at faith, while blasphemy does not. Therefore, seeing that Christians can proceed by war against unbelievers for their blasphemy of Christ, so they can for their unbelief itself. And the contention that blasphemy is not so great a sin as unbelief is confirmed by the fact that unbelief, is, in a Christian, a capital crime by the civil laws, while blasphemy is not.

Confirmation.

Certain propositions in reply. Proposition I.

8. By way of answer let my first proposition be: Before the barbarians heard anything about Christianity, they did not commit the sin of unbelief by not believing in Christ. This proposition is precisely that of St. Thomas in *Secunda Secundae*, qu. 10, art. 1, where he says that in those who have not heard of Christ unbelief does not wear the guise of sin, but rather of punishment, such ignorance of things divine being a consequence of the sin of our first parent. "Such unbelievers as these," says he, "are indeed open to condemnation for other sins, . . . but not for the sin of unbelief." Accordingly our Lord says (*St. John*, ch. 15): "If I had not come and spoken unto them, they had not had sin." St. Augustine, in his exposition of this passage, says it refers to the sin of unbelief in Christ. St. Thomas says the same (*Secunda Secundae*, qu. 10, art. 6, and qu. 34, art. 2, on obj. 2).

The contrary opinion of Altissiodorensis, and William of Paris, and Gerson, sc. that unbelief is always a sin, quoted.

This proposition is opposed to the teaching of many doctors and especially to that of Altissiodorensis, 3 p.,¹ on the question, *Utrum fidei possit subesse falsum*, where he says that ignorance not only of Christ, but of any article of faith is not invincible ignorance in any one, for if a man does what in him lies, God will illuminate him either through the doctor that is within him or through a doctor outside, and so it is always a mortal sin to believe anything contrary to articles of faith. He takes an illustration from an old woman to whom a bishop might preach something contrary to an article of faith. And he lays down the general proposition that ignorance of divine law excuseth none. William of Paris was of the same opinion and supported it by the same kind of argument. For either, says he, such an one does what in him lies and therefore will receive illumina-

¹*Summa aurea sententiarum*: Paris edition (1500), fol. cxxxv, col. 4 at end.

tion, or if he does not this, he is without excuse. And Gerson (*De spirituali vita animae*, lect. 4) appears to be of the same view. "Doctors are unanimous," says he, "that in matters of the divine law there is no room for invincible ignorance, seeing that God will always help him who does what in him lies, and He is ready to enlighten the mind as far as will be necessary for salvation and the avoidance of error." And Hugo de Sancto Victore (*bk. 2, pt. 6, ch. 5*) says that none is excused by ignorance for breach of the command to receive baptism, for he could have heard and known, had it not been for his own fault, as was the case with Cornelius (*Acts*, ch. 10).

Hugo de S. Victore, of the same opinion.

Adrian gives precision to this doctrine, in his *Quodlibeta*, qu. 4. "There is," says he, "a two-fold distinction in matters of the divine law. There are some matters to the knowledge of which God does not oblige every one universally, such as the nice problems of the divine law and difficulties with regard to this law and with regard to Holy Scripture and the Commandments; in these matters there may well be a case of invincible ignorance, even if a man does all that in him lies. There are other matters to the knowledge of which God obliges all men generally, such as the articles of faith and the universal commandments of the law; of these it is true, as the doctors assert, that ignorance thereof is not excused. For if any one does what in him lies, he will be illuminated of God through either the doctor that is within him or a doctor from without."

So also in part Adrian.

Nevertheless, the conclusion above stated is entirely in accord with St. Thomas's doctrine. The proof of it is as follows: Such as have never heard anything, however much they may be sinners in other respects, are under an invincible ignorance; therefore, their ignorance is not sin. The antecedent is evident from the passage (*Romans*, ch. 10): "How shall they believe in him of whom they have not heard, and how shall they hear without a preacher?" Therefore, if the faith has not been preached to them, their ignorance is invincible, for it was impossible for them to know. And what Paul condemns in unbelievers is not that they have not done what in them lies in order to receive illumination from God, but that they do not believe after they have heard. "Have they not heard?" says he, "Yes, verily, their sound went into all the earth." That is the ground of his condemnation, inasmuch as the Gospel has been preached over all the earth; he would not otherwise condemn them, whatever other sins they might have.

Rejecting the views of these persons, the author proves his own proposition.

This shows that Adrian was also mistaken in another point, with regard to the subject-matter of their ignorance; for in the same note he says, with regard to the subject-matter of morals, that if a man bestows all industry and diligence in getting to know that which behoves him, this is not enough to procure him an excuse for his ignorance, unless by repentance of his sins he specially prepares himself to be illuminated by God. Suppose, then, a man is in doubt about a certain business arrangement and makes inquiry of learned men and tries in other ways to find out the truth and thinks that the thing is lawful; if it really is not lawful and he does it, he is without

Adrian's mistake about subject-matter of ignorance.

¹*De Sacramentis Christianae fidei*.

excuse, if in another respect he is in sin, because he does not do all that in him lies to conquer his ignorance, and although it be admitted that were he to render himself amenable to grace he would not receive illumination, still he is without excuse so long as he does not remove the hindrance in question, that is, his sin. Accordingly, if Peter and John are in doubt in the same case and business matter and bestow equal human diligence, and each thinks the thing is lawful, but Peter is in grace, while John is in sin, Peter's ignorance is invincible, but John's is vincible, and if they both embark on the business, Peter is excused and John is not. Adrian, I say, makes a mistake here, as I have shown at length in my discussion on *Prima Secundae* on the topic of ignorance. For it would be strange to say that there is no topic of the divine law on which an unbeliever, aye, any one who is in mortal sin, can be invincibly ignorant. Nay, it would follow in the case of the above-named Peter, who was in grace and whose ignorance on some point about usury or simony was invincible, that his ignorance would become vincible merely by his falling into mortal sin, which is absurd.

The author's reasoning against Adrian.

The author's opinion what ignorance is sin, what is not. The author again confirms his proposition.

The mistake of the aforementioned authors explained.

Proposition II.

9. I say accordingly on this point that negligence with regard to the subject-matter is requisite for ignorance, even though it be vincible, to be imputed as, and to be, a sin, as, for example, that the man refused to hear or did not believe what he did hear; and on the other hand I say that for invincible ignorance it is enough that the man bestowed human diligence in trying to learn, even if in other respects he is in mortal sin. And so on this point our judgment is the same concerning one in sin and one in grace, both now and immediately after Christ's coming or after His passion. Adrian could not deny that after our Lord's passion the Jews in India or in Spain were invincibly ignorant of His passion, however much they were in mortal sin; nay, he himself has expressly conceded this in his first *quaestio*, fourth point, on the topic *de observantia legalium*. And it is certain that the Jews who were away from Judaea, whether they were in sin or not, had invincible ignorance about baptism and about the faith of Christ. Just as there could at that time be a case of invincible ignorance on this matter, so there may also be nowadays among those who have not had baptism declared to them. But the mistake which the doctors in question make is in thinking that when we postulate invincible ignorance on the subject of baptism or of the Christian faith it follows at once that a person can be saved without baptism or the Christian faith, which, however, does not follow. For the aborigines to whom no preaching of the faith or Christian religion has come will be damned for mortal sins or for idolatry, but not for the sin of unbelief, as St. Thomas (*Secunda Secundae*, as above) says, namely, that if they do what in them lies, accompanied by a good life according to the law of nature, it is consistent with God's providence and He will illuminate them regarding the name of Christ, but it does not therefore follow that if their life be bad, ignorance or unbelief in baptism and the Christian faith may be imputed to them as a sin.

10. Second proposition: The Indians in question are not bound, directly the Christian faith is announced to them, to believe it, in such a

way that they commit mortal sin by not believing it, merely because it has been declared and announced to them that Christianity is the true religion and that Christ is the Saviour and Redeemer of the world, without miracle or any other proof or persuasion. This proposition is proved by the first: For if before hearing anything of the Christian religion they were excused, they are put under no fresh obligation by a simple declaration and announcement of this kind, for such announcement is no proof or incentive to belief. Nay, as Cajetan says (on *Secunda Secundae*, qu. 1, art. 4), it would be rash and imprudent for any one to believe anything, especially in matters which concern salvation, unless he knows that this is asserted by a man worthy of credence, a thing which the aboriginal Indians do not know, seeing that they do not know who or what manner of men they are who are announcing the new religion to them. And this is confirmed by what St. Thomas says (*Secunda Secundae*, qu. 1, art. 4, on obj. 2, and art. 5, on obj. 1), namely, that matters of faith are seen and become evident by reason of their credibility. For a believer would not believe unless he saw that the things were worthy of belief either because of the evidence of signs or for some other reason of this kind. Therefore, where there are no such signs nor anything else of persuasive force, the aborigines are not bound to believe. And this is confirmed by the consideration that if the Saracens were at the same time to set their creed before them in the same way and without anything more, like the Christians, they would not be bound to believe them, as is certain. Therefore they are not bound to believe the Christians either, when without any moving or persuasive accompaniments they set the faith before them, for they are unable, and are not bound, to guess which of the two is the truer religion, unless a greater weight of probability be apparent on one side. For this would be to believe hastily, which is a mark of levity of heart, as *Ecclesiasticus*, ch. 19, says. Further confirmation is furnished by the passage in *St. John*, ch. 15: "If I had not wrought signs," etc., "they would not have had sin." Therefore, where there are no signs, and nothing to induce belief, there will be no sin.

Proof.

Confirmation 1.

Confirmation 2.

Confirmation 3.

Corollary.

Proposition proved from the common opinion of the doctors.

11. From this proposition it follows that, if the faith be presented to the Indians in the way named only and they do not receive it, the Spaniards can not make this a reason for waging war on them or for proceeding against them under the law of war. This is manifest, because they are innocent in this respect and have done no wrong to the Spaniards. And this corollary receives confirmation from the fact that, as St. Thomas lays it down (*Secunda Secundae*, qu. 40, art. 1), for a just war "there must be a just cause, namely, they who are attacked for some fault must deserve the attack." Accordingly, St. Augustine says (*Liber 83 Quaestionum*): "It is involved in the definition of a just war that some wrong is being avenged, as where a people or state is to be punished for neglect to exact amends from its citizens for their wrongdoing or to restore what has been wrongfully taken away." Where, then, no wrong has previously been committed by the Indians, there is no cause of just war. This is the received opinion of all the doctors, not only of the theologians, but also of the jurists, such as

Hostiensis, Innocent, and others. Cajetan (*Secunda Secundae*, qu. 66, art. 8) lays it down clearly and I know of no doctor whose opinion is to the contrary. Therefore this would not be a legitimate title to seize the lands of the aborigines or to despoil the former owners.

Proposition III.

Proof 1.

12. Third proposition: If the Indians, after being asked and admonished³⁷¹ to hear the peaceful preachers of religion, refused, they would not be excused of mortal sin. The proof lies in the supposition that they have very grave errors for which they have no probable or demonstrable reasons. Therefore, if any one admonishes them to hear and deliberate upon religious matters, they are bound at least to hear and to enter into consultation. Further, it is needful for their salvation that they believe in Christ and be baptized (*St. Mark*, last ch.), "Whoso believeth," etc. But they can not believe unless they hear (*Romans*, ch. 10). Therefore they are bound to hear, otherwise if they are not bound to hear, they would, without their own fault, be outside the pale of salvation.

Proof 2.

Proposition IV.

13. Fourth proposition: If the Christian faith be put before the aborigines with demonstration, that is, with demonstrable and reasonable arguments, and this be accompanied by an upright life, well-ordered according to the law of nature (an argument which weighs much in confirmation of the truth), and this be done not once only and perfunctorily, but diligently and zealously, the aborigines are bound to receive the faith of Christ under penalty of mortal sin. This is proved by our third proposition, for, if they are bound to hear, they are in consequence bound also to acquiesce in what they hear, if it be reasonable. This is abundantly clear from the passage (*St. Mark*, last ch.): "Go ye out into all the world, preach the Gospel to every creature; whoso believeth and is baptized shall be saved, but whoso³⁷² believeth not shall be damned"; and by the passage (*Acts*, ch. 4): "No other name is given unto man whereby we can be saved."

Proposition V.

14. Fifth proposition: It is not sufficiently clear to me that the Christian faith has yet been so put before the aborigines and announced to them that they are bound to believe it or commit fresh sin. I say this because (as appears from my second proposition) they are not bound to believe unless the faith be put before them with persuasive demonstration. Now, I hear of no miracles or signs or religious patterns of life; nay, on the other hand, I hear of many scandals and cruel crimes and acts of impiety. Hence it does not appear that the Christian religion has been preached to them with such sufficient propriety and piety that they are bound to acquiesce in it, although many religious and other ecclesiastics seem both by their lives and example and their diligent preaching to have bestowed sufficient pains and industry in this business, had they not been hindered therein by others who had other matters in their charge.

Proposition VI.

Proof 1.

15. Sixth proposition: Although the Christian faith may have been announced to the Indians with adequate demonstration and they have refused to receive it, yet this is not a reason which justifies making war on them and depriving them of their property. This conclusion is definitely stated by St. Thomas (*Secunda Secundae*, qu. 10, art. 8), where he says that

373 unbelievers who have never received the faith, like Gentiles and Jews, are in no wise to be compelled to do so. This is the received conclusion of the doctors alike in the canon law and the civil law. The proof lies in the fact that belief is an operation of the will. Now, fear detracts greatly from the voluntary (*Ethics*, bk. 3), and it is a sacrilege to approach under the influence of servile fear as far as the mysteries and sacraments of Christ. Our conclusion is also proved by the canon *de Judaeis* (can. 5, Dist. 45), which says: "The holy synod also enjoins concerning the Jews that thenceforth force be not applied to any of them to make him believe; 'for God has compassion on whom He wills, and whom He wills He hardens.'" There is no doubt about the doctrine of the Council of Toledo, that threats and fears should not be employed against the Jews in order to make them receive the faith. And Gregory expressly says the same in the canon *qui sincera* (can. 3, Dist. 45): "Who with sincerity of purpose," says he, "desires to bring into the perfect faith those who are outside the Christian religion should labor in a manner that will attract and not with severity; . . . for whosoever does otherwise and under cover of the latter would turn them from their accustomed worship and ritual is demonstrably furthering his own end thereby and not God's end." Proof 2.

Our proposition receives further proof from the use and custom of the Church. For never have Christian Emperors, who had as advisors the most holy and wise Pontiffs, made war on unbelievers for their refusal to accept the Christian religion. Further, war is no argument for the truth of the Christian faith. Therefore the Indians can not be induced by war to believe, but rather to feign belief and reception of the Christian faith, which is monstrous and a sacrilege. And although Scotus (Bk. 4, dist. 4, last qu.) calls it a religious act for princes to compel unbelievers by threats and fears to receive the faith, yet he seems to mean this to apply only to unbelievers who in other respects are subjects of Christian princes (with whom we will deal later on). Now, the Indians are not such subjects. Hence, I think that Scotus does not make this assertion applicable to their case. It is clear, then, that the title which we are now discussing is not adequate and lawful for the seizure of the lands of the aborigines. Proof 3.

Another, and a fifth, title is seriously put forward, namely, the sins of these Indian aborigines. For it is alleged that, though their unbelief or their rejection of the Christian faith is not a good reason for making war on them, yet they may be attacked for other mortal sins which (so it is said) they have in numbers, and those very heinous. A distinction is here drawn with regard to mortal sins, it being asserted that there are some sins, which are not against the law of nature, but only against positive divine law, and for these the aborigines can not be attacked in war, while there are other sins against nature, such as cannibalism, and promiscuous intercourse with mother or sisters and with males, and for these they can be attacked in war and so compelled to desist therefrom. The principle in each case is that, in the case of sins which are against positive law, it can not be clearly Proof 4.

¹Romans, ch. 9, v. 18.

The opinion of Scotus hereon set forth.

The fifth title discussed.

shown to the Indians that they are doing wrong, whereas in the case of the sins which are against the law of nature, it can be shown to them that they are offending God, and they may consequently be prevented from continuing to offend Him. Further they can be compelled to keep the law which they themselves profess. Now, this law is the law of nature. Therefore. This is the opinion of the Archbishop of Florence (pt. 3, tit. 22, ch. 5, § 8), following Augustinus Anconitanus, and of Sylvester (under the word *Papa*, § 7); and it is the opinion of Innocent in *X*, 3, 34, 8, where he expressly says: "I hold that if the Gentiles who have no other law than the law of nature break that law, they can be punished by the Pope. This is shown by the case of the men of Sodom, who were punished by God (*Genesis*, ch. 19). Now, the judgments of God are examples unto us, and so I do not see why the Pope, who is the vicar of Christ, can not do this." This is what Innocent said. And on the same principle the Indians can be punished by Christian princes under the authority of the Pope.

Statement and explanation of the opinion of the Archbishop, Augustinus of Ancona, Sylvester and Innocent that this is a lawful title.

The author's answer. ✓

Proof 1.

Proof 2.

16. I, however, assert the following proposition: Christian princes can not, even by the authorization of the Pope, restrain the Indians from sins against the law of nature or punish them because of those sins. My first proof is that the writers in question build on a false hypothesis, namely, that the Pope has jurisdiction over the Indian aborigines, as said above. My second proof is as follows: They mean to justify such coercion either universally for sins against the law of nature, such as theft, fornication, and adultery, or particularly for sins against nature, such as those which St. Thomas deals with (*Secunda Secundae*, qu. 154, arts. 11, 12), the phrase "sin against nature" being employed not only of what is contrary to the law of nature, but also of what is against the natural order and is called uncleanness in II *Corinthians*, ch. 12, according to the commentators, such as intercourse with boys and with animals or intercourse of woman with woman, whereon see *Romans*, ch. 1. Now, if they limit themselves to the second meaning, they are open to the argument that homicide is just as grave a sin, and even a graver sin, and, therefore, it is clear that, if it is lawful in the case of the sins of the kind named, therefore it is lawful also in the case of homicide. Similarly, blasphemy is a sin as grave and so the same is clear; therefore. If, however, they are to be understood in the first sense, that is, as speaking of all sin against the law of nature, the argument against them is that the coercion in question is not lawful for fornication; therefore not for the other sins which are contrary to the law of nature. The antecedent is clear from I *Corinthians*, ch. 5: "I wrote to you in an epistle not to company with fornicators," and besides "If any brother among you is called a fornicator or an idolater," etc.; and lower down: "For what have I to do to judge them also that are without?" Whereon St. Thomas says: "The prelates have received power over those only who have submitted themselves to the faith." Hence it clearly appears that St. Paul declares it not his business to pronounce judgment on unbelievers and fornicators and idolaters. So also it is not every sin against the law of nature that can be clearly shown to be such, at any rate to every one.

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Further, this is as much as to say that the aborigines may be warred into subjection because of their unbelief, for they are all idolaters. Further, the Pope can not make war on Christians on the ground of their being fornicators or thieves or, indeed, because they are sodomites; nor can he on that ground confiscate their land and give it to other princes; were that so, there would be daily changes of kingdoms, seeing that there are many sinners in every realm. And this is confirmed by the consideration that these sins are more heinous in Christians, who are aware that they are sins, than in barbarians, who have not that knowledge. Further, it would be a strange thing that the Pope, who can not make laws for unbelievers, can yet sit in judgment and visit punishment upon them.

Confirmation.

Proof 3.

Proof 4.

A further and convincing proof is the following: The aborigines in question are either bound to submit to the punishment awarded to the sins in question or they are not. If they are not bound, then the Pope can not award such punishment. If they are bound, then they are bound to recognize the Pope as lord and lawgiver. Therefore, if they refuse such recognition, this in itself furnishes a ground for making war on them, which, however, the writers in question deny, as said above. And it would indeed be strange that the barbarians could with impunity deny the authority and jurisdiction of the Pope, and yet that they should be bound to submit to his award. Further, they who are not Christians can not be subjected to the judgment of the Pope, for the Pope has no other right to condemn or punish them than as vicar of Christ. But, the writers in question admit—both Innocent and Augustinus of Ancona, and the Archbishop and Sylvester, too—that they can not be punished because they do not receive Christ. Therefore not because they do not receive the judgment of the Pope, for the latter presupposes the former.

Proof 5.

The insufficiency alike of this present title and of the preceding one, is shown by the fact that, even in the Old Testament, where much was done by force of arms, the people of Israel never seized the land of unbelievers either because they were unbelievers or idolaters or because they were guilty of other sins against nature (and there were people guilty of many such sins, in that they were idolaters and committed many other sins against nature, as by sacrificing their sons and daughters to devils), but because either a special gift from God or because their enemies had hindered their passage or had attacked them. Further, what is it that the writers in question call a profession of the law of nature? If it is mere knowledge, they do not know it all; if it is a mere willingness to observe the law of nature, then the retort is that they are also willing to observe the whole divine law; for, if they knew that the law of Christ was divine, they would be willing to observe it. Therefore, they make no more a profession of the law of nature than they make of the law of Christ. Further, we certainly possess clearer proofs whereby to demonstrate that the law of Christ is from God and is true than to demonstrate that fornication is wrong or that other things which are also forbidden by natural law are to be shunned.*

Refutation common to this and the just preceding title.

1.

2.

3.

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*Otherwise to be blamed.

Therefore, if the Indians can be compelled to observe the law of nature because it admits of proof, they can therefore, be compelled to observe the Gospel law.

Sixth title set out.

There remains another, a sixth title, which is put forward, namely, by voluntary choice. For on the arrival of the Spaniards we find them declaring to the aborigines how the King of Spain has sent them for their good and admonishing them to receive and accept him as lord and king; and the aborigines replied that they were content to do so. Now, "there is nothing so natural as that the intent of an owner to transfer his property to another should have effect given to it" (*Inst.*, 2, 1, 40). I, however, assert the proposition that this title, too, is insufficient. This appears, in the first place, because fear and ignorance, which vitiate every choice, ought to be absent. But they were markedly operative in the cases of choice and acceptance under consideration, for the Indians did not know what they were doing; nay, they may not have understood what the Spaniards were seeking. Further, we find the Spaniards seeking it in armed array from an unwarlike and timid crowd. Further, inasmuch as the aborigines, as said above, had real lords and princes, the populace could not procure new lords without other reasonable cause, this being to the hurt of their former lords. Further, on the other hand, these lords themselves could not appoint a new prince without the assent of the populace. Seeing, then, that in such cases of choice and acceptance as these there are not present all the requisite elements of a valid choice, the title under review is utterly inadequate and unlawful for seizing and retaining the provinces in question.

Seventh title.

The author's refutation.

1. There is a seventh title which can be set up, namely, by special grant from God. For some (I know not who) assert that the Lord by His especial judgment condemned all the barbarians in question to perdition because of their abominations and delivered them into the hands of the Spaniards, just as of old He delivered the Canaanites into the hands of the Jews. I am loath to dispute hereon at any length, for it would be hazardous to give credence to one who asserts a prophecy against the common law and against the rules of Scripture, unless his doctrine were confirmed by miracles. Now,
2. no such are adduced by prophets of this type. Further, even assuming that it is true that the Lord had determined to bring the barbarians to perdition, it would not follow, therefore, that he who wrought their ruin would be blameless, any more than the Kings of Babylon who led their army against Jerusalem and carried away the children of Israel into captivity were blameless, although in actual fact all of this was by the especial providence of God, as had often been foretold to them. Nor was Jeroboam right in drawing Israel away from Rehoboam, although this was done by God's design, as the Lord had also threatened by his prophet. And, would that,
3. apart from the sin of unbelief, there might be no greater sins in morals among certain Christians than there are among those barbarians! It is also written (I *St. John*, ch. 4): "Believe not every spirit, but try the spirits whether they be of God;" and as St. Thomas says (*Prima Secundae*, qu. 68),

"Gifts are given by the Holy Spirit for the perfecting of virtues." Accordingly, where faith or authority or providence shows what ought to be done, recourse should not be had to gifts.

Let this suffice about false and inadequate titles to seize the lands of the Indians. But it is to be noted that I have seen nothing written on this question and have never been present at any discussion or council on this matter. Hence it may be that others may find a title and base the justice of this business and overlordship on some of the passages cited and not lack reason in so doing. I, however, have up to now been unable to form any other opinion than what I have written. And so, if there be no other titles than those which I have discussed, it would certainly be of ill omen for the safety of our princes, or rather of those who are charged with the discovery of these matters; for princes follow advice given by others, being unable to examine into these matters for themselves. "What is a man advantaged" so saith the Lord, "if he gain the whole world and lose himself, or be cast away?" (*St. Matthew*, ch. 16; *St. Mark*, ch. 8; *St. Luke*, ch. 9.)

The author excuses himself.

SUMMARY OF THE THIRD SECTION.

On the lawful titles whereby the aborigines of America could have come into the power of Spain.

1. How the aborigines might have come into the power of the Spaniards on the ground of natural society and fellowship.
2. The Spaniards have a right to travel to the lands of the Indians and to sojourn there so long as they do no harm, and they can not be prevented by the 383 Indians.
3. The Spaniards may carry on trade among the Indian aborigines, so long as they do no harm to their own country, by importing the goods which the aborigines lack, etc., and taking away gold and silver and other articles in which the Indians abound; and the princes of the Indians can not prevent their subjects from trading with the Spaniards, etc.
4. The Indians can not prevent the Spaniards from a communication and participation in those things which they treat as common alike to natives and to strangers.
5. Any children born to Spanish parents domiciled in those parts who wish to become citizens thereof can not be excluded from citizenship or from the advantages enjoyed by other citizens.
1. 6. What course ought to be adopted if the aborigines desire to prevent the Spaniards trading with them, etc.
7. If the Spaniards, after resort to all moderate measures, can not attain security among the aborigines or Indians save by seizing their cities and reducing them to subjection, whether they can lawfully do this.
8. When and in what case the Spaniards can resort to severe measures against the 384 Indians, treating them as faithless foes, and employ all the rights of war against them and take away their property and even reduce them to captivity, aye, and depose their former lords also and set up new lords.
2. 9. Whether the Indians could have come under the sway of the Spaniards, in the interest of the spread of Christianity. Christians have a right to preach and publish the Gospel in the lands of barbarians.
10. The Pope could entrust to the Spaniards alone the task of converting the Indian aborigines and could forbid to all others not only preaching, but trade too, if the propagation of Christianity would thus be furthered.
11. The Indians are not to be warred into subjection or despoiled of their property, if they give the Spaniards unhindered freedom to preach the Gospel, and this whether they accept the faith or not.
7. 12. How the aborigines who hinder the spread of the Gospel, whether it be their lords or the populace, may be coerced by the Spaniards, so long as no scandal is caused. And what is to be said of those who, while admitting preaching, prevent conversion, either by killing or punishing or terrorizing 385 those who have been converted to Christianity?
3. 13. How the Indians might have come under the sway of the Spaniards by the fact that, when they had been converted and become Christians, their princes desired to bring them back to idolatry by force or by fear, and so they were taken into the protection and guardianship of the Spaniards.
4. 14. The Indians might have come under the sway of the Spaniards by the fact that, after the conversion of a large part of them to Christianity, the Pope, either with or without a request on their part, might on reasonable grounds have given them a Christian prince, such as the King of Spain, and driven out their infidel lords.

5. 15. Whether the Indians could have come under the sway of the Spaniards because of the tyranny of their lords or because of tyrannical laws which injured innocent folk.
6. 16. The Indian aborigines could have come under the sway of the Spaniards through true and voluntary choice.
7. 17. The Indians might have come under the sway of the Spaniards by a title of alliance and friendship.
8. 18. Whether the Spaniards could have reduced the Indians into their power, if it were certainly clear that they were of defective intelligence.

386 I will now speak of the lawful and adequate titles whereby the Indians might have come under the sway of the Spaniards. (1) The first title to be named is that of natural society and fellowship. And hereon let my first conclusion be: (2) The Spaniards have a right to travel into the lands in question and to sojourn there, provided they do no harm to the natives, and the natives may not prevent them. Proof of this may in the first place be derived from the law of nations (*jus gentium*), which either is natural law or is derived from natural law (*Inst.*, 1, 2, 1): "What natural reason has established among all nations is called the *jus gentium*." For, congruently herewith, it is reckoned among all nations inhumane to treat visitors and foreigners badly without some special cause, while, on the other hand, it is humane and correct to treat visitors well; but the case would be different, if the foreigners were to misbehave when visiting other nations.

Secondly, it was permissible from the beginning of the world (when everything was in common) for any one to set forth and travel wheresoever he would. Now this was not taken away by the division of property, for it was never the intention of peoples to destroy by that division the reciprocity and common user which prevailed among men, and indeed in the days of Noah it would have been inhumane to do so.

Thirdly, everything is lawful which is not prohibited or which is not 387 injurious or hurtful to others in some other way. But (so we suppose) the travel of the Spaniards does no injury or harm to the natives. Therefore it is lawful.

Fourthly, it would not be lawful for the French to prevent the Spanish from traveling or even from living in France, or vice versa, provided this in no way enured to their hurt and the visitors did no injury. Therefore it is not lawful for the Indians.

Further, fifthly, banishment is one of the capital forms of punishment. Therefore it is unlawful to banish strangers who have committed no fault.

Further, sixthly, to keep certain people out of the city or province as being enemies, or to expel them when already there, are acts of war. Inasmuch, then, as the Indians are not making a just war on the Spaniards (it being assumed that the Spaniards are doing no harm), it is not lawful for them to keep the Spaniards away from their territory.

Further, seventhly, there is the Poet's verse,

Quod genus hoc hominum? quaeve hunc tam barbara morem
Permittit patria? hospitio prohibemur arenae.

[What race of men is this? or what country is barbarous enough to allow this usage? We are driven off from the hospitality of its shore.]

The first lawful title.
Proposition I.

Proof 1.

Proof 2.

Proof 3.

Proof 4.

Proof 5.

Proof 6.

Proof 7.

Proof 8.

Also, eighthly, "Every animal loveth its kind" (*Ecclesiasticus*, ch. 15). Therefore, it appears that friendship among men exists by natural law and it is against nature to shun the society of harmless folk.

Proof 9.

Also, ninthly, there is the passage (*St. Matthew*, ch. 25): "I was a stranger and ye took me not in." Hence, as the reception of strangers seems to be by natural law, that judgment of Christ will be pronounced with universal application.

Proof 10.

Tenthly, "by natural law running water and the sea are common to all, so are rivers and harbors, and by the law of nations ships from all parts may be moored there" (*Inst.*, 2, 1); and on the same principle they are public things. Therefore it is not lawful to keep any one from them. Hence it follows that the aborigines would be doing a wrong to the Spaniards, if they were to keep them from their territories.

Proof 11.

Also, eleventhly, these very persons admit all other barbarians from all parts. Therefore, they would be doing a wrong, if they were not to admit the Spaniards.

Proof 12.

Also, twelfthly, if it were not lawful for the Spaniards to travel among them, this would be either by natural law or by divine law or by human law. Now, it is certainly lawful by natural and by divine law. And if there were any human law which without any cause took away rights conferred by natural and divine law, it would be inhumane and unreasonable and consequently would not have the force of law.

Proof 13.

Thirteenthly, either the Spaniards are subjects of the Indians or they are not. If they are not, then the Indians can not keep them away. If they are, then the Indians ought to treat them well.

Proof 14.

Also, fourteenthly, the Spaniards are the neighbors of the barbarians, as appears from the Gospel parable of the Samaritan (*St. Luke*, ch. 10). But they are bound to love their neighbors as themselves (*St. Matthew*, ch. 22). Therefore they may not keep them away from their country without cause: "When it is said 'Love thy neighbour,' it is clear that every man is our neighbour" (*St. Augustine's De doctrina Christiana*).

Proposition II.

3. Second proposition: The Spaniards may lawfully carry on trade among the native Indians, so long as they do no harm to their country, as, for instance, by importing thither wares which the natives lack and by exporting thence either gold or silver or other wares of which the natives have abundance. Neither may the native princes hinder their subjects from carrying on trade with the Spanish; nor, on the other hand, may the princes of Spain prevent commerce with the natives. This is proved by means of my first proposition.

Proof 1.

Firstly, because it is an apparent rule of the *jus gentium* that foreigners may carry on trade, provided they do no hurt to citizens.

Proof 2.

Also, secondly, a similar proof lies in the fact that this is permitted by the divine law. Therefore a law prohibiting it would undoubtedly not be reasonable.

Proof 3.

Also, thirdly, the sovereign of the Indians is bound by the law of nature to love the Spaniards. Therefore the Indians may not causelessly prevent

the Spaniards from making their profit where this can be done without injury to themselves.

A fourth reason is that such conduct would be against the proverb: "Thou shalt not do to another what thou wouldest not wish done to thyself."

And, in sum, it is certain that the aborigines can no more keep off the Spaniards from trade than Christians can keep off other Christians. Now, it is clear that if the Spaniards kept off the French from trade with the Spaniards, and this not for the good of Spain, but in order to prevent the French from sharing in some advantage, that practice would offend against righteousness and charity. If, then, there can be no just legal ordinance to this effect, it also can not be accomplished in actual fact (for the injustice of a law consists solely in the execution of the law). And, as is said in *Dig.*, 1, 1, 3, "Nature has established a bond of relationship between all men," and so it is contrary to natural law for one man to dissociate himself from another without good reason. "Man," says Ovid, "is not a wolf to his fellow man, but a man."

4. Third proposition: If there are among the Indians any things which are treated as common both to citizens and to strangers, the Indians may not prevent the Spaniards from a communication and participation in them. If, for example, other foreigners are allowed to dig for gold in the land of the community or in rivers, or to fish for pearls in the sea or in a river, the natives can not prevent the Spaniards from doing this, but they have the same right to do it as others have, so long as the citizens and indigenous population are not hurt thereby. This is proved by my first and second propositions. For if the Spaniards may travel and trade among them, they may consequently make use of the laws and advantages enjoyed by all foreigners.

Secondly, inasmuch as things that belong to nobody are acquired by the first occupant according to the law of nations (*Inst.*, 2, 1, 12), it follows that if there be in the earth gold or in the sea pearls or in a river anything else which is not appropriated by the law of nations those will vest in the first occupant, just as the fish in the sea do. And, indeed, there are many things in this connection which issue from the law of nations, which, because it has a sufficient derivation from natural law, is clearly capable of conferring rights and creating obligations. And even if we grant that it is not always derived from natural law, yet there exists clearly enough a consensus of the greater part of the whole world, especially in behalf of the common good of all. For if after the early days of the creation of the world or its recovery from the flood the majority of mankind decided that ambassadors should everywhere be reckoned inviolable and that the sea should be common and that prisoners of war should be made slaves, and if this, namely, that strangers should not be driven out, were deemed a desirable principle, it would certainly have the force of law, even though the rest of mankind objected thereto.

5. Fourth proposition: If children of any Spaniard be born there and they wish to acquire citizenship, it seems they can not be barred either from citizenship or from the advantages enjoyed by other citizens—I refer to the

Proof. case where the parents had their domicile there. The proof of this is furnished by the rule of the law of nations, that he is to be called and is a citizen who is born within the state (*Cod.*, 7, 62, 11). And the confirmation lies in the fact that, as man is a civil animal, whoever is born in any one state is not a citizen of another state. Therefore, if he were not a citizen of the state referred to, he would not be a citizen of any state, to the prejudice of his rights under both natural law and the law of nations. **Corollary.** Aye, and if there be any persons who wish to acquire a domicile in some state of the Indians, as by marriage or in virtue of any other fact whereby other foreigners are wont to become citizens, they can not be impeded any more than others, and consequently they enjoy the privileges of citizens just as others do, provided they also submit to the burdens to which others submit. And the passages wherein hospitality is commended are to the same effect (*I St. Peter*, ch. 4): "Use hospitality one to another"; and (*I Timothy*, ch. 3, about a bishop): "A bishop must be given to hospitality." Hence, on the other hand, refusal to receive strangers and foreigners is wrong in itself.

Proposition V.

6. Fifth proposition: If the Indian natives wish to prevent the Spaniards from enjoying any of their above-named rights under the law of nations, for instance, trade or other above-named matter, the Spaniards ought in the first place to use reason and persuasion in order to remove scandal and ought to show in all possible methods that they do not come to the hurt of the natives, but wish to sojourn as peaceful guests and to travel without doing the natives any harm; and they ought to show this not only by word, but also by reason, according to the saying, "It behoveth the prudent to make trial of everything by words first." But if, after this recourse to reason, the barbarians decline to agree and propose to use force, the Spaniards can defend themselves and do all that consists with their own safety, it being lawful to repel force by force. And not only so, but, if safety can not otherwise be had, they may build fortresses and defensive works, and, if they have sustained a wrong, they may follow it up with war on the authorization of their sovereign and may avail themselves of the other rights of war. The proof hereof lies in the fact that warding-off and avenging a wrong make a good cause of war, as said above, following St. Thomas (*Secunda Secunda*, qu. 40). [But when the Indians deny the Spaniards their rights under the law of nations they do them a wrong. Therefore, if it be necessary, in order to preserve their right, that they should go to war, they may lawfully do so.]

Proof.

Note!

It is, however, to be noted that the natives being timid by nature and in other respects dull and stupid, however much the Spaniards may desire to remove their fears and reassure them with regard to peaceful dealings with each other, they may very excusably continue afraid at the sight of men strange in garb and armed and much more powerful than themselves. And therefore, if, under the influence of these fears, they unite their efforts to drive out the Spaniards or even to slay them, the Spaniards might, indeed, defend themselves but within the limits of permissible self-protection, and it would not be right for them to enforce against

the natives any of the other rights of war (as, for instance, after winning the victory and obtaining safety, to slay them or despoil them of their goods or seize their cities), because on our hypothesis the natives are innocent and are justified in feeling afraid. Accordingly, the Spaniards ought to defend themselves, but so far as possible with the least damage to the natives, the war being a purely defensive one.

There is no inconsistency, indeed, in holding the war to be a just war on both sides, seeing that on one side there is right and on the other side there is invincible ignorance. For instance, just as the French hold the province of Burgundy with demonstrable ignorance, in the belief that it belongs to them, while our Emperor's right to it is certain, and he may make war to regain it, just as the French may defend it, so it may also befall in the case of the Indians—a point deserving careful attention. For the rights of war which may be invoked against men who are really guilty and lawless differ from those which may be invoked against the innocent and ignorant, just as the scandal of the Pharisees is to be avoided in a different way from that of the self-distrustful and weak.

7. Sixth proposition: If after recourse to all other measures, the Spaniards are unable to obtain safety as regards the native Indians, save by seizing their cities and reducing them to subjection, they may lawfully proceed to these extremities. The proof lies in the fact that "peace and safety are the end and aim of war," as St. Augustine says, writing to Boniface. And since it is now lawful for the Spaniards, as has been said, to wage defensive war or even if necessary offensive war, therefore, everything necessary to secure the end and aim of war, namely, the obtaining of safety and peace, is lawful.

8. Seventh proposition: If, after the Spaniards have used all diligence, both in deed and in word, to show that nothing will come from them to interfere with the peace and well-being of the aborigines, the latter nevertheless persist in their hostility and do their best to destroy the Spaniards, then they can make war on the Indians, no longer as on innocent folk, but as against forsworn enemies, and may enforce against them all the rights of war, despoiling them of their goods, reducing them to captivity, deposing their former lords and setting up new ones, yet withal with observance of proportion as regards the nature of the circumstances and of the wrongs done to them. This conclusion is sufficiently apparent from the fact that, if it be lawful to declare the war, it is consequently lawful to pursue the rights of war. And it is confirmed by the consideration that the aborigines ought not to hold a better position merely because they are unbelievers. But all the things enumerated would be lawful against Christians, when once a just war has arisen. Therefore they are lawful against the aborigines, too. Also, it is a universal rule of the law of nations that whatever is captured in war becomes the property of the conqueror, as is laid down in *Dig.*, 49, 15, 28 and 24, and in *Decretum*, pt. 1, dist. 1, as is laid down in *Dig.*, 49, 15, 28 and 24, and in *Decretum*, pt. 1, dist. 1, as is laid down in *Inst.*, 2, 1, 17, where it is said that "by the law of nations whatever we take from the enemy becomes ours at once,

Sometimes a war is a just war on both sides.

Proposition VI.

Proof.

Proposition VII.

Proof 1.

Proof 2.

Proof 3. to such an extent that even men may be brought into slavery to us." Further (as the doctors say on the topic of war), a prince who has on hand a just war is *ipso jure* the judge of his enemies and can inflict a legal punishment on them, condemning them according to the scale of their wrongdoing. Confirmation. Everything said above receives confirmation from the fact that ambassadors are by the law of nations inviolable and the Spaniards 396 are the ambassadors of Christian peoples. Therefore, the native Indians are bound to give them, at least, a friendly hearing and not to repel them. This, then, is the first title which the Spaniards might have for seizing the provinces and sovereignty of the natives, provided the seizure be without guile or fraud and they do not look for imaginary causes of war. For if the natives allow the Spaniards to traffic peaceably among them, the Spaniards could not allege in this connection any just cause for seizing their goods any more than the goods of Christians.

Second law-ful title. Proposition I. Proof 1. Proof 2. Proof 3. Proof 4. Proof 5. 9. Another possible title is by way of propagation of Christianity. In this connection let my first proposition be: Christians have a right to preach and declare the Gospel in barbarian lands. This proposition is manifest from the passage: "Preach the Gospel to every creature," etc.,¹ and also, "The word of the Lord is not bound" (II *Timothy*, ch. 2). Secondly, our proposition is clear from what has been already said, for if the Spaniards have a right to travel and trade among the Indians, they can teach the truth to those willing to hear them, especially as regards matters pertaining to salvation and happiness, much more than as regards matters pertaining to any human subject of instruction. Thirdly, because the natives would otherwise be outside the pale of salvation, if Christians were not allowed to go to them carrying the Gospel message. Fourthly, because brotherly 397 correction is required by the law of nature, just as brotherly love is. Since, then, the Indians are all not only in sin, but outside the pale of salvation, therefore, it concerns Christians to correct and direct them; nay, it seems that they are bound to do so. Fifthly and lastly, because they are our neighbors, as said above: "Now the Lord has laid a command on everyone concerning his neighbour" (*Ecclesiasticus*, ch. 17). Therefore it concerns Christians to instruct those who are ignorant of these supremely vital matters.

Proposition II. Proof 1. 10. Second proposition: Although this is a task common and permitted to all, yet the Pope might entrust it to the Spaniards and forbid it to all others. The proof is in the fact that, although (as said above) the Pope is not temporal lord, yet he has power in matters temporal when this would subserve matters spiritual. Therefore, as it is the Pope's concern to bestow especial care on the propagation of the Gospel over the whole world, he can entrust it to the Spaniards to the exclusion of all others, if the sovereigns of Spain could render more effective help in the spread of the Gospel in those parts; and not only could the Pope forbid others to preach, but also to trade there, if this would further the propagation of Christianity, for he can order temporal matters in the manner which is most helpful to spiritual

¹St. Mark, ch. 16, v. 15.

matters. And if in this case that is how spiritual matters would be best helped, it consequently falls within the authority and power of the supreme Pontiff. But it seems that in this case this is the course most conducive to spiritual welfare, because, if there was to be an indiscriminate inrush of Christians from other parts to the part in question, they might easily hinder one another and develop quarrels, to the banishment of tranquillity and the disturbance of the concerns of the faith and of the conversion of the natives. Further, inasmuch as it was the sovereigns of Spain who were the first to patronize and pay for the navigation of the intermediate ocean, and as they then had the good fortune to discover the New World, it is just that this travel should be forbidden to others and that the Spaniards should enjoy alone the fruits of their discovery. For, just as in the interests of the preservation of the peace among princes and of the spread of religion the Pope could make such a distribution of the land of the Saracens among Christian princes as would prevent one from crossing over the lands of another, so also for the good of religion he could appoint princes, especially where there were aforesaid no Christian princes.

11. Third proposition: If the Indians allow the Spaniards freely and without hindrance to preach the Gospel, then whether they do or do not receive the faith, this furnishes no lawful ground for making war on them and seizing in any other way their lands. This has been proved above,¹ where we confuted the fourth alleged title, and it is self-evident, seeing 399 that there can not be a just war where no wrong has previously been done (*Secunda Secundae*, qu. 40, art. 1).

12. Fourth proposition: [If the Indians—whether it be their lords or the populace—prevent the Spaniards from freely preaching the Gospel, the Spaniards, after first reasoning with them in order to remove scandal, may preach it despite their unwillingness and devote themselves to the conversion of the people in question, and if need be they may then accept or even make war, until they succeed in obtaining facilities and safety for preaching the Gospel.] And the same pronouncement must be made in the case where they allow preaching, but hinder conversion either by killing or otherwise punishing those who have been converted to Christ or by deterring others by threats and fears. This is clear, because herein the Indians would be doing an injury to the Spaniards (as appears from what has already been said) and these would have a just cause of war. A second reason is that an obstacle would thereby be put in the way of the welfare of the Indians themselves such as their princes have no right to put there. Therefore, in favor of those who are oppressed and suffer wrong, the Spaniards can make war, especially as such vitally important interests are at stake. This proposition demonstrates that, if there is no other way to carry on the work of religion, this furnishes the Spaniards with another justification for seizing the lands and territory of the natives and for setting 400 up new lords there and putting down the old lords and doing in right of war everything which it is permitted in other just wars, but always with a regard

¹In the immediately preceding section.

for moderation and proportion, so as to go no further than necessity demands, preferring to abstain from what they lawfully might do rather than transgress due limits, and with an intent directed more to the welfare of the aborigines than to their own gain.

Note!

Careful attention must, however, be paid to what St. Paul says (I Corinthians, ch. 6): "All things are lawful unto me, but not all things are expedient." So everything said above must be taken as spoken absolutely. For it may be that these wars and massacres and spoliations will hinder rather than procure and further the conversion of the Indians. Accordingly, the prime consideration is that no obstacle be placed in the way of the Gospel, and if any such be so placed, this method of evangelization must be abandoned and another one sought for. What we have been showing is what is lawful in itself. I personally have no doubt that the Spaniards were bound to employ force and arms in order to continue their work there, but I fear measures were adopted in excess of what is allowed by human and divine law. The title under consideration might, then, be a second lawful title whereby the Indians might fall into the power of Spain. But regard must ever be had to what has just been said lest what in itself is lawful be made in the circumstances wrong, for goodness springs from the one complete¹ cause, but badness from individual defects, according to Aristotle⁴⁰¹ (*Ethics*, bk. 3) and Dionysius (*De divinis nominibus*, ch. 4).

Third lawful title.

13. Another title there may be, which is derived from the foregoing, namely: If any of the native converts to Christianity be subjected to force or fear by their princes in order to make them return to idolatry, this would justify the Spaniards, should other methods fail, in making war and in compelling the barbarians by force to stop such misconduct, and in employing the rights of war against such as continue obstinate, and consequently at times in deposing rulers as in other just wars. This can be reckoned a third just title, a title based not only on religion, but on human friendship and alliance, inasmuch as the native converts to Christianity have become friends and allies of Christians and we are under an obligation to do "good unto all men, especially unto such as are of the household of faith" (*Galatians*, ch. 6).

Proof.

Fourth lawful title.

14. Another possible title is the following: Suppose a large part of the Indians were converted to Christianity, and this whether it were done lawfully or unlawfully (as by means of threats or fear or other improper procedure), so long as they really were Christians, the Pope might for a reasonable cause, either with or without a request from them, give them a Christian sovereign and depose their other unbelieving rulers. The proof hereof is in the fact that, if this were expedient in order to preserve Christianity because of a fear that under unbelieving rulers converts would apostatize, that is, would lapse from the faith, or that their rulers would seize the opportunity to harass them, the Pope can change rulers in the interests

Proof.

¹The reference to Aristotle can not be traced with certainty; but the text follows Dionysius closely. He wrote, literally translated, "The good is from the one and complete (*μία και ὅλη*) cause, but the bad from many and partial defects."—TRANSL.

of the faith. And confirmation is found in the fact that, as the doctors assert and as St. Thomas expressly says (*Secunda Secundae*, qu. 10. art. 10), the Church could free all Christian slaves who are in bondage to unbelievers even if that bondage was in other respects lawful. Innocent expressly declares this, in the above-mentioned X, 3, 34, 8. Therefore much more will he be able to free other Christians who have been reduced to bondage but not as stringently as slaves. Confirmation hereof is also to be found in the fact that a wife is as much bound to her husband as a bondsman is to his lord, and even more so, seeing that marriage is a tie of the divine law and bondage is not. But in the interests of the faith a believing wife is freed from an unbelieving husband, if he persecutes her for her religion, as appears from I Corinthians, ch. 7, and X, 4, 19, 7. Aye, the custom now is that by the very fact of one spouse being converted to the faith he or she is freed from the other who is an unbeliever. Therefore also the Church, in the interests of the faith and to avoid risks, may free all Christians from obedience and subjection to unbelieving lords, provided this be done without scandal. So we justify this fourth legal title.

Confirmation 1.

Confirmation 2.

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15. Another possible title is founded either on the tyranny of those who bear rule among the aborigines of America or on the tyrannical laws which work wrong to innocent folk there, such as that which allows the sacrifice of innocent people or the killing in other ways of uncondemned people for cannibalistic purposes. I assert also that without the Pope's authority the Spaniards can stop all such nefarious usage and ritual among the aborigines, being entitled to rescue innocent people from an unjust death. This is proved by the fact that "God has laid a charge on every individual concerning his neighbor,"¹ and they all are our neighbors. Therefore, any one may defend them from such tyrannical and oppressive acts, and it is especially the business of princes to do so. A further proof is given by *Proverbs*, ch. 24: "Deliver them that are drawn unto death, and forbear not to free those that are being dragged to destruction." This passage is not to be taken as applying only when victims are actually being dragged to death, but the natives can also be compelled to abstain from such ritual. And if they refuse, it is a good ground for making war on them and proceeding against them under the law of war, and if such sacrilegious rites can not otherwise be stopped, for changing their rulers and creating a new sovereignty over them. In this connection we find the opinion of Innocent and the Archbishop to be sound, namely, that punishment can be inflicted for sins against nature. And it is immaterial that all the Indians assent to rules and sacrifices of this kind and do not wish the Spaniards to champion them, for herein they are not of such legal independence as to be able to consign themselves or their children to death. So we may find a fifth lawful title here.

Fifth lawful title.

Proof 1.

Proof 2.

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16. Another possible title is by true and voluntary choice, as if the Indians, aware alike of the prudent administration and the humanity of the Spaniards, were of their own motion, both rulers and ruled, to accept the

Sixth lawful title.

¹*Ecclesiasticus*, ch. 17, v. 12.

Proof.

King of Spain as their sovereign. This could be done and would be a lawful title, by the law natural too, seeing that a State can appoint any one it will to be its lord, and herfor the consent of all is not necessary, but the consent of the majority suffices. For, as I have argued elsewhere, in matters touching the good of the State the decisions of the majority bind even when the rest are of a contrary mind; otherwise naught could be done for the welfare of the State, it being difficult to get all of the same way of thinking. Accordingly, if the majority of any city or province were Christians and they, in the interests of the faith and for the common weal, would have a prince who was a Christian, I think that they could elect him even against the wishes of the others and even if it meant the repudiation of other unbelieving rulers, and I assert that they could choose a prince not only for themselves, but for the whole State, just as the Franks for the good of their State changed their 405 sovereigns and, deposing Childeric, put Pepin, the father of Charlemagne, in his place, a change which was approved by Pope Zacharias. This, then, can be put forward as a sixth title.

Seventh lawful title.

17. Another title may be found in the cause of allies and friends. For as the Indians themselves sometimes wage lawful wars with one another and the side which has suffered a wrong has the right to make war, they might summon the Spaniards to help and share the rewards of victory with them. This is what the Tlaxcaltecs are said to have done against the Mexicans, the former arranging with the Spaniards to help them to overcome the latter and to receive whatever could fall to them under the law of war.

Proof.

For there is no doubt, as Cajetan also asserts (*Secunda Secundae*, qu. 40, art. 1), that the cause of allies and friends is a just cause of war, a State being quite properly able, as against foreign wrongdoers, to summon

Confirmation.

foreigners to punish its enemies. And this is confirmed by the fact that this was a method very much in vogue among the Romans for the extension of their Empire; that is, they brought aid to their allies and friends and so making a just war came, by right of war, into possession of fresh provinces. Yet the Roman Empire is approved by St. Augustine (*De civitate Dei*, 406 bk. 5) and by St. Thomas (*Opusculum* 21) as a lawful one. And Sylvester reckoned Constantine the Great as Emperor, as St. Ambrose did Theodosius. Now, there does not seem any other juridic title whereby the Romans came into possession of the world, save in right of war, and the most especial cause of their wars was the defense and protection of their friends. In just the same way Abraham championed the cause of the King of Salem and of other kings who had struck a treaty with him, and he fought against four kings of that region, though they had done him personally no wrong (*Genesis*, ch. 14). This is the seventh and the last title whereby the Indians and their lands could have come or might come into the possession and lordship of Spain.

Eighth title is doubtful.

18. There is another title which can indeed not be asserted, but brought up for discussion, and some think it a lawful one. I dare not affirm it at all, nor do I entirely condemn it. It is this: Although the aborigines in question are (as has been said above) not wholly unintelligent, yet they are

little short of that condition, and so are unfit to found or administer a lawful State up to the standard required by human and civil claims. Accordingly they have no proper laws nor magistrates, and are not even capable 407 of controlling their family affairs; they are without any literature or arts, not only the liberal arts, but the mechanical arts also; they have no careful agriculture and no artisans; and they lack many other conveniences, yea necessities, of human life. It might, therefore, be maintained that in their own interests the sovereigns of Spain might undertake the administration of their country, providing them with prefects and governors for their towns, and might even give them new lords, so long as this was clearly for their benefit. I say there would be some force in this contention; for if they were all wanting in intelligence, there is no doubt that this would not only be a permissible, but also a highly proper, course to take; nay, our sovereigns would be bound to take it, just as if the natives were infants. The same principle seems to apply here to them as to people of defective intelligence; and indeed they are no whit or little better than such so far as self-government is concerned, or even than the wild beasts, for their food is not more pleasant and hardly better than that of beasts. Therefore their governance should in the same way be entrusted to people of intelligence. There is clear confirmation hereof, for if by some accident of fortune all 408 their adults were to perish and there were to be left boys and youths in enjoyment, indeed, of a certain amount of reason, but of tender years and under the age of puberty, our sovereigns would certainly be justified in taking charge of them and governing them so long as they were in that condition. Now, this being admitted, it appears undeniable that the same could be done in the case of their barbarian parents, if they be supposed to be of that dullness of mind which is attributed to them by those who have been among them and which is reported to be more marked among them than even among the boys and youths of other nations. And surely this might be founded on the precept of charity, they being our neighbors and we being bound to look after their welfare. Let this, however, as I have already said, be put forward without dogmatism and subject also to the limitation that any such interposition be for the welfare and in the interests of the Indians and not merely for the profit of the Spaniards. For this is the respect in which all the danger to soul and salvation lies. And herein some help might be gotten from the consideration, referred to above, that some are by nature slaves, for all the barbarians in question are of that type and so they may in part be governed as slaves are.

Now, it seems to follow from all this discussion that, if there be no force in any of the titles which have been put forward, so that the native Indians neither gave cause for just war nor wished for Spanish rulers, etc., all the travel to, and trade with, those parts should be stopped, to the great loss of the Spaniards and also to the grave hurt of the royal treasury (a thing intolerable). My first answer to this is: There would be no obligation to stop trade, for, as already said, there are many commodities of which 409 the natives have a superfluity and which the Spaniards could acquire by

Probable principle.

This mandate

Confirmation.

Objection.

First answer.

Second
answer.Third
answer.

barter. Also there are many commodities which the natives treat as ownerless or as common to all who like to take them, and the Portuguese, to their own great profit, have a big trade with similar people without reducing them to subjection. Secondly, there would probably be no diminution in the amount of the royalties, for a tax might quite fairly be placed on the gold and silver which would be brought away from the Indians, as much as a fifth or even more, according to quality, and it would be well-earned, inasmuch as the maritime discovery was made by our sovereign and it is under his authority that trade is carried on in safety. Thirdly, it is evident, now that there are already so many native converts, that it would be neither expedient nor lawful for our sovereign to wash his hands entirely of the administration of the lands in question.

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THE SECOND RELECTIO

OF THE REVEREND FATHER, BROTHER FRANCISCUS DE VICTORIA,
ON THE INDIANS, OR ON THE LAW OF WAR
MADE BY THE SPANIARDS ON THE
BARBARIANS.

SUMMARY.

- ✓ 1. Christians may serve in war and make war.
- ✓ 2. In whose hands lies the authority to make or declare war?
3. Anyone, even a private person, can accept and wage a defensive war.
4. Whether one who is attacked by a robber or a foe may strike back the assailant, if able to escape by flight.
- ✓ 5. Every commonwealth has authority to declare and make war.
- ✓ 6. A prince has the same authority to declare and make war as a State has.
- ✓ 7. What a State is and who is properly styled a prince.
8. Whether several States or princes, when they have one common lord or prince, may make war of themselves without the authority of the superior lord.
- 411 9. Petty rulers or princes, who are not at the head of a complete State, but are parts of another State, can not undertake or make war. And what about cities?
- ✓ 10. What can be a reason or cause of just war? Proof that diversity of religion is not a cause of just war. (4)
- ✓ 11. Extension of an Empire is not a just cause of war.
- ✓ 12. The personal glory, or other advantage, of a prince is not a just cause of war.
- ✓ 13. Wrong done is the sole and only just cause for making war.
- ✓ 14. Not every kind and degree of wrong suffices for making war.
- ✓ 15. When just war exists, everything is lawful which is necessary for the defense of the public good.
16. In just war it is lawful to retake all things that have been lost, or a part thereof.
17. In just war it is lawful to make good, out of the goods of the enemy, all the cost of the war and all damages wrongfully caused by the enemy.
18. After property has been recaptured from an enemy in just war, what the prince may then do.
- ✓ 19. It is lawful for a prince, after gaining the victory in a just war and after retaking property, and even after the establishment of peace and security, to avenge the wrongs done to him by the enemy and to take measures against the enemy and punish them for these wrongs.
- 412 20. In order that a war be called just, it is not always enough that the prince believes he has a just cause.
21. The justice of a war must be most thoroughly and carefully examined.
22. Whether subjects are bound to examine the cause of a war; and how, if a subject is convinced of the injustice of a war, he may not serve in it, even though his sovereign commands.
23. If subjects are conscientiously of opinion that a war is unjust, they may not serve in it, whether their opinion be wrong or right.
24. Senators, petty rulers, and, in general, all who, either on summons or coming of their own accord, are admitted to the public council or the king's council, are bound to examine the cause of an unjust war.

25. Who are not bound to examine the causes of war, but may lawfully serve in it in reliance on the good faith of their betters.
26. When ignorance of the injustice of a war would not excuse subjects who serve in it.
- ✓ 27. What is to be done, when there is doubt about the justice of a war; and how if one prince be in lawful possession, so long as the doubt remains another 413 may not try to turn him out by war and armed force.
28. If there be a city or province concerning which it is doubtful whether it has a lawful possessor, especially where there is a vacancy owing to the death of the lawful lord, etc.—what is to be done in such a case.
29. How a person who is doubtful about his own title, even if he be in peaceable possession, is bound to make careful examination of his case, if perchance he can arrive at certainty either in his own favor or in favor of another.
30. After the examination of a case, so long as a doubt reasonably persists, a lawful possessor is not bound to quit possession, but may lawfully retain it.
31. In a doubtful case, subjects may follow their prince to battle not only in a defensive, but also in an offensive war.
32. Whether a war can be just on both sides, and how, apart from ignorance, this can not happen.
33. Whether a prince or a subject, who in ignorance has prosecuted an unjust war, is bound to make restitution, if afterwards he becomes convinced of its injustice.
- * ✓ 34. Whether it is lawful in war to kill the innocent.
35. Slaughter of the innocent is never lawful in itself and intentionally.
36. Whether it is lawful to kill women and children in a war against the Turks; 414 and what, among Christians, about farmers, civilians, foreigners, strangers, and clergy.
37. The incidental killing of the innocent, even with knowledge, is sometimes lawful, sometimes not.
38. Whether it is lawful to kill the innocent from whom danger in the future is apprehended.
39. Whether it is lawful to despoil the innocent among the enemy, and what things may be taken.
40. If war can be adequately conducted without despoiling farmers or other innocent folk, it seems unlawful to despoil them; and what about foreigners and strangers on enemy territory?
41. How, if the enemy refuse to restore the things which they have wrongfully taken away, and the injured party can not recoup himself in any other way, he can seek satisfaction where he will, whether from the guilty or the innocent.
42. Whether the innocent and children, who are admittedly not to be killed, may at least be led into captivity and slavery.
43. Whether hostages, taken from the enemy in time of truce or on the termination of a war, may be put to death, if the enemy break faith and do not abide by what has been agreed on.
44. Whether it is lawful in war to kill all the guilty. 415
45. It is lawful to kill without distinction all who resist in the actual heat of battle either in the storming or in the defense of a city, and as long as affairs are in peril.
- * 46. It is lawful to kill the guilty, even after victory has been won and danger has already been removed.
47. It is not always lawful to kill all the guilty, merely in order to avenge a wrong.
48. At times it is both lawful and expedient to kill all the guilty, especially in a war against unbelievers. And what in a war against Christians?
49. Whether it is lawful to kill captives and those who have surrendered, assuming them to have been guilty also.

- ✓ 50. Whether things captured in a just war belong to the captor and seisor; and how these things vest in the seisor up to a sufficient satisfaction for what has been wrongfully taken away and for expenses.
- ✓ 51. How all movables, by the law of nations, vest in the seisor, even though their value more than compensates the wrong done.
- 416 52. Whether it is lawful to leave a city to the soldiery by way of booty; and how this is not unlawful, but at times even necessary.
53. Soldiers may not loot or burn without authority; otherwise they are bound to make restitution.
- ✓ 54. It is lawful to seize and hold the lands and fortresses and towns of the enemy, so far as this is necessary by way of compensation for damages done.
- ✓ 55. It is lawful to seize and hold an enemy fortress or city by way of obtaining security and avoiding danger or as a means of defense and in order to take away from the enemy an opportunity to do harm, etc.
- ✓ 56. It is lawful to deprive the enemy of part of his territory on account of the wrong he has done and by way of punishment, that is, revenge; and how on this ground a fortress or town may be seized, so long as due limits are observed.
57. Whether it is lawful to impose the payment of tribute on the conquered enemy.
- ✓ 58. Whether it is lawful to depose the princes of the enemy and put new ones over them or retain the sovereignty for oneself; and how it is not lawful to do this indiscriminately and for every cause of just war whatsoever.
- ✓ 59. When the princes of the enemy may lawfully be deposed, is shown.
- ✓ 60. The canons or rules of belligerency are described.

417 Inasmuch as the seizure and occupation of those lands of the barbarians whom we style Indians can best, it seems, be defended under the law of war, I propose to supplement the foregoing discussion of the titles, some just and some unjust, which the Spaniards may allege for their hold on the lands in question, by a short discussion of the law of war, so as to give more completeness to that *relectio*. As, however, the other claims on my time will not allow me to deal with all the points which arise out of this topic, the scope which I can give my pen must be proportionate, not to the amplitude and dignity of the theme, but to the shortness of the time at my disposal. And so I will merely note the main propositions of this topic, together with very brief proofs, and will abstain from touching on the many doubtful matters which might otherwise be brought into this discussion. I will deal with four principal questions. First, Whether Christians may make war at all; secondly, Where does the authority to declare or wage war repose; thirdly, What may and ought to furnish causes of just war; fourthly, What and how extensive measures may be taken in a just war against the enemy?

Four principal questions to be discussed.

As regards the first question, war might seem altogether prohibited to Christians, for there is the prohibition of self-defense in the passage (*Romans*, ch. 12), "Dearly beloved, avenge not yourselves, but give place unto wrath, and our Lord says in the Gospel (*St. Matthew*, ch. 5), "Whosoever shall smite thee on the right cheek, turn to him the other also" and "I say unto you not to resist evil," and (*St. Matthew*, ch. 26), "All they that take the sword shall perish by the sword." And it is no sufficient answer to say that all these matters are not of precept, but of counsel, for it would be a grave enough impropriety if every war undertaken by Christians was contrary to

The first principal question. The argument on one side of the question.

our Lord's advice. The opinion of all the doctors is to the contrary and so is the received usage of the Church.

Luther's opinion.

In development of this question be it noted that, although Catholics are fairly in accord on the matter, yet Luther, who left naught uncontaminated, denies that Christians may take up arms even against the Turks, and he relies not only on the above-cited texts of Scripture, but also on the fact that if the Turks attack Christendom it is the will of God, which may not be resisted. Herein, however, he had not as much success as in his other dogmas in imposing on the Germans, who are born soldiers. Tertullian too, seems not averse from this opinion, for in his *De corona militis* he discusses "whether military service is at all right for a Christian," and in the issue he inclines to hold that military service is forbidden to a Christian, who, says he, "may not even go to law."

Tertullian, too, inclines to same opinion.

The author gives his opinion in a single proposition.

(a) Especially book 22.

(b) Quest. 31.

(c) Serm. 19.

Proof 1.

(d) It is in the Sermones

De verbis Domini.

(e) Letter 205

to Count Boniface.

(f) Passage seems to be in bk. 22

Contra Faustum, ch. 74.

Proof 2.

I. Passing over outside opinions, however, let my answer to the question be given in the single proposition: Christians may serve in war and make war. This is the conclusion of St. Augustine in the many passages where he thoroughly considers the question, such as: (a) in his *Contra Faustum*, (b) in his *Liber 83 Quaestionum*, (c) in his *De verbis Domini*, in his *Contra Secundinum Manichaeum*, (d) in his sermon on the Centurion's son, and (e) in his Letter to Boniface. And, as St. Augustine shows, this is proved by the words of John the Baptist to the soldiers (*St. Luke*, ch. 3), "Do violence to no man, neither accuse any falsely." "But," says St. Augustine, (f) "if Christian doctrine condemned war altogether, those looking for counsels of salvation in the Gospel would be told to throw away their arms and give up soldiering altogether; but what is said to them is, 'Do violence to no man and be content with your wages.'"

Secondly, there is proof in the reason of the thing (*Secunda Secundae*, qu. 40, art. 1). To draw the sword and use arms against internal wrongdoers and seditious citizens is lawful according to *Romans*, ch. 13, "He beareth not the sword in vain, for he is the minister of God, a revenger of wrath upon him that doeth evil." Therefore it is lawful also to use the sword and arms against external enemies. Princes, accordingly, are told in the *Psalms*,¹ "Deliver the poor and needy, rid them out of the hand of the wicked."

Proof 3.

Thirdly, this was also allowable by the law of nature, as appears from the case of Abraham, who fought against four kings (*Genesis*, ch. 14), and also by the written law, as appears from the cases of David and the Maccabees. But the Gospel law forbids nothing which is allowed by natural law, as is well shown by St. Thomas (*Prima Secundae*, qu. 107, last art.), and that is why it is called the law of liberty (*St. James*, ch. 1 and 2). Therefore, what was lawful under natural law and in the written law is no less lawful under the Gospel law.

Proof 4 and onward deals with offensive war.

Fourthly, since there can be no doubt that in a defensive war force may be employed to repel force (*Dig.*, 1, 1, 3), this is also proved with regard to an offensive war, that is, a war where we are not only defending ourselves

¹Pr. 81, in Vulgate. In A. V. Pr. 82.

or seeking to repossess ourselves of property, but also where we are trying to avenge ourselves for some wrong done to us. This, I say, is proved by the authority of St. Augustine (*Liber 83 Quaestionum*) in a passage also found in *can. dominus*, C. 23, qu. 2, "Those wars are described as just wars which are waged in order to avenge a wrong done, as where punishment has to be meted out to a city or state because it has itself neglected to exact punishment for an offense committed by its citizens or subjects or to return what has been wrongfully taken away."

This is an extract from Quaestiones super Josue, qu. 10.

A fifth proof with regard to an offensive war is that even a defensive war could not be waged satisfactorily, were no vengeance taken on enemies who have done or tried to do a wrong. For they would only be emboldened to make a second attack, if the fear of retribution did not keep them from wrongdoing.

A sixth proof is that, as St. Augustine says (*De verbo Domini* and *Ad Bonifacium*), the end and aim of war is the peace and security of the State. But there can be no security in the State unless enemies are made to desist from wrong by the fear of war, for the situation with regard to war would be glaringly unfair, if all that a State could do when enemies attack it unjustly was to ward off the attack and if they could not follow this up by further steps.

A seventh proof comes from the end and aim and good of the whole world. For there would be no condition of happiness for the world, nay, its condition would be one of utter misery, if oppressors and robbers and plunderers could with impunity commit their crimes and oppress the good and innocent, and these latter could not in turn retaliate on them.

My eighth and last proof is one which in morals carries the utmost weight, namely, the authority and example of good and holy men. Such men have not only defended their country and their own property in defensive wars, but have also in offensive wars sought reparation for wrongs done or attempted by their enemies, as appears from the case of Jonathan and Simon (I *Maccabees*, ch. 9), who avenged the death of their brother John on the sons of Jambri. And in the Christian Church we have the conspicuous examples of Constantine the Great and Theodosius the Elder and other renowned and most Christian Emperors, who made many wars of both kinds, although their councils included bishops of great sanctity and learning.

2. Second question: In whose hands lies the authority to declare and to make war?

3. Herein let my first proposition be: Any one, even a private person, can accept and wage a defensive war. This is shown by the fact that force may be repelled by force (*Dig.*, as above). Hence any one can make this kind of war, without authority from any one else, for the defense not only of his person, but also of his property and goods.

4. A doubt, however, arises in connection with this proposition, namely, whether one who is attacked by a robber or enemy can strike his assailant back if escape by flight is possible. The Archbishop, indeed, says, No; this being in excess of the limits of blameless self-defense, since everyone

Second principal question. Proposition I.

Doubt. The Archbishop's opinion.

is bound in the exercise of self-defense to do as little harm as possible to his assailant. If, then, resistance would involve the death of or grievous bodily harm to the assailant, but escape by flight is a possible thing, the latter course ought to be adopted. Panormitanus, however, writing on *X*, 2, 13, 12, draws a distinction. If, says he, the victim would be seriously disgraced by flight, he is not bound to fly, but may repel the wrong by striking back, whereas if flight would not smirch his reputation or honor, as when a monk or rustic is attacked by a noble and powerful man, he is bound to fly instead. Bartolus, however, commenting on *Dig.*, 48, 19, 1, and 48, 8, 9, holds without distinguishing that self-defense is lawful and that there is no obligation to fly, the putting to flight being itself a wrong (*Dig.*, 47, 10, 15). If, then, armed resistance is permissible in defense of property, as appears from *X*, 2, 13, 12, and from c. 6, tit. 11, bk. 5 in VI, much more is it permissible in order to protect the body from hurt, such hurt being more serious than wrong to property (*Dig.*, 48, 19, 10). This opinion can be safely held and with possibility of demonstration, especially as the civil law admits as much, as in *Dig.*, 48, 8, 9. Now, no one sins who acts under warrant of the law, inasmuch as the law affords justification in the forum of conscience. Accordingly, even if natural law does not allow killing in defense of property, this is rendered lawful by the civil law and is available, so long as no scandal is caused, not only to laymen, but to clerics and professed persons.

Panormitanus' opinion.

Bartolus' opinion.

The author adopts Bartolus' opinion.

Proposition II.

Distinction between a private person and a State.

The author's opinion.

5. Second proposition: Every State has authority to declare and to make war. In course of proof of this be it noted that the difference herein between a private person and a State is that a private person is entitled, as said above, to defend himself and what belongs to him, but has no right to avenge a wrong done to him, nay, not even to recapt property that has been seized from him if time has been allowed to go by since the seizure. But defense can only be resorted to at the very moment of the danger, or, as the jurists say, *in continenti*, and so when the necessity of defense has passed there is an end to the lawfulness of war. In my view, however, one who has been contumeliously assaulted can immediately strike back, even if the assaulter was not proposing to make a further attack, for in the avoidance of shame and disgrace one who (for example) has had his ears boxed might immediately use his sword, not for the purpose of vengeance, but, as has been said, in order to avoid infamy and disgrace. But a State is within its rights not only in defending itself, but also in avenging itself and its subjects and in redressing wrongs. This is proved by what Aristotle says in the third book of his *Politics*, namely, that a State ought to be sufficient unto itself. But it can not adequately protect the public weal and the position of the State if it can not avenge a wrong and take measures against its enemies, for wrongdoers would become readier and bolder for wrongdoing, if they could do wrong with impunity. It is, therefore, imperative for the due ordering of human affairs that this authority be allowed to States.

Proposition III.

6. Third proposition: A prince has the same authority in this respect as the State has. This is the opinion of St. Augustine (*Contra Faustum*):

"The natural order, best adapted to secure the peace of mankind, requires that the authority to make war and the advisability of it should be in the hands of the sovereign prince." Reason supports this, for the prince only holds his position by the election of the State. Therefore he is its representative and wields its authority; aye, and where there are already lawful princes in a State, all authority is in their hands and without them nothing of a public nature can be done either in war or in peace.

Herein the prince has the same authority as the State.

7. Now, the whole difficulty is in the questions: What is a State, and who can properly be called a sovereign prince? I will briefly reply to them by saying that a State is properly called a perfect community. But the essence of the difficulty is in saying what a perfect community is. By way of solution be it noted that a thing is called perfect when it is a completed whole, for that is imperfect in which there is something wanting, and, on the other hand, that is perfect from which nothing is wanting. A perfect State or community, therefore, is one which is complete in itself, that is, which is not a part of another community, but has its own laws and its own council and its own magistrates, such as is the Kingdom of Castile and Aragon and the Republic of Venice and other the like. For there is no obstacle to many principalities and perfect States being under one prince. Such a State, then, or the prince thereof, has authority to declare war, and no one else.

8. Here, however, a doubt may well arise whether, when a number of States of this kind or a number of princes have one common lord or prince, they can make war of themselves and without the authorization of their superior lord. My answer is that they can do so undoubtedly, just as the kings who are subordinate to the Emperor can make war on one another without waiting for the Emperor's authorization, for (as has been said) a State ought to be self-sufficient, and this it would not be, if it had not the faculty in question.

The author's answer.

9. Hence it follows and is plain that other petty rulers and princes, who are not at the head of a perfect State, but are parts of another State, can not begin to carry on a war. Such is the Duke of Alva or the Count of Benevento, for they are parts of the Kingdom of Castile and consequently have not perfect States. As, however, these matters are for a great part governed by the law of nations or by human law, Custom can give power and authority to make war. And so if any State or prince has obtained by ancient custom the right to make war of itself or himself, this authority can not be gained, even if in other respects the State be not a perfect one. So, also, necessity can confer this license and authority. For if within one and the same realm one city should take up arms against another, or one of the dukes against another duke, and the king should neglect or should lack courage to exact redress for the wrongs that have been done, the aggrieved city or duke may not only resort to self-defense, but may also commence war and take measures against the enemy and even kill the wrongdoers, there being no other adequate means of self-defense. For the enemy would not cease from outrage, if the victims thereof were content merely with self-

Corollary.

defense. On this principle a private person also may begin an attack on his foe, if there is no other way of safeguarding himself from wrong. This is enough on the present question.

10. Third question: What may be a reason and cause of just war? It is particularly necessary to ask this in connection with the case of the Indian aborigines, which is now before us. Here my first proposition is: Difference of religion is not a cause of just war. This was shown at length in the preceding Relectio, when we demolished the fourth alleged title for taking possession of the Indians, namely, their refusal to accept Christianity. And it is the opinion of St. Thomas (*Secunda Secundae*, qu. 66, art. 8), and the common opinion of the doctors—indeed, I know of no one of the opposite way of thinking.

11. Second proposition: Extension of empire is not a just cause of war. This is too well known to need proof, for otherwise each of the two belligerents might have an equally just cause and so both would be innocent. This in its turn would involve the consequence that it would not be lawful to kill them and so imply a contradiction, because it would be a just war.

12. Third proposition: Neither the personal glory of the prince nor any other advantage to him is a just cause of war. This, too, is notorious. For a prince ought to subordinate both peace and war to the common weal of his State and not spend public revenues in quest of his own glory or gain, much less expose his subjects to danger on that account. Herein, indeed, is the difference between a lawful king and a tyrant, that the latter directs his government towards his individual profit and advantage, but a king to the public welfare, as Aristotle says (*Politics*, bk. 4, ch. 10). Also, the prince derives his authority from the State. Therefore he ought to use it for the good of the State. Also, laws ought "not to be enacted for the private good of any individual, but in the common interest of all the citizens," as is ruled in can. 2, Dist. 4, a citation from Isadore. Therefore the rules relating to war ought to be for the common good of all and not for the private good of the prince. Again, this is the difference between freemen and slaves, as Aristotle says (*Politics*, bk. 1, ch. 3 and 4) that masters exploit slaves for their own good and not for the good of the slaves, while freemen do not exist in the interest of others, but in their own interest. And so, were a prince to misuse his subjects by compelling them to go soldiering and to contribute money for his campaigns, not for the public good, but for his own private gain, this would be to make slaves of them.

13. Fourth proposition: There is a single and only just cause for commencing a war, namely, a wrong received. The proof of this rests in the first place on the authority of St. Augustine (*Liber 83 Quaestionum*, * "Those wars are described as just wars," etc., as above), and it is the conclusion arrived at by St. Thomas (*Secunda Secundae*, qu. 40, art. 1) and the opinion of all the doctors. Also, an offensive war is for the purpose of avenging a wrong and of taking measures against an enemy, as said above. But there can be no vengeance where there is no preceding fault and wrong. Therefore. Also, a prince has no greater authority over foreigners than

Third principal question. Proposition I.

Proposition II.

Proposition III.

Proof 1.

Proof 2.

Proof 3.

Proposition IV.

*Rather in Quaestiones super Josue, qu. 10. Proof 1. Proof 2.

Proof 3.

over his own subjects. But he may not draw his sword against his own subjects, unless they have done some wrong. Therefore not against foreigners either. This is confirmed by the text already cited from St. Paul (*Romans*, ch. 13) about a prince: "He beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil." Hence it is clear that we may not turn our sword against those who do us no harm, the killing of the innocent being forbidden by natural law. I omit here any injunctions inconsistent herewith which God has given in special cases, for He is the Lord of life and death and it is within His competence to vary His dispositions.

14. Fifth proposition: Not every kind and degree of wrong can suffice for commencing a war. The proof of this is that not even upon one's own fellow-countrymen is it lawful for every offense to exact atrocious punishments, such as death or banishment or confiscation of property. As, then, the evils inflicted in war are all of a severe and atrocious character, such as slaughter and fire and devastation, it is not lawful for slight wrongs to pursue the authors of the wrongs with war, seeing that the degree of the punishment ought to correspond to the measure of the offence (*Deuteronomy*, ch. 25).

15. The fourth question is about the law of war, namely, what kind and degree of stress is lawful in a just war. Here let my first proposition be: In war everything is lawful which the defense of the common weal requires. This is notorious, for the end and aim of war is the defense and preservation of the State. Also, a private person may do this in self-defense, as has been proved. Therefore much more may a State and a prince.

16. Second proposition: It is permissible to recapt everything that has been lost and any part of the same. This is too notorious to need proof. For war is begun or undertaken with this object.

17. Third proposition: It is lawful to make good out of enemy property the expenses of the war and all damages wrongfully caused by the enemy. This is clear, for the enemy who has done the wrong is bound to give all this redress. Therefore the prince can claim it all and exact it all by war. Also, as before, there is the argument that, when no other way lies open, a private creditor can seize the amount of his debt from the debtor. Also, if there were any competent judge over the two belligerents, he would have to condemn the unjust aggressors and authors of wrong, not only to make restitution of what they have carried off, but also to make good the expenses of the war to the other side, and also all damages. But a prince who is carrying on a just war is as it were his own judge in matters touching the war, as we shall forthwith show. Therefore he can enforce all these claims upon his enemy.

18. Fourth proposition: Not only are the things just named allowable, but a prince may go even further in a just war and do whatever is necessary in order to obtain peace and security from the enemy; for example, destroy an enemy's fortress and even build one on enemy soil, if this be necessary in order to avert a dangerous attack of the enemy. This

Proposition V.

Fourth principal question. Proposition I.

Proposition II.

Proposition III.

Proof 1.

Proof 2.

Proof 3.

Proposition IV.

Proof 1.

is proved by the fact that, as said above, the end and aim of war is peace and security. Therefore a belligerent may do everything requisite to obtain peace and security. Further, tranquillity and peace are reckoned among the desirable things of mankind and so the utmost material prosperity does not produce a state of happiness if there be no security there. Therefore it is lawful to employ all appropriate measures against enemies who are plundering and disturbing the tranquillity of the State. Also, all measures of this kind may be taken against internal foes, that is, against bad citizens. Therefore they are lawful against external foes. The antecedent is clear, for if one citizen does a wrong to a fellow citizen, the magistrate not only compels the wrongdoer to make amends to the injured party, but, if the former is a source of fear to the latter, he is compelled to give bond or quit the city, so as to remove the danger of which he is the cause. This shows that even when victory has been won and redress obtained, the enemy may be made to give hostages, ships, arms, and other things, when this is genuinely necessary for keeping the enemy in his duty and preventing him from becoming dangerous again.

Proof 2.

Proof 3.

Corollary.

Proposition V.

Power which, in the author's opinion, princes have not only over their own subjects, but also over foreigners by the law of nations, and by natural law too.

19. Fifth proposition: Not only is all this permissible, but even after victory has been won and redress obtained and peace and safety been secured, it is lawful to avenge the wrong received from the enemy and to take measures against him and exact punishment from him for the wrongs he has done. In proof of this be it observed that princes have authority not only over their own subjects, but also over foreigners, so far as to prevent them from committing wrongs, and this is by the law of nations and by the authority of the whole world. Nay, it seems to be by natural law also, seeing that otherwise society could not hold together unless there was somewhere a power and authority to deter wrongdoers and prevent them from injuring the good and innocent. Now, everything needed for the government and preservation of society exists by natural law, and in no other way can we show that a State has by natural law authority to inflict pains and penalties on its citizens who are dangerous to it. But if a State can do this to its own citizens, society at large no doubt can do it to all wicked and dangerous folk, and this can only be through the instrumentality of princes. It is, therefore, certain that princes can punish enemies who have done a wrong to their State and that after a war has been duly and justly undertaken the enemy are just as much within the jurisdiction of the prince who undertakes it as if he were their proper judge. Confirmation hereof is furnished by the fact that in reality peace and tranquillity, which are the end and aim of war, can not be had unless evils and damages be visited on the enemy in order to deter them from the like conduct in the future. All this is also proved and confirmed by the authority and examples of good men. For, as said above, the Maccabees made war not only to recover the things which they had lost, but also to avenge their wrongs. And some most Christian princes and most religious Emperors have done the same thing. Moreover, shame and disgrace are not wiped away from a State merely by its rout of its enemies, but also by its visiting severe punishment

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and castigation on them. Now, among the things which a prince is bound to defend and preserve for his State are its honor and authority.

20. Many doubts are suggested by what has just been said. In the first place, there is a doubtful point in connection with the justice of a war, whether it be enough for a just war that the prince believes himself to have a just cause. On this point let my first proposition be: This belief is not always enough. And for proof I rely, first, on the fact that in some matters of less moment it is not enough either for a prince or for private persons to believe that they are acting justly. This is notorious, for their error may be vincible and deliberate, and the opinion of the individual is not enough to render an act good, but it must come up to the standard of a wise man's judgment, as appears from *Ethics*, bk. 2. Also the result would otherwise be that very many wars would be just on both sides, for although it is not a common occurrence for princes to wage war in bad faith, they nearly always think theirs is a just cause. In this way all belligerents would be innocent and it would not be lawful to kill them. Also, were it otherwise, even Turks and Saracens might wage just wars against Christians, for they think they are thus rendering God service.

Doubt I suggested by what has been said. Proposition I.

21. Second proposition: It is essential for a just war that an exceedingly careful examination be made of the justice and causes of the war and that the reasons of those who on grounds of equity oppose it be listened to. For (as the comic poet says) "A wise man must make trial of everything by words before resorting to force," and he ought to consult the good and wise and those who speak with freedom and without anger or bitterness or greed, seeing that (as Sallust says) "where these vices hold sway, truth is not easily distinguished." This is self-evident. For truth and justice in moral questions are hard of attainment and so any careless treatment of them easily leads to error, an error which will be inexcusable, especially in a concern of great moment, involving danger and calamity to many, and they our neighbors, too, whom we are bound to love as ourselves.

Proposition II.

Terence.

Sallust.

22. Second doubt: Whether subjects are bound to examine the cause of a war or whether they may serve in the war without any careful scrutiny thereof, just as the lictors had to enforce the praetor's decree without questioning. On this doubt let my first proposition be: If a subject is convinced of the injustice of a war, he ought not to serve in it, even on the command of his prince. This is clear, for no one can authorize the killing of an innocent person. But in the case before us the enemy are innocent. Therefore they may not be killed. Again, a prince sins when he commences a war in such a case. But "not only are they who commit such things worthy of death, but they, too, who consent to the doing thereof" (*Romans*, ch. 1). Therefore soldiers also are not excused when they fight in bad faith. Again, it is not lawful to kill innocent citizens at the prince's command. Therefore not aliens either.

Doubt II.

Proposition I.

23. Hence flows the corollary that subjects whose conscience is against the justice of a war may not engage in it whether they be right or wrong. This is clear, for "whatever is not of faith is sin" (*Romans*, ch. 14).

Corollary.

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Proposition II.

24. Second proposition: Senators and petty rulers and in general all who are admitted on summons or voluntarily to the public council or the prince's council ought, and are bound, to examine into the cause of an unjust war. This is clear; for whoever can save his neighbor from danger and harm is bound to do so, especially when the danger is that of death and greater ills, as is the case in war. But the persons referred to can avert the war, supposing it to be unjust, if they lend their wisdom and weight to an examination into its causes. Therefore they are bound so to do. Again, if by their neglect an unjust war be entered on, they are consenting parties thereto, for that which a man could and ought to prevent is imputed to him, if he does not prevent it. Again, a king is not by himself capable of examining into the causes of a war and the possibility of a mistake on his part is not unlikely and such a mistake would bring great evil and ruin to multitudes. Therefore war ought not to be made on the sole judgment of the king, nor, indeed, on the judgment of a few, but on that of many, and they wise and upright men.

Proposition III.

25. Third proposition: Other lesser folk who have no place or audience in the prince's council or in the public council are under no obligation to examine the causes of a war, but may serve in it in reliance on their betters. This is proved, first, by the fact that it is impossible and inexpedient to give reasons for all acts of state to every member of the commonalty. Also by the fact that men of the lower orders, even if they perceived the injustice of a war, could not stop it, and their voice would not be heeded. Therefore, any examination by them of the causes of a war would be futile. Also by the fact that for men of this sort it is enough proof of the justice of war (unless the contrary be quite certain) that it is being waged after public counsel and by public authority. Therefore no further examination on their part is needed.

Proposition IV.

26. Fourth proposition: Nevertheless the proofs and tokens of the injustice of the war may be such that ignorance would be no excuse even to subjects of this sort who serve in it. This is clear, because such ignorance might be deliberate and adopted with evil intent towards the enemy. Also, were this otherwise, unbelievers would be excused when they follow their chieftains to war against Christians and it would be unlawful to kill them, it being certain that they deem themselves to have a just cause of war. Also, the soldiers who crucified Christ, ignorantly following Pilate's order, would be excused. Also, the Jewish mob would be excused which was led by the elders to shout "Away with Him, crucify Him."

Doubt III.

Proposition I.

27. Third doubt: What should be done when the justice of the war is doubtful, that is, when there are apparent and probable reasons on both sides. First proposition: As regards the princes themselves, it seems that if one be in lawful possession, the other may not try to turn him out by war and armed force, so long as the doubt remains. For example: Suppose the King of France to be in lawful possession of Burgundy and that it be doubtful whether he has or has not right thereto. The Emperor may not try to oust him by arms; nor on the other hand may the French King

seize Naples or Milan, if there be doubt who is entitled to it. The proof is that in doubtful matters the party in possession has the better position. Therefore it is not lawful to dispossess the possessor in favor of a doubtful cause. Further, if the matter were being heard by a lawful judge, he would never in case of doubt dispossess the party in possession. Therefore, if we postulate that those princes who are asserting a right are judges in their own cause, they may not lawfully eject a possessor so long as there is any doubt about the title. Further, in the suits and causes of private persons it is never permissible in a doubtful matter to dispossess a lawful possessor. Therefore not in the causes of princes; for the laws are the princes' laws. Therefore, if by human law it is not permissible in a doubtful matter to dispossess a lawful possessor, it can quite validly be objected to princes, "Obey the law thyself hast made, seeing that a man ought to adopt the same law for himself which he has enjoined on others." Also, were it otherwise, a war could be just on both sides and would never be settled. For if in a doubtful matter it were lawful for one side to assert his claim by force, the other might make armed defense, and after the one had obtained what he claimed, the other might afterwards claim it back, and so there would be war without end, to the ruin and tribulation of peoples.

28. Second proposition: If the city or province in regard of which the doubt arises has no lawful possessor, as, for instance, if it were open by reason of the death of the lawful lord and there is a doubt whether the King of Spain or the King of France be the heir and no certainty in point of law can be attained, it seems that, if one party wants to settle and make a division or compromise as to part of the claim, the other is bound to accept his proposal, even if that other be the stronger and able to seize the whole by armed force; nor would he have a just cause of war. The proof is that when the merits of a quarrel are equal, one side does no wrong by claiming an equal part of the thing in dispute. Further, in private disputes also, where the matter is in doubt, one party may not seize the whole thing. Also, in the same way the war would be just on both sides. Also, a just judge would not decree and award the whole thing to either party.

29. Third proposition: He who is in doubt about his own title is bound, even though he be in peaceable possession, to examine carefully into the cause and give a quiet hearing to the arguments of the other side, if so be he may thus attain certitude either in favor of himself or the other. This is proved by the fact that a man who is in doubt and neglects to ascertain the truth is not in possession in good faith. So also, in a matrimonial cause, if the man who is in lawful possession entertains a doubt whether in truth the woman is his or the other's, it is certain that he is bound to examine the question. Therefore the same principle applies in other causes. Also, princes are judges in their own cases, inasmuch as they have no superior. But it is certain that, if any one raises any objection to a lawful possessor, the judge is bound to examine the case. Therefore in a doubtful matter princes are bound to examine their own case.

Proposition IV.

30. Fourth proposition: After examination of the case the lawful possessor is not bound to quit possession so long as the doubt reasonably persists, but may lawfully retain it. This is manifestly so, for, firstly, no judge could divest him of it. Therefore he is not bound to give it up, 441 either the whole or part. Also, in a matrimonial cause where the matter is doubtful, the man is under no obligation to give up his possession, as is laid down in *X*, 5, 39, 44, and in *X*, 4, 21, 2. Therefore the like is not required in other causes. And Adrian expressly holds (*qu. 2, Quotlib. 2*) that a party in doubt may retain his possession, and he applies this rule to princes in a doubtful matter. But concerning subjects who are in doubt with regard to the justice of a war, Adrian indeed says (*Quotlib. 2, on the first principal argument*) that a subject in such a case, that is, one who is in doubt whether the alleged cause of a war is a sufficient one or simply whether there exists some sufficient cause for declaring war, may not serve in such a war, even at the command of his prince. The proof is that he exposes himself to the danger of mortal sin. Also, what is not of faith is sin, a doctrine which, according to the doctors and to truth, is to be understood as condemnatory, not only where the conscience is assured or based on opinion, but also where it is in doubt. Sylvester seems to hold the same doctrine, under the word *bellum*, I, § 9.

Adrian's opinion about subjects.

Proposition V, wherein the opinion of Adrian is refuted.

31. But let this be my fifth proposition: In the first place, there is no doubt that in a defensive war subjects may, even though the matter be doubtful, follow their prince to the war; nay, that they are bound to follow him, and also in an offensive war. The first proof is in the fact that, as 442 has been said, a prince is not able, and ought not, always to render reasons for the war to his subjects, and if subjects can not serve in war except they are first satisfied of its justice, the State would fall into grave peril and the door would be opened to wrongdoing. Also, in doubtful matters the safer course ought to be adopted. Now, if subjects in a case of doubt do not follow their prince to the war, they expose themselves to the risk of betraying their State to the enemy, and this is a much more serious thing than fighting against the enemy despite a doubt. Therefore they ought rather to fight. Also, this is manifestly proved by the fact that the lictor is bound to carry out the decree of the judge, even though he has his doubts about its justice, for there would be serious danger in the opposite course. Also, St. Augustine writing against the Manichæans, defends this line of argument, where he says: "If a righteous person be in the military service of a sacrilegious king, he may consistently go to war at his command, provided that it is certain that the command laid on him is not contrary to the Divine precepts or that it is not certain whether it be so" (*C. 23, qu. 1, can. quid culpatur*). Here we have St. Augustine expressly declaring that if it is not certain—that is, if there is a doubt—whether it be against God's precepts, the subject may lawfully go to the war. And however Adrian may twist and turn, he can not free himself from the authority of St. Augustine, for our proposition is, beyond cavil, the conclusion at which St. Augustine arrives. Nor does it avail to 443 say that such a person ought to get rid of his doubt and make his conscience

This passage is in bk. 22, *Contra Faustum*, c. 75, though not in quite the same words.

acquiesce in the justice of the war, for it remains that, mortally speaking, this is impossible, as in other cases of doubt. Now, Adrian's mistake seems to be in thinking that, if I am in doubt whether this war is just for my prince or whether there be a just cause for this war, it immediately follows that I am in doubt whether or no I ought to go to this war. I admit that I am no wise justified in doing what my conscience doubts about and that, if I am doubtful about the lawfulness of doing any given thing, I sin if I do it. But any doubt of mine about the justice of this war does not necessarily involve a doubt whether I ought to fight or serve in this war. Nay, it is quite the other way about. For although I may doubt whether the war is just, yet the next point is that I may lawfully serve in the field at my prince's command. It is precisely the same as with a lictor who has his doubts whether the judge's decree is just, it does not follow therefrom that he doubts whether or no he ought to carry it into execution; he knows that he is bound to carry it into execution. So, also, if the doubt be whether this woman be my wife; I am, consequent upon such doubt, bound to render her conjugal rights.

The cause of Adrian's error.

32. The fourth doubt is: Whether a war can be just on both sides. The following is my answer: First proposition: Apart from ignorance the 444 case clearly can not occur, for if the right and justice of each side be certain, it is unlawful to fight against it, either in offense or in defense. Second proposition: Assuming a demonstrable ignorance either of fact or of law, it may be that on the side where true justice is the war is just of itself, while on the other side the war is just in the sense of being excused from sin by reason of good faith, because invincible ignorance is a complete excuse. Also, on the side of the subjects at any rate, this may often occur; for even if we assume that a prince who is carrying on an unjust war knows about its injustice, still (as has been said) subjects may in good faith follow their prince, and in this way the subjects on both sides may be doing what is lawful when they fight.

Doubt IV.

Proposition I.

Proposition II.

Although their prince knows the injustice of the war, the subjects on each side may sometimes lawfully fight.

Doubt V.

33. Hence arises the fifth doubt: Whether one who has in ignorance gone in an unjust war and subsequently is convinced of its injustice is bound to make amends therefor. This may be asked both about a prince and about a subject. My first proposition is: If the injustice of the war had been within reach of proof by him, he is bound when he learns of its injustice to give back what he has taken away and not yet consumed—that is, to the extent to which he has been enriched; but he need make no amends as regards what he has consumed, because the rule of law is that a person who is not in fault ought not to be damnified, just as one who in good faith attended a sumptuous banquet given by a thief where stolen things were consumed would be under no obligation to give redress therefor, save 445 perhaps up to the amount that his meal would have cost him at home. Sylvester, however, says, under the word *bellum*, I, § 9, that if our man was in doubt about the injustice of the war yet followed his lord's authority, he is liable to make good everything, because it was with bad faith that he fought.

Proposition I.

Sylvester's opinion.

Proposition II; against Sylvester's opinion.

Note!

Now, let my second proposition, in conformity with the foregoing, be: Our man is not bound to make good what has been consumed, any more than the other side would be, because (as has been said) his fighting was lawful and in good faith. Sylvester's contention would, however, be sound if the man had really been in doubt whether it was lawful for him to go to the war, for he would then be acting against his conscience. [Now, much attention must be paid to the admitted fact that a war may be just and lawful in itself and yet owing to some collateral circumstance may be unlawful. For it is admitted that one may be entitled to recapture a city or a province and yet that, because of some scandal, this may become quite unlawful. For inasmuch as (according to what has been said before) wars ought to be waged for the common good, if some one city can not be recaptured without greater evils befalling the State, such as the devastation of many cities, great slaughter of human beings, provocation of princes, occasions for new wars to the destruction of the Church (in that an opportunity is given to pagans to invade and seize the lands of Christians), it is indubitable that the prince is bound rather to give up his own rights and abstain from war.] For it is clear that if the King of France, for example, had a right to retake Milan, but by the war both the Kingdom of France and the Duchy of Milan would suffer intolerable ills and heavy woes, it would not be right for him to retake it. This is because that war ought to take place either for the good of France or for the good of Milan. Therefore, when, on the contrary, great ills would befall each side by the war, it could not be a just war.

Doubt I, arising from the last principal question.

Argument for the affirmative.

34. With regard to another question, namely, what degree of stress is lawful in a just war, there are also many doubts. The first is: Whether it is lawful in war to kill the innocent. It seems that it is; because, in the first place, the Sons of Israel slew children at Jericho, as appears from *Joshua*, ch. 6, and afterwards Saul slew children in Amalek (*I Samuel*, ch. 15), and in both these cases it was by the authority and at the bidding of God. "Now, whatever is written is written for our instruction," as appears from *Romans*, ch. 15. Therefore, if a war of the present day be just, it will be lawful to kill the innocent.

Proposition I. Proof 1.

Proof 2.

Proof 3.

Proof 4.

Confirmation.

35. With regard to this doubt, let my first proposition be: The deliberate slaughter of the innocent is never lawful in itself. This is proved, firstly, by *Exodus*, ch. 23: "The innocent and righteous slay thou not." Secondly, the basis of a just war is a wrong done, as has been shown above. But wrong is not done by an innocent person. Therefore war may not be employed against him. Thirdly, it is not lawful within a State to punish the innocent for the wrongdoing of the guilty. Therefore this is not lawful among enemies. Fourthly, were this not so, a war would be just on both sides, although there was no ignorance, a thing which, as has been shown, is impossible. And the consequence is manifest, because it is certain that innocent folk may defend themselves against any who try to kill them. And all this is confirmed by *Deuteronomy*, ch. 20, where the Sons of Israel were ordered to take a certain city by force and to slay every one except women and little ones.

36. Hence it follows that even in war with the Turks it is not allowable to kill children. This is clear, because they are innocent. Aye, and the same holds with regard to the women of unbelievers. This is clear, because so far as the war is concerned, they are presumed innocent; but it does not hold in the case of any individual woman who is certainly guilty. Aye, and this same pronouncement must be made among Christians with regard to harmless agricultural folk, and also with regard to the rest of the peaceable civilian population, for all these are presumed innocent until the contrary is shown. On this principle it follows that it is not lawful to slay either foreigners or guests who are sojourning among the enemy, for they are presumed innocent, and in truth they are not enemies. The same principle applies to clerics and members of a religious order, for they in war are presumed innocent unless the contrary be shown, as when they engage in actual fighting.

Proposition II.

37. Second proposition: Sometimes it is right, in virtue of collateral circumstances, to slay the innocent even knowingly, as when a fortress or city is stormed in a just war, although it is known that there are a number of innocent people in it and although cannon and other engines of war can not be discharged or fire applied to buildings without destroying innocent together with guilty. The proof is that war could not otherwise be waged against even the guilty and the justice of belligerents would be balked. In the same way, conversely, if a town be wrongfully besieged and rightfully defended, it is lawful to fire cannon-shot and other missiles on the besiegers and into the hostile camp, even though we assume that there are some children and innocent people there.

Great attention, however, must be paid to the point already taken, namely, the obligation to see that greater evils do not arise out of the war than the war would avert. For if little effect upon the ultimate issue of the war is to be expected from the storming of a fortress or fortified town wherein are many innocent folk, it would not be right, for the purpose of assailing a few guilty, to slay the many innocent by use of fire or engines of war or other means likely to overwhelm indifferently both innocent and guilty. In sum, it is never right to slay the guiltless, even as an indirect and unintended result, except when there is no other means of carrying on the operations of a just war, according to the passage (*St. Matthew*, ch. 13) "Let the tares grow, lest while ye gather up the tares ye root up also the wheat with them."

Short and decided answer of the author.

38. Here a doubt may arise whether the killing of guiltless persons is lawful when they may be expected to cause danger in the future; thus, for example, the children of Saracens are guiltless, but there is good reason to fear that when grown up they will fight against Christians and bring on them all the hazards of war. Moreover, although the adult male civilians of the enemy who are not soldiers are presumed to be innocent, yet they will hereafter carry a soldier's arms and cause the hazard named. Now, is it lawful to slay these youths? It seems so, on the same principle which justifies the incidental killing of other guiltless persons. Also (*Deuteronomy*,

An incidental doubt.

ch. 20) the Sons of Israel were ordered when assaulting any city to slay "every adult male." Now, it can not be presumed that all of these would be guilty.

The author's answer.

My answer is that although this killing may possibly be defended, yet I believe that it is in no wise right, seeing that evil is not to be done even in order to avoid greater evil still, and it is intolerable that any one should be killed for a future fault. There are, moreover, other available measures of precaution against their future conduct, namely, captivity, exile, etc., as we shall forthwith show. Hence it follows that, whether victory has already been won or the war is still in progress, if the innocence of any soldier is evident and the soldiers can let him go free, they are bound to do so.

On the argument for the affirmative.

To the argument on the opposite side my rejoinder is that the slaughter in the instances named was at the special command of God, who was wroth against the people in question and wished to destroy them utterly, just as he sent fire on Sodom and Gomorrah which devoured both guiltless and guilty together. He, however, is Lord of all and has not given this license as a common law. And the same answer might be made to that passage in *Deuteronomy*, ch. 20. But, inasmuch as what is there enjoined is in the form of a common law of war for all future time, it would rather seem that the Lord enjoined it because all adult males in an enemy State are deemed guilty, and guiltless can not be distinguished from guilty. Therefore all may be killed.

On the passage last cited from Deuteronomy.

Doubt II. Proposition I.

39. The second doubtful point is whether in a just war it is lawful to despoil innocent enemy-subjects. Let my first proposition be: It is certainly lawful to despoil the innocent of goods and things which the enemy would use against us, such as arms, ships, and engines of war. This is clear, because otherwise we could not gain the victory, which is the aim of war. Nay, it is also lawful to take the money of the innocent and to burn and destroy their grain and kill their horses, if this is requisite in order to sap the enemy's strength. Hence follows the corollary that if the war goes on for an indefinitely long time it is lawful utterly to despoil all enemy-subjects, guilty and guiltless alike, for it is from their resources that the enemy is feeding an unjust war, and, on the other hand, his strength is sapped by this spoliation of his citizens.

Corollary.

Proposition II.

Sylvester.

40. Second proposition: If a war can be carried on effectively enough without the spoliation of the agricultural population and other innocent folk, they ought not to be despoiled. Sylvester maintains this (under the word *bellum*, I, § 10) on the ground that war is founded on a wrong done, and therefore the rights of war may not be enforced against the innocent if the wrong can be redressed in another quarter. Aye, and Sylvester adds that, even if there were good reason to despoil the innocent, yet when the war is over the victor is bound to restore to them whatever is left. This, however, I do not think necessary, because, as said above, whatever is done in right of war receives the construction most favorable to the claims of those engaged in a just war. Hence, whatever has been lawfully seized is not in my opinion subject to restitution. All the same,

Sylvester's dictum a pious one, but does not seem to the author necessary.

Sylvester's remark is a pious one and not indefensible. But the spoliation of foreigners and travelers on enemy soil, unless they are obviously at fault, is in no wise lawful, they not being enemies.

41. Third proposition: If the enemy refuse to restore things wrongfully seized by them and the injured party can not otherwise properly recoup himself, he may do so wherever satisfaction is obtainable, whether from guilty or from innocent. For instance, if French brigands made a raid into Spanish territory and the French King would not, though able, compel them to restore their booty, the Spanish might, on the authorization of their sovereign, despoil French merchants or farmers, however innocent these might be. This is because, although the French State or Sovereign might initially be blameless, yet it is a breach of duty, as St. Augustine says, for them to neglect to vindicate the right against the wrongdoing of their subjects, and the injured sovereign can take satisfaction from every member and portion of their State. There is, accordingly, no inherent injustice in the letters of marque and reprisals which princes often issue in such cases, because it is on account of the neglect and breach of duty of the other prince that the prince of the injured party grants him this right to recoup himself even from innocent folk. These letters are, however, hazardous and open the way to plunder.

Proposition III.

Letters of reprisal not unjust in themselves, however hazardous.

42. The third doubtful point is: Assuming the unlawfulness of the slaughter of children and other innocent parties, is it permissible, at any rate, to carry them off into captivity and slavery? This can be cleared up in a single proposition, namely: It is in precisely the same way permissible to carry the innocent off into captivity as to despoil them, liberty and slavery being included among the good things of Fortune. And so when a war is at that pass that the indiscriminate spoliation of all enemy-subjects alike and the seizure of all their goods are justifiable, then it is also justifiable to carry all enemy-subjects off into captivity, whether they be guilty or guiltless. And inasmuch as war with pagans is of this type, seeing that it is perpetual and that they can never make amends for the wrongs and damages they have wrought, it is indubitably lawful to carry off both the children and the women of the Saracens into captivity and slavery. But inasmuch as, by the law of nations, it is a received rule of Christendom that Christians do not become slaves in right of war, this enslaving is not lawful in a war between Christians; but if it is necessary having regard to the end and aim of war, it would be lawful to carry away even innocent captives, such as children and women, not indeed into slavery, but so that we may receive a money-ransom for them. This, however, must not be pushed beyond what the necessity of the war may demand and what the custom of lawful belligerents has allowed.

Doubt III.

Answer contained in a single proposition.

Christians may not enslave Christians under the law of war.

43. The fourth doubtful point is: Whether it is lawful at any rate to kill hostages who have been taken from the enemy, either in time of truce or on the conclusion of a war, if the enemy break faith and do not abide by their undertakings. My answer is in a single proposition: If the hostages are in other respects among the guilty, as, for instance, because they have

Doubt IV.

Answered in a single proposition.

borne arms, they may rightfully be killed in that case; if, however, they are innocent, as, for instance, if they be children or women or other innocent folk, it is obvious from what has been said above that they can not be killed.

Doubt V.
Four points to be noted.

44. The fifth doubt is: Whether in a just war it is lawful to kill, at any rate, all the guilty. Prefatory to an answer be it noted that, as is shown by what has been said above, war is waged: Firstly, in defense of ourselves and what belongs to us; secondly, to recover things taken from us; thirdly, to avenge a wrong suffered by us; fourthly, to secure peace and security.

Proposition I.

45. This premised, let my first proposition be: In the actual heat of battle, either in the storming or in the defense of a city, all who resist may be killed indiscriminately; and, briefly, this is so as long as affairs are in peril. This is manifest, because combatants could not properly effect their purpose

Wherein consists the difficulty of this doubt.

Argument for the affirmative

save by removing all who hinder and resist them. All the doubt and difficulty, however, is to know whether, when we have won our victory and the enemy is no longer any danger to us, we may kill all who have borne arms against us. Manifestly, yes. For, as shown above, one of the military precepts given by the Lord (*Deuteronomy*, ch. 20) was that when a city of the enemy had been taken all dwellers in it were to be killed. The words of the passage are: "When thou comest nigh unto a place to fight against it, then proclaim peace unto it. And it shall be if it make thee answer of peace, and open unto thee, that all the people that is found therein shall be saved and shall be tributaries unto thee and shall serve thee. But if it will make no peace with thee, but will make war against thee, then thou shalt besiege it. And when the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword, but not the women and the little ones."

Proposition II.

46. Second proposition: Even when victory has been won and no danger remains, it is lawful to kill the guilty. The proof is that, as said above, war is ordained not only for the recovery of property, but also for the avenging of wrongs. Therefore the authors of a past wrong may be killed therefor. Again, this is permissible against our own wrongdoing citizens. Therefore also against foreigners; for, as said above, a prince when at war has by right of war the same authority over the enemy as if he were their lawful judge and prince. And a further reason is that, although there be no present danger from the enemy, yet security for the future can not be had, unless the enemy be restrained by the fear of punishment.

Proposition III.

47. Third proposition: Merely by way of avenging a wrong it is not always lawful to kill all the guilty. The proof is that even among citizens it would not be lawful, not even where the wrong was done by the whole city or district, to kill all the delinquents; nor in a common rebellion would it be permissible to slay and destroy the whole population. Accordingly, for such a deed, St. Ambrose interdicted Theodosius from the church. For such conduct would not be for the public good, which is nevertheless the end and aim of both war and peace. Therefore, it is not right to kill all the guilty among the enemy. We ought, then, to take into account the nature of the wrong done by the enemy and of the damage they have caused and

of their other offenses, and from that standpoint to move to our revenge and punishment, without any cruelty and inhumanity. In this connection Cicero says (*Offices*, bk. 2) that the punishment which we inflict on the guilty must be such as equity and humanity allow. And Sallust says: "Our ancestors, the most religious of men, took naught from those they conquered save what was authorized by the nature of their offenses."

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48. Fourth proposition: Sometimes it is lawful and expedient to kill all the guilty. The proof is that war is waged in order to get peace and security. But there are times when security can not be got save by destroying all one's enemies: and this is especially the case against unbelievers, from whom it is useless ever to hope for a just peace on any terms. And as the only remedy is to destroy all of them who can bear arms against us, provided they have already been in fault. That is how the injunction in *Deuteronomy*, ch. 20, is to be interpreted. Otherwise, however, in a war with Christians, where I do not think this would be allowable. For, as it needs must be that scandals come (*St. Matthew*, ch. 18) and also wars between princes, it would involve the ruin of mankind and of Christianity if the victor always slew all his enemies, and the world would soon be reduced to solitude, and wars would not be waged for the public good, but to the utter ruin of the public. The measure of the punishment, then, must be proportionate to the offense, and vengeance ought to go no further, and herein account must be taken of the consideration that, as said above, subjects are not bound, and ought not, to scrutinize the causes of a war, but can follow their prince to it in reliance on his authority and on public

Proposition IV.
Here an incidental answer is given to the principle advanced, in favor of Proposition I.

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counsels. Hence in the majority of cases, although the war be unjust on the other side, yet the troops engaged in it and who defend or attack cities are innocent on both sides. And therefore after their defeat, when no further danger is present, I think that they may not be killed, not only not all of them, but not even one of them, if the presumption is that they entered on the strife in good faith.

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49. Sixth doubt: Whether it is lawful to slay those who have surrendered or been captured, supposing them also to have been guilty. My answer is that, speaking absolutely, there is nothing to prevent the killing of those who have surrendered or been captured in a just war so long as abstract equity is observed. Many of the rules of war have, however, been fashioned by the law of nations, and it seems to be received in the use and custom of war that captives, after victory has been won (unless perchance they have been routed) and all danger is over, are not to be killed, and the law of nations must be respected, as is the wont among good people. But I do not read or hear of any such custom with regard to those who have surrendered; nay, on the capitulation of a fortress or city it is usual for those who surrender to try and provide for themselves in the conditions of the capitulation, as that their heads shall be safe and that they shall be let go in safety; that is, they fear that an unconditional surrender would mean their deaths. We read of this being several times done. Accordingly, it does not seem unjust that, if a city capitulates without taking any such

Doubt VI.
The author's answer.

precautions, the more notorious offenders should be put to death on the order of the prince or a judge.

Doubt VII.
Proposition I.

50. Seventh doubt: Whether everything that is captured in a just war becomes the property of the captor and seizor. My first proposition hereon is: There is no doubt that everything captured in a just war vests in the seizor up to the amount which provides satisfaction for the things that have been wrongfully seized and which covers expenses also. This needs no proof, for that is the end and aim of war. But, apart from all consideration both of restitution and satisfaction, and looking at the matter from the standpoint of the law of war, we must distinguish according as the things captured in war are movables (like money, garments, silver, and gold), or are immovables (like lands, cities, and fortresses).

Proposition II.

51. This being assumed, let my second proposition be: All movables vest in the seizor by the law of nations, even if in amount they exceed what will compensate for damages sustained. This is clear from *Dig.*, 49, 15, 28 and 24, and from can. 9, Dist. 1, and it is more expressly laid down in *Inst.*, 2, 1, 17, where it is said that "by the law of nations whatever is taken from the enemy immediately becomes ours, even so far as that free persons may be made our slaves." And St. Ambrose says (*Liber de Patriarchis*) that when Abraham slew the four kings their spoil belonged to him as the conqueror, although he refused to take it (*Genesis*, ch. 14, and can. 25, C. 23, qu. 5). And this is confirmed by the authority of the Lord (*Deuteronomy*, ch. 20), where He says concerning the storming of a town: "All the spoil thereof thou shalt divide with the army and thou shalt eat of the spoil of thine enemies." Adrian holds this opinion in his *quaestio* on restitution, in the special *quaestio* on war. So, also, Sylvester, under the word *bellum*, § 1 and § 9, where he says that he who fights a just cause is not bound to give back his booty (can. 2, C. 23, qu. 7). "Hence it follows that what is taken in war is not used as a set-off against the principal debt, as the Archdeacon also holds (can. 2, C. 23, qu. 2)." And Bartolus is of the same opinion, in his comment on *Dig.*, 49, 15, 28. And this is understood to be so even if the enemy be ready to make amends in other ways for the damages and wrongs suffered. Sylvester, however, limits this, and rightly, allowing it only until a satisfaction sufficient in equity has been taken for the damages and wrongs suffered. For it is not to be imagined that, if the French have ravaged some one district or insignificant town in Spain, the Spanish might also, if they could, ravage the whole of France; they can only retort in a manner proportionate in kind and degree to the wrong done, according to the estimate of a good man.

Corollary.

Incidental doubt.
Answer thereto.
Proposition III.
Sylvester.

52. But on this conclusion a doubt arises, namely, whether it is right to give a city up to the soldiery to sack. My answer is, and let this be my third proposition: This is not unlawful in itself, if necessary for the conduct of the war or as a deterrent to the enemy or as a spur to the courage of the troops. So Sylvester, under the word *bellum*, § 10. It is on the same principle as that which justifies the burning of a city for reasonable cause. Nevertheless, inasmuch as such authorization to sack results in many

horrors and cruelties, enacted beyond all humane limits by a barbarous soldiery, such as slaughter and torture of the innocent, rape of virgins, dishonor of matrons, and looting of temples, it is undoubtedly unjust in the extreme to deliver up a city, especially a Christian city, to be sacked, without the greatest necessity and weightiest reason. If, however, the necessities of war require it, it is not unlawful, even if it be likely that the troops will perpetrate foul misdeeds of this kind, which their generals are none the less bound to forbid and, as far as they can, to prevent.

53. Fourth proposition: Despite all this, soldiers may not, without the authority of their prince or general, go looting or burning, because they are themselves not judges, but executive officers; and those who do otherwise are bound to make restitution.

54. Now, with regard to immovable property and things, the difficulty is greater, and let my fifth proposition be: There is no doubt about the lawfulness of seizing and holding the land and fortresses and towns of the enemy, so far as is necessary to obtain compensation for the damages he has caused. For instance, if the enemy has destroyed a fortress of ours, or has burnt a city or vineyards or olive gardens, we may in turn seize his land or fortress or city and hold it. For if it is lawful to exact compensation from the enemy for the things of ours which he has taken, it is certain that by the divine law and natural law it is not more lawful to take recompense therefore in movables than in immovables.

55. Sixth proposition: In order to obtain security and avoid danger from our enemy it is also lawful to seize and hold a fortress or city belonging to him which is necessary for our defense or for taking away from him an opportunity of hurting us.

56. Seventh proposition: It is also lawful, in return for a wrong received and by way of punishment, that is, in revenge, to mulct the enemy of a part of his territory in proportion to the character of the wrong, or even on this ground to seize a fortress or town. This, however, must be done within due limits, as already said, and not as utterly far as our strength and armed force enable us to go in seizing and storming. And if necessity and the principle of war require the seizure of the larger part of the enemy's land, and the capture of numerous cities, they ought to be restored when the strife is adjusted and the war is over, only so much being retained as is just, in way of compensation for damages caused and expenses incurred and of vengeance for wrongs done, and with due regard for equity and humanity, seeing that punishment ought to be proportionate to the fault. Thus it would be intolerable that, if the French raided the flocks of the Spanish or burnt a single district, the latter should be allowed to seize the whole Kingdom of France. Now, the lawfulness of seizing on this score either a part of enemy territory or an enemy city appears from *Deuteronomy*, ch. 20, where permission is granted in war to seize a city that has refused to accept terms of peace. Again, internal wrongdoers may be punished in this way, that is, they may be deprived of house or land or a fortress, in proportion to the character of the circumstances. Therefore foreigner wrongdoers also.

Again, a superior judge has competence to mulct the author of a wrong by taking away from him a city (for instance) or a fortress. Therefore a prince who has suffered wrong can do this too, because by the law of war he is put in the position of a judge. Again, it was in this way and by this title that the Roman Empire grew and developed, that is, by occupation, in right of war, of cities and provinces belonging to enemies who had injured them, and yet the Roman Empire is defended as just and lawful by St. Augustine, St. Jerome, St. Ambrose, St. Thomas, and other reverend doctors. Nay, it might be held approved by God in the passage, "Render unto Caesar the things that are Caesar's," and by St. Paul, who appealed unto Caesar and who in *Romans*, ch. 13, gave an admonition to be subject to the higher powers and to princes and to pay tribute to those who at that time, all of them, derived their authority from the Roman Empire.

Doubt VIII.

Answer.

Doubt IX.

Proposition I.

Proposition II.

Note!

57. Eighth doubt: Whether it is lawful to impose a tribute on conquered enemies. My answer is that it is undoubtedly lawful, not only in order to recoup damages, but also as a punishment and by way of revenge. This is clear enough from what has been said above and from the passage in *Deuteronomy*, ch. 20, which says that when the Jews have approached a city with good cause in order to attack it, if the city receives them and opens its gates, all the people therein shall be saved and shall serve the Jews with payment of tribute. And this law and usage of war has prevailed.

58. Ninth doubt: Whether it is lawful to depose the princes of the enemy and appoint new ones or keep the principedom for oneself. First proposition: This is not unqualifiedly permissible, nor for any and every cause of just war, as appears from what has been said. For punishment should not exceed the degree and nature of the offense. Nay, punishments should be awarded restrictively, and rewards extensively. This is not a rule of human law only, but also of natural and divine law. Therefore, even assuming that the enemy's offense is a sufficient cause of war, it will not always suffice to justify the overthrow of the enemy's sovereignty and the deposition of lawful and natural princes; for these would be utterly savage and inhumane measures.

59. Second proposition: It is undeniable that there may sometimes arise sufficient and lawful causes for effecting a change of princes or for seizing a sovereignty; and this may be either because of the number and aggravated quality of the damages and wrongs which have been wrought or, especially, when security and peace can not otherwise be had of the enemy and grave danger from them would threaten the State if this were not done. This is obvious, for if the seizure of a city is lawful for good cause, as has been said, it follows that the removal of its prince is also lawful. And the same holds good of a province and the prince of a province, if proportionately graver cause arise.

Note, however, with regard to Doubts VI to IX, that sometimes, nay, frequently, not only subjects, but princes, too, who in reality have no just cause of war, may nevertheless be waging war in good faith, with such good faith, I say, as to free them from fault; as, for instance, if the war is

made after a careful examination and in accordance with the opinion of learned and upright men. And since no one who has not committed a fault should be punished, in that case, although the victor may recoup himself for things that have been taken from him and for any expenses of the war, yet, just as it is unlawful to go on killing after victory in the war has been won, so the victor ought not to make seizures or exactions in temporal matters beyond the limits of just satisfaction, seeing that anything beyond these limits could only be justified as a punishment, such as could not be visited on the innocent.

60. All this can be summarized in a few canons or rules of warfare. Three rules of warfare.
 First canon: Assuming that a prince has authority to make war, he should first of all not go seeking occasions and causes of war, but should, if possible, live in peace with all men, as St. Paul enjoins on us (*Romans*, ch. 12). Moreover, he should reflect that others are his neighbors, whom we are bound to love as ourselves, and that we all have one common Lord, before whose tribunal we shall have to render our account. For it is the extreme of savagery to seek for and rejoice in grounds for killing and destroying men whom God has created and for whom Christ died. But only under compulsion and reluctantly should he come to the necessity of war.

Second canon: When war for a just cause has broken out, it must not be waged so as to ruin the people against whom it is directed, but only so as to obtain one's rights and the defense of one's country and in order that from that war peace and security may in time result.

Third canon: When victory has been won and the war is over, the victor should be utilized with moderation and Christian humility, and the one which has been wronged and the one which has done the wrong, so that it will be as judge and not as accuser that he will deliver the judgment whereby the injured state can obtain satisfaction, and this, so far as possible should involve the offending state in the least degree of calamity and misfortune, the offending individuals being chastised within lawful limits; and an especial reason for this is that in general among Christians all the fault is to be laid at the door of their princes, for subjects when fighting for their princes act in good faith and it is thoroughly unjust, in the words of the poet, that—

Quidquid delirant reges, plectantur Achivi.
 (For every folly their Kings commit the punishment should fall upon the Greeks.)

THE
CLASSICS OF INTERNATIONAL LAW

EDITED BY

JAMES BROWN SCOTT

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BEING PARTS OF

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BY FRANCISCUS DE VICTORIA

Primary Professor of Sacred Theology in the University of Salamanca

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JAMES BROWN SCOTT,
General Editor.

WASHINGTON, February 19, 1917.

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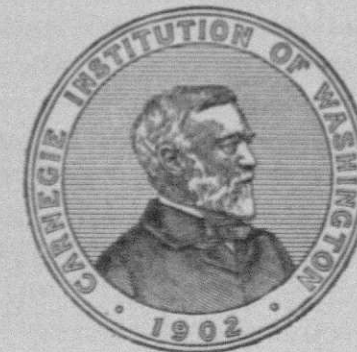
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PUBLISHED BY THE CARNEGIE INSTITUTION OF WASHINGTON
WASHINGTON, 1917