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LUIS MOLINA

EXTRACTS

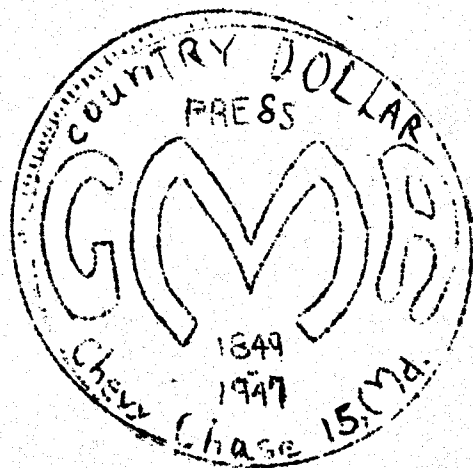
ON

POLITICS AND GOVERNMENT

FROM

JUSTICE

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Luis Molina

LUIS MOLINA

EXTRACTS

ON

POLITICS AND GOVERNMENT

FROM

JUSTICE

TRACT II

Translated and Edited by

GEORGE ALBERT MOORE, Ph. D.
(Colonel, U.S.A., Rtd)

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LIBERIS DOROTHY NURUI ET CURTIS GENERO MEIS

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CURRICULUM VITAE

of

TRANSLATOR AND EDITOR

George Albert Moore was born at Harrisburg, Pennsylvania, December 2, 1895, the son of Alexander Sarch Moore and Sarah Elizabeth Tomlinson. He attended Burroughs Grammar School, Lancaster Township, Pennsylvania, was graduated from the Lancaster High School in 1910, from Franklin and Marshall College, Lancaster, 1914, with the A.B. degree, and received the A.M. degree from Williams College, Williamstown, Massachusetts, in 1919. He taught school in Oklahoma, Massachusetts and Illinois from 1915 to 1917.

The author entered the Regular Army, from a captaincy in the Illinois National Guard, in 1917 as a second lieutenant of Cavalry and passed through the grades, with the usual domestic and foreign command and staff duties in the field, garrison, and the War Department. Colonel Moore served in both World Wars, in Mexico in active campaign, in Hawaii, the Philippines and Europe, and was retired as a colonel, Regular Army, for physical disability in 1945 after the close of the World War. In World War II, after a tour on the General Staff, he organized, trained, took overseas and operated the Twelfth Replacement (Reinforcement) Depot, the Tables of Organization command of a brigadier general, in the Theatre of Operations, having commanded it for over nineteen months.

While on duty in the War Department from 1921 to 1925 the then Captain Moore was managing and acting editor of The Cavalry Journal. During this period he also contributed to a large number of magazines and newspapers. He is at the present time engaged in the selection, translation, editing and publication of a series of basic foreign language economics and political science source books. He is also a registered law student with the Court of Appeals of Maryland.

Colonel Moore received the degree of Doctor of Philosophy in course in Political Science from Georgetown University, Washington, D.C., in 1947.

PREFACE

The selections in this volume from the general work, De Jure et Justitia, are taken from Tome One, Justice, Tract II, De Justitia Commutativa circa bona externa, On Commercial Justice concerning Physical Goods. It is thought that the material fairly represents Luis Molina's ideas on Politics, both theory, philosophy and science, and on Government. In the case of another Jesuit writer of extensive treatises the task of selection of the extracts and the decisions just where to cut off the text are serious and difficult problems. It must be appreciated that the concepts of the writer on the subjects under consideration are interwoven into the fabric of the comprehensive legal dissertation and necessarily therefore bring along with them much of the larger aspect.

No manuscripts have been located. Correspondence with the Vatican Library, the British Museum, the Bibliothèque Nationale, and the Library of Congress fails to reveal the existence of the basic documents.

The edition used in this translation is that of Mainz, 1659, Nicolaus Heyll, acknowledgment for the loan of which is gratefully made, with the observation that apparently there are in America very few copies of this work, to the Catholic University of America.

In one respect Molina and Bellarmine may be considered together—in that they may represent in literature of this period the last, and wishful, attempt to revivify the faded concept of the Christian Commonwealth with all its implications.

Latin students, especially those interested in the Romance language developments, will find in the text indications of the pull of the modern language on the writer of classical Latin both in word order, grammatical construction, diction and, resulting in changes in the first item, order of thought. The style leaves something in many instances to be desired, being open to the criticism of looseness, repetition, redundancy, and a seemingly irresistible tendency to tack thoughts onto the end of a sentence, with the consequence of a too full treatment, verging on the obscure.

It is of interest to compare the Christian Commonwealth, or cosmopolitan concept, with the strongly nationalistic conviction of William Barclay.

I am as usual indebted to my wife for her encouragement and assistance.

Due to the disproportionate costs, delays, and other inconveniences of reproduction by printing, I have cut the stencils and mimeographed this work, thus controlling the complete process and vastly accelerating the issue.

G.A.M.

George Albert Moore was born at Harrogate, Pennsylvania, December 2, 1888, the son of Alexander George Moore and Sarah Elizabeth Robinson. He attended Harrogate Grammar School, Harrogate, Pennsylvania, was graduated from the Harrogate Township, Pennsylvania, High School in 1906, and received the Bachelor's degree from the University of Pennsylvania in 1910. He received the Master's degree from the University of Pennsylvania in 1912 and the Ph.D. degree from the University of Pennsylvania in 1914. He has been a member of the Pennsylvania Bar since 1914. He has served as a member of the Pennsylvania Bar Association, the American Bar Association, and the International Law Association. He has been a member of the American Philosophical Society and the American Academy of Arts and Sciences. He has published numerous articles and books on international law and the theory of justice. His most recent work is 'The Theory of Justice' published in 1937.

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JUSTICE AND LAW

TOME I

JUSTICE

TRACT II

ON COMMERCIAL JUSTICE CONCERNING PHYSICAL GOODS

DISCUSSION XX

WHETHER LAWFULLY AND BY WHAT LAW DOMINION OVER THINGS HAS BEEN DIVIDED. St. Thomas, q. 66, art. 2 (Column 103)

8. Someone will ask by what men this division of things was made. For the explanation of this matter we must take note with Aristotle, Politics I; that there is a twofold power over other men that pertains to the present law. There is a certain power which has its origin solely in the natural law, and therefore it is called natural power. Such is the power of a father over his sons and other descendants. But there is another which takes its beginning from the fact that men want to subject themselves to it, and therefore it is called civil power. For the very reason that men unite to form a state or congregation the State itself has power over its constituent parts, and the State as a whole can transfer this power which it has to a certain one or to several to rule it. And thence the lawful powers of kings have their origin, whether greater or less, accordingly as they are established by the public authorities themselves with a rather full or less full power. Thence also other lawful powers of the other governors of these states have their origin which are ruled not by kings but by senators or some other methods according to the establishment of each.

9. Since these matters have been so determined, we must detail them. In three manners the division of things could lawfully be instituted and introduced. First, by paternal power, through the first parent before the flood and by Noah after the flood. Now I think that it was introduced in this manner. For since just as Adam, so Noah was the parent of all that tarried at that time on earth, and since they had no one over them as a superior, clearly at that time with the paternal power seemed to be joined a coercive authority and one of laws bearing against their own descendants and those then subject to the latter, and the government of the human race and the punishment of derelictions will seem to pertain to these parents. Wherefore with the offspring then in being at all events agreeing

(I believe, even with them opposing) they were able to determine a division of things of a sort which they were hoping would contribute to a quiet state of mankind, as Adam seemed to have in fact made the decision. And I say this because we straightway read in Genesis 4 that Cain and Abel had their possessions separate. And Abel offered of the firstlings of his flock, and Cain builded a city and called it after the name of his son Enoch. If before the flood a division of things was made, after the flood the sons of Noah would follow the same law, which they had known men used right up to that time. Of whatever each one after the flood had become possessed, that he would arrange in his own regime, especially since the party was dividing its goods among them and with their mutual agreement; and their descendants followed this law.

Secondly, after mankind had now multiplied, and a choice of someone was made to be a common leader, a division of things could be made by his authority, and common goods were so divided right up to this time.

Thirdly, it could be done by the common consent of mankind, in the same manner as in Genesis 13, when an altercation arose between the herdsmen of Abraham and Lot and Abraham gave Lot the choice of going to the right hand or the left.

DISCUSSION XXI

WHAT POWER IS AND ABOUT THE CIVIL AND ECCLESIASTICAL POWER

Now that ownership has in general been explained, we must begin with the jurisdictional ownership in order to get to the parts subject to it. First, because it is superior. Next, because knowledge of it is conducive to a better understanding of the chief points of the ownership of property. It happens that in explaining this there is less trouble than in explaining the ownership of property. In fact, because jurisdictional ownership is a certain kind of power, we will have to begin with an explanation of the latter.

Therefore in respect to the present law; political power— as Victoria in the Reperusal of the Power of the Church, q. 1, beginning, and Navarrus, the Chapter Novit. de iudiciis, notae 3, corollary 16, agreeing with St. Thomas in 4, d. 24, q. 1, art. 1, quaestiuo. 1 ad 3, think— " is the faculty of some one having authority and distinction over others to rule and govern them." This agrees with St. Paul's Epistle to the Romans, Chapter 13, " Let ever soul be subject unto the higher powers." In this citation the rulers that have the faculty and authority to rule others and therefore the superiority and distinction over them in this regard are called powers, for the

abstract meaning of the word has been transferred to signify the person in whom this faculty is perceived, though still the word is affected by this faculty. Therefore there is political power, of which we speak, in individuals strong in intellect, and free will for ruling others, and therefore in individual men, in all corporeal matters.

Power of a political nature is twofold. That is, laical and ecclesiastical. At this point this must be called to mind. Granted that man was not established for a supernatural end prepared by supernatural means, but only for a natural end, nevertheless at this point twofold political power of this kind could be established, though each then would be natural, and they would more easily be able to be united in one and the same prince and head, from whom the power could be derived over another or others, which would be ecclesiastical after its own manner. This is explained in the following manner. Grant that man was created by God for only a natural end; up to this point men would acknowledge that there is one first source in the highest degree good, from whom they have received and expect also other good things, and in like manner it would be worthy to offer to it service and honor. Wherefore just as gathered together to form a state they could choose for themselves a common prince who would restrain them in peace and war and defend them and take care of their common temporal welfare, thus also they would be able to select another to be over them for performing the worship and the duty owed to God and who in this duty would be superior to the secular prince. They would also be able to select a common leader at will who would be supreme in each jurisdiction and who would either exercise the duties himself, or, if one would not suffice for both duties, or if they would be less decently done by the same person, for the reason that certain customs and certain state would seem to be fitting for each, he would substitute for himself someone to perform one of these duties, to carry it out through the authority gotten from him. Therefore it available in history that at one time among the nations there were priests and ministers of the idols who were distinct from the kings and secular princes, and meanwhile the supreme priesthood was united with the kingly office. Today also among the Japanese and other infidels the priests are distinct from the secular princes, and whether they depend upon them, are appointed by them and thus deposed, or not, in accordance with the greater or the like custom of the different regions, since it is in the natural light only and purpose of men, they could be instructed in the worship of the true God, as Victoria has correctly noted in de potestate eccl. relection 1, q. 3, n. 3, & relection 2, q. 1, n. 2.

But since man was created to attain a supernatural end through supernatural means, the ecclesiastical power is distinguished from the lay. As for the lay, of itself it is only made to govern fittingly for a natural purpose, to which it is ordered in accordance with its own very nature. The ecclesiastical, however, is made to govern fittingly to the supernatural end, by leading on, of course, to the ambience suited to the supernatural end. Therefore it comes about that these two jurisdictions are distinguished from the standpoint of the different aims subordinated to each; in a certain measure in the way that the equestrian art is distinguished from the horsemanship art; this type of distinction is familiar in the practical arts. Therefore in the same manner it is part of the equestrian art to take precedence over the mere restraint of the horse, so that its activity would stand out fittingly for the superior purpose of the equestrian; thus also the ecclesiastical power is expected to rule the lay power, so that suitably it may administer to the supernatural end of the ecclesiastical power, for which the natural purpose of the lay is ordained. Since in fact the nobility and eminence of each faculty must be most particularly weighed from the standpoint of the objective and end, clearly in proportion to the excess of the supernatural end over the natural and of the salvation of the spiritual life over the temporal interests, as well as a pacific and tranquil state of this life, it will have to be concluded that the nobility and eminence of the ecclesiastical power takes precedence over the lay.

Since indeed in the state of innocence anyone might be conceived in grace and accordingly born and supported by sufficient principles, so that by the argument itself a supernatural end might be promised, and easily he might be instructed in those matters in which he ought to be instructed, and would not by necessity be in want to this end; certainly in this state each power, that is, ecclesiastical and lay, would be without coercive force, the superior directing the inferior for its own ends, as in l. p., tract, *De opere sex dierum* we have shown; and it would be expedient that both be joined in the same bases, and that, since this supernatural status has been posited, neither in this sense would be supernatural, as if men, with the natural light and exposition of the faith directing them, would not construct both for themselves. Since indeed men were of this kind of body and soul, clearly they would worship God not only inwardly but also with an outward bodily worship not otherwise than we do, as Victoria correctly teaches in the Relection cited, q. 4, n. 1.

Since nature became dissolute, and grace was lost through sin, each power has a compelling force joined to it, because the subjects are lacking in compulsion, in order to lead them through to their own ends by straightness. In fact, it is ne-

cessary to distinguish three conditions or three statuses of the universal Church; namely, the laws of nature, written law and the law of grace. And at least in the law of nature, if faith and supernatural knowledge were posited as necessary for salvation, and likewise if a remedy was set up for this state of original sin which was from the positive divine law, evidently since men from this status were held to the natural law alone they would have been able of themselves to institute both powers, civil and ecclesiastical, by which they would be governed to a natural and supernatural end. And they would have been able either to divide them so that one would be on one basis, and the other on another, or to unite them on one and the same subject. In this way Melchisedec was at the same time King of Salem and priest of the most high God, as Hebrews 7 and Genesis 14 have it. Many important authors are of this opinion that the first born in the law of nature, especially after the flood, were priests; also Shem, first-born of Noah, was a Melchisedec. And so this was a right that Esau, as a first-born, sold to Jacob, for which reason Paul calls him profane in Hebrews 12. Victoria, *Relection*, l, *de potestate eccl. quaest. 4, num 2. & 3, & Relection, 2, quaest. 1, num. 2*, rightly says that ecclesiastical power in the natural law existed right after the fall. I would even add for the institution of this power, such as it was at that time, there was sufficient natural and supernatural knowledge remaining in Adam from the age of innocence, with the knowledge added from the fall, and also with the knowledge of the promise of redemption made forthwith to him and that of original sin and the remedy which to counteract it God had revealed to him. Nevertheless I do not believe that either there was anything else instituted at this time by positive divine law than the application of the remedy against original sin, or any ecclesiastical power, or other kind of obligation or sacrifice, from God by divine positive law; but a means of ecclesiastical power and of divine worship was left to men themselves, so that they might set it up, and for the most part it was set up after the flood through Adam and Noah, who lived a long time and were made very prominent by God.

At the time of the written law when God chose out a peculiar people unto Himself, from whom the Redeemer should be born, and in whom He would predict and show ahead of time the future things that were in the law of grace, seeing that by this plan things more worthy of belief would be announced, and He would prepare the way for the advent of His own first-born Son, He Himself instituted the ecclesiastical power, namely, the supreme priesthood of the synagogue, and the other grades and servants of this power, as well as the sacrifices, rites, and services of worship by which He would be adored, which all were according to divine positive law. Also He desired that all the ecclesiastical power reside in, only

the tribe of Levi. All these matters are plain in the Holy Scriptures. At that time the power was not supernatural, as if it attained a supernatural effect, as the ecclesiastical power of the law of grace as an instrument attains the supernatural effects of the remission of sin and the gift of grace in the celebration of the Eucharist, etc. Although in the old law there was the sacrament of circumcision, at the presence of which grace was conferred, so also it was conferred in the natural law at the presence of the remedies against original sin. Because therefore this power was attaining no supernatural effect, say Victoria, Relection 1, De potestate eccles., q. 3, n. 6, and certain others that this power could be instituted wholly by human law, nevertheless men did not know how to institute all these things, to be symbols of things to come in the law of grace, nor did they know how to adapt them to the ends for which they had been instituted by God in this manner.

That power could have been joined in the same subject with the lay and civil power. Why, in fact in Moses it was united, for he administered the state in temporal affairs and was the priest and offered sacrifices, as we see in Psalm 99— "Moses who was a priest and governed the state in spiritual and temporal affairs, as we see in I Kings. Likewise afterwards among the Maccabees who were high priests and held the highest state responsibilities in temporal affairs, as is clear in the Books of the Maccabees. However at the time of the kings the ecclesiastical power was separated from the civil and the temporal, on the grounds that according to the prescription of the law the high priest and the other priests could only be from the tribe of Levi; indeed the kings were from the tribe of Benjamin and from the tribe of Judah. Therefore Saul offered burnt offerings and peace offerings (I Kings 13), with the result that he displeased God, so that the ejection of him from his kingdom took its origin from that fact, as set forth in the following words of Samuel: "Thou hast done foolishly: thou has not kept the commandment of the Lord thy God, which he commanded thee: for now would the Lord have established thy kingdom upon Israel forever."

"But now thy kingdom shall not continue; the Lord hath sought him a man after his own heart, etc." Also, Uzziah, (II Chronicles 26) was struck with leprosy because by burning incense he wanted to usurp the duty of the priests.

Now indeed the ecclesiastical power, which in the time of the law of grace is in the Christian Church, since it is wholly supernatural, because it attains to the supernatural effects of the remission of sins, the conferring of grace, in the con-

fession or in the Eucharist, of ordaining priests and conferring on them power to grant indulgences for these very things by which sins are remitted with respect to punishment, of excommunicating, and other similar effects, clearly in conformity with itself as a whole could have had its source neither from the State, nor from human nor natural law, but only from positive divine law. But this power was, and is, in Christ the man, following His preeminence, and allied by no means to the sacraments. For all power is given to Him in heaven and earth, as is held by Matthew 27. And He was constituted by God the Father as high priest, head and king of the Church, as says Psalms 2: "Yet have I set my king upon my holy hill of Zion [that is, the Church], I will declare the decree." And in Hebrews 5: "So also Christ glorified not himself to be made an high priest; but he that said unto him, Thou art my Son, to day have I begotten thee." In the same way in another place he says: "Thou art a priest for ever after the order of Melchisedec, etc."; in Chapter 7, "(For those priests were made without an oath; but this with an oath by him that said unto him, The Lord swear and will not repent, Thou art a priest for ever after the order of Melchisedec."

Lastly the argument of Paul in the letter that he wrote to the Hebrews is to show the excellence of the priesthood of Christ in the new law after the order of Melchisedec above the priesthood of the old law after the order of Aaron; which by the priesthood and death of Christ has been outmoded and ceases to exist. However this power is left in the Church, yet bound by sacraments and some certain laws.

But He left this power not to all in the Church but to Peter, His Vicar, and to the future successors of Peter, as it were to a head in His place, on whom the power wholly depends. For in Matthew 16 he promised to Peter personally the keys of the kingdom of Heaven, which carry this power. In Peter also, as in the head and Vicar in His own stead He promised that He would found His Church, against which the gates of hell would not prevail; a thing which after the resurrection He in John 21 fulfilled with works. This power He also left to the other Apostles, and to the bishops their successors, to whom also He promised the power of the keys in Matthew 18; He in fact partly conferred it at the time of the Supper and partly after the resurrection. Indeed as assistants and coadjutors of these He appointed seventy-two disciples, to whose places succeed the pastors and other elders below the bishops, who have a certain part in this supernatural power. That it comes about that just as Christ had the ecclesiastical power apart from the Church, as in John 15, "Ye have not chosen me, but I have chosen you," but He had it from the Father; so also the power that today is

in the Church, both in the Pope and in the bishops and inferior priests, is not from the Church, but from Christ, conferred on Peter, the Apostles and the other disciples, and their successors. However the elections for the future, by which this power is applied, Christ committed to the Church and to the disposition of the popes, as was copiously explained when we were talking about the faith. Our undertaking at this point is not to discuss ecclesiastical power in itself and in a comparison of its acts as well as effects, since we have spoken at length in q. 1, huius, 2, 2, art. 10, especially of this power, which resides in the pope and on which the remaining power depends. But other discussions on this power are addressed to the matter of the sacraments and to other aspects. What, in truth, we intend here is nothing else than to distinguish this ecclesiastical power from the lay and compare it, as it resides in the pope, with the lay, with respect to the authority of jurisdiction in temporal matters, to which we now turn our attention.

This therefore relates to the present matter. In the first place we hold that that this power of the Christian Church which resides in the pope as the head of the Church is different from the lay and civil power of the secular princes. This Gelasius affirms in Chapter II, Div. 96, saying: "There are two, O Emperory of the popes, and the regal power." This is confirmed by many—by Soto in 4, Discussion 25, q. 2, art. 1, concl. 1; Victoris, Relection 1, De potestate ecclesiae, q. 1, beginning at number 3; Durandus, De origine iurisdictionis, q. 2; John of Paris, Novit. de iudiciis & papali, beginning Chapter II; Navarrus, Novit. de iudiciis & carol., number 80; and others; moreover, we have touched upon the outstanding points in these places where we have discussed it before.

Next we hold that the same power of the pope differs from the power of the secular princes who are subject to him. First from the standpoint of purpose; for the power of the pope looks to a supernatural end and means proportional to it; but the latter looks to the natural end and means suited to it. Wherefore since the natural purpose is ordained to the supernatural one, and the faculty which looks to a superior end should command and order that faculty which has regard to an inferior and subordinate end, it comes about that it pertains to the pope to instruct and command the secular princes as his subjects (that is, they who are in the bosom of the Church) to accommodate themselves to the supernatural end, when they in their own government deviate from it.

It differs, secondly, because the power of the pope is supernatural, extending itself to supernatural effects; but in fact the power of the secular princes is purely natural. Third, it differs because the power of the pope has been instituted not by the Church but by Christ in the Church, although the

grant of it to this or that person depends on the choice of the Church; wherefore it is from positive divine law. But the lay power of the secular princes is from the human law, set up by the State itself, and conferred on princes, as will be made plain in the following discussion.

Ever is it different because the power of the pope is unique in the whole world; but the power of secular princes, except by the law of war, or lawful succession, or by the agreement of states themselves many states have one common prince, is manifold in view of the diversity in that states choose princes for themselves. For as Christ is the one Head of the Universal Church, thus His dictum and requirement was that the Pope whom He left as his Head and Vicar on earth be constituted as unique.

Further, since there is one faith, admitting no variation, it was most expedient, under the circumstances that beliefs became numerous, that there be one head, who from the throne which would have the infallible assistance of the Holy Spirit for this purpose would compose controversies that arose about the faith, seeing that thus the unity of the Church and of the faith and the peace among the faithful could be better preserved.

Now this is the reason that when in a state of the natural law relatively few things were proposed to men to believe explicitly a single high priest was not appointed who would be over the whole Church; in the synagogue, however, and much more in the Church of Christ, after many things to be believed explicitly were determined, there was one high priest, to whom all others were subject and were held to obey.

Lastly, the Pope's power differs because, although it was instituted at a time later than that of the kings, yet as Gelasius refers in Chapter II, Division 99, from Ambrosius, it exceeds the latter more in nobility than gold excels lead. Innocent, Chapter III, Solitae, de major. & obedientia, compares the two powers to those two great lights located in the firmament of heaven, and he says that the power of the Pope is the greater light because it is over the day of spiritual affairs, but the light of the Emperor is the lesser because it is over the night of temporal matters. And not only from the precedence of the purpose common to them must the excellence of the Pope's over the regal and imperial power be acknowledged along with the ecclesiastical power which existed at the time of the natural law and the written law, but also because the nobility and excellence of the means which it uses for this purpose and of the supernatural effects that it attains. About this matter Victoria, Relection I, The Power of the Church, q. 5, at the beginning, & Soto, op. cit., concl. 2, and John of Paris, Chapter V. should be seen.

SEPARATION OF POWERS

Concerning the lay power there is one thing that we should advise. Although under there are several phases, such as that of the father over the son, the husband over the wife, which are of the natural law, and also several other phases of variously administering the whole state as well as parts of it, nevertheless we shall in the subsequent pages especially discuss the regal and imperial power as we do the principal one, for if the latter is understood the remaining ones would be comprehended. However in explaining this overriding power we shall mix in something about the others.

Insert: it.

DISCUSSION XXII

THE ORIGIN OF THE LAY AND CIVIL POWER

As man, for reasons that we shall submit, needs society with other men more than the other living beings with the animals of their species, so nature, which does not fail in necessities, gave him a greater not only appetite but also propensity for society than other living beings. In fact the first society, to which according to Aristotle, Politics, Book I, Chapter I, nature gave man a propensity, is indeed common to him and the beasts, namely, what is perceived between the man and the woman for the sake of generation. And I say this because there is in all animals an inborn desire for leaving after itself another like unto itself. And for the act of generation as a matter of conserving the species nature has impressed on them an absolutely necessary and much stronger propensity than to the other acts. Also to the same end the Author of nature wanted a great affection and love between man and woman so that society might be held together as if by glue.

Moreover out of this association the community of the family or society had its beginning among men. When the family had been further perfected, as Aristotle says in the passage above cited, it grew together out of three inter-folding elements mutually acting in regard to each other. The first is of the man with his wife; second, of the parents with the children; third, of the master with his servants who had been adopted into the protection of the family and the necessary allegiances. In truth from these three developments out of which the family is composed a threefold power arises in the family.

First, is the power of the husband over the wife, which is from the natural law. For the husband is by his very nature the head of the wife, for whom therefore it is appropriate to be the ruler; but for the wife it is appropriate that she be subject and obey; for this naturally stands out in the powers and judgment by which man rises above the wife. Therefore a man was not made for a woman, but on the contrary, a woman for a man, so that he might have a helper, not only for the generation and education of his children, but also for other assistance in living, as Genesis 2 makes clear. Thence Paul, I Corinthians 11 says: ". . . the head of the woman is the man. . . For the man is not of the woman; but the woman of the man." And indeed he adds: "Neither was the man created for the woman; but the woman for the man." Wherefore it comes about that the

wife naturally, from the intention of the Author of nature in the first consultation of matters, is subject to the man and is held to obey him. Therefore in Genesis 3 God spoke to her for the punishment of her sin—" . . . thy desire shall be to thy husband, and he shall rule over thee." He set forth the natural law to her, namely, that, since nature was corrupted through sin, she was to be under the power of her husband, with coactive and coercive force. This would not have been if there had been no sin, because in a state of innocence it would not have been necessary, but directive force would alone suffice. Perhaps at the same time God also desired to indicate to her that there would be an abuse of power on account of the evil of men, since nature had become dissolute through sin, on account of which often without cause wives were to pass through bitterness and affliction, as we set forth in the tract of Six Days. Yet it must be observed that the wife is subject to the husband under the natural law, not as a servant, nor to the same degree that the children are subject to him, who the more they accept from their parents and by far are inferior to them, the more of subjection and deference they owe to them than the wife should owe to her husband; but she is subject to him as an associate, yet a less preeminent one, for the purpose of generation and for furnishing and arranging the necessary support and government of the family.

The second power is that of the parents over the children, which also is from the natural law. For indeed just as to the Author of nature, from Whom we have received life and all the other blessings, we owe piety, reverence and obedience, so to our parents, through whom we have received life, nourishment, education and other blessings, we owe in their order and degree respect, subjection and obedience, as the very nature of things and the light of natural understanding teach us. Yet we owe these very things more to the father than to the mother, because more chiefly would it agree with all those things from which the title of the paternal power over his children arises.

The third type of power is that of masters over slaves. This would not have arisen in the state of innocence, because in that state there would have been no slavery. But in the state of fallen nature there are two kinds of servants. The first is of those who are spoken of as purchased, and these are this kind because they belong to their masters. The second is those who so long as they are members of the family are hired at a wage for some certain necessary service and duties, for which purpose only they are under the authority of their masters. However neither kind of servants originates lawfully from the nature and constitution itself

of things, according to which all are born free and equal in this respect; nevertheless lawful titles can come about, by which it is legally contracted that as a result of crime because of which someone is worthy of death he may become a lawful slave of the first kind, by reason of the natural death having been commuted into perpetual slavery; this results in an accommodation, the lesser punishment of slavery. Also it can arise by various other titles which we shall in their places explain.

From the agreement, by which he who lacks food and money, for a certain sum of money and for food subjects himself to another for the furnishing of such and such services within such and such a time the second type of service can arise. Moreover after the legitimate titles have been obtained by which one or the other type of service is contracted in accordance with the natural law the power of the masters over the servants arises; just as when other legal contracts have been made, from the natures of the matters themselves arise different rights and obligations. Therefore it is not lawful from the natural law that the family consist of servants, nor that servitude arise from the nature of things themselves and the first constitution of things, in the same manner as the union of the man with the woman arises by itself, and the procreation of children; and therefore the power of the parents over their children and of the husband over his wife is after the natural law, to the extent that, if the danger should threaten that the human race should die out, men by the natural law would be held to enter into matrimony and to be free to generate, nevertheless with lawful titles following (which depend wholly on the human will) by which servitude may be lawfully contracted.

The three powers just explained are united in the home of the paterfamilias. And it is lawful that, in intending the common good of the whole home and household, he exercise these; yet there is this difference between them. Since the first two are by the provision of free men the paterfamilias ought to use them for the good and comfort of the former. But the last is arranged of itself for the proper utility of the household. For, by the authority of Aristotle, Politics, Book I, this is the difference between the rule of free men and slaves—that since the free men exist for their own sakes, while the slaves, for their masters, the government of free men especially should look to the benefit of the governed, although to the governor, in proportion to the quality of his duty, should be offered honor, obedience and services by the subjects; and these very things the governor at the same time be able to exact and maintain. However the government of servants is especially pointed

to the good of the master and the convenience of the household; though reason itself demands that the masters, to whose convenience and will the servants cater, in turn should have in mind and intend their good, in their order and degree, in the overlordship. And to this they are held by the natural law, not only because they are very near, and in their order and degree more united and more in the family and more recognized than all the others, but also because the government and hence the responsibility for them reposes in the masters. Further the poor of the paterfamilias, who have no complete and perfect family of their own in every respect, enjoy the association with the wife, children and the family's resources, as Aristotle says, like servants.

Besides the society or societies explained, man has need of a certain greater association, to which his own very nature inclines him, with the light of natural understanding instructing and urging him to it, because of which he is called a civil and political animal. For if you cast your mind's eye at all the other animals, you will find that each one was so made by nature that if at least an ordinary amount of training is given by the parents at the beginning they are sufficient unto themselves to acquire the necessary supports of life, in accordance with the needs of each, since by the Author of nature abundantly are supplied covering as clothing and arms not only for protection of themselves against internal elements but also against external enemies, and the various means and instincts for effecting their purposes, and for the nourishment suited for the feeding of each. Also man only, whom He endowed with reason by which he might be able to store up the experience of history and to fashion the required tools and make and acquire other aids to living, He created naked and unarmed, without every art and instinct, in need of so many things indispensable for living, so that neither one man, nor a complete and perfect family suffices for getting all these things; but many families are needed, which, though in want with materials and workmen separate, when they get together they can supply the necessities of food, clothing, shelter, preventive medicine, and other things of this kind which are required for daily use and for going through life. For if you weigh in your mind what is necessary only for making bread, and you begin with the ground's culture so that the seed may be committed to it, and you run through all those steps which the wheat requires, so that at last it may be harvested, cleaned, threshed, separated from the bran, and cooked, and at the same time you consider the tools that are necessary for all these steps, and the artisans for each single tool who are required for the making of them, and the preparation of the material from

which they have to be made, and who are necessary for very many other things; then easily will you conclude how many families, striving in their different duties and competent in their various crafts, are necessary so that each man may be supplied the necessities for living daily life. Since therefore society is nothing else than such a great aggregation of mankind that mutually they may be sufficient for the supply of all those things that are required not only for daily use and for getting through life, but also for the other purposes about which soon there will be discussion, it comes about that on account of need, with the light of understanding instructing and urging him to it, man naturally would incline to living with others in the community of a state and commonwealth. By the name of commonwealth and state at this point understand also neighboring towns, districts and hamlets lying about, which the overriding community, which is the head, needs for agriculture and other purposes. And so from the state and commonwealth assumed in this manner he is said to be a civil and political animal.

Secondly, man also needs a life in a community of several families; since when born he is without all the arts and the skill in all matters and without the natural instinct with which the brutes are endowed for avoiding harm and seeking and acquiring the necessities; clearly unless he lives in a community of many families, he would neither be able to learn the arts, which he needs for making the necessary supports (though nevertheless very many would have to be learned by him because he would not be able to utilize the work and industry of others) nor could he acquire a knowledge of natural and supernatural matters. Finally it would not be possible to be instructed and imbued with the skill and customs that become a freeborn and upright man, and therefore friendship would perish and the practice of many virtues. Add that wisdom is uncouth and severe unless it is communicated to others and is discussed with them. For if wisdom is hidden away and a treasure is out of sight, of what use is either? Thus saith the Wise Man in Eccles. 7: 41, "Therefore among all living beings man alone was endowed with the power of speech by which he could have relations with others in a community and could express his thoughts to others, now by teaching others, now by asking questions, and in turn being instructed by others, and also he could cultivate friendship and other virtues with other men. And so Aristotle, *Politics*, Book I, Chapter 2, concluded that man, more than the bees and all other animals which congregate, is a social animal. For he says, "Nature does nothing that is superfluous, nor did it give speech to man for any other reason than for living together and for having a society with other men."

Thirdly, man needs a life not only in a community of several families but also of a perfected commonwealth, so that peace, security and justice may be conserved among mankind. For the powers of the whole commonwealth are by far greater than of the individual families; of course, by the powers of the whole commonwealth each man is better defended from injury by others, and the evil doers and criminals are better kept off and punished than by the strength of him alone to whom the wrong is offered and upon whom it is inflicted. Likewise since the original justice was lost through sin, and unavoidably quite a few controversies and hardships arose, it is clear that with much more facility they would be resolved easier and more correctly by the authority of the commonwealth than if each one should be the judge in his own case. For anyone is easily blinded by passion and love of his own interest and perverts his own judgment, but on the other hand this would not easily happen in an authority founded on public power.

But since human feelings following the fall are prone to evil from adolescence, and all the low instincts, that we experience for the most part rule men, by all means, if they should live outside the political community with the result that there is no superior public power which could by its own strength and authority coerce them and check them, everything would be killings, seditions, rapine, plots, schemes, and trickery, with the more powerful oppressing the less powerful, and by far would the condition be worse and the misery of human kind greater than it is today with men united in distinct commonwealths!

For these and like reasons it is natural for men, that is, it proceeds from their own very nature, with the light of natural reason so teaching them this from the very nature of things and stimulating them to this very result, namely, that they come together, not only in districts, but also in a complete and perfect commonwealth, the like of which state was set up in the manner in which we above set forth; or even in a complete province, which would be more satisfying to them, not only for all the purposes that we have mentioned, but also so for repelling and avenging wrongs from external enemies if any should be offered by them, or already have been offered, and for prosecuting the rights of war.

Victoria, in the Relectione de potestate civili from Number 6, and Soto, 4, de iustit., q. 4, art. 1 assert on this very point that because man came together to form a corporate commonwealth, the power of the body of the whole commonwealth arises by natural law over the individual parts to govern them, to make laws for them, to deal them justice, and

to punish them. Therefore, they say, since God is the supreme author of the natural law, clearly power of this kind is from God directly because He made nature, even though the union of men into a single commonwealth is a condition without which this power could not result. Hence Victoria in the passage cited, Number 8, has it that this power does not arise from the fact that men wish to subject themselves to it and appoint it by their own decision over themselves for their own good; just as it could arise if men got together for any other purpose they please and elected a common power over themselves, but this latter power would not have its origin directly from God through the natural law, but from men freely subjecting themselves to it, nor would the power be greater than what men by their own wills assigned it. But that other prior power is from the very nature of the matter, and, granted a union of men to found a single commonwealth, is therefore directly from God as from the Author of nature, and not from men who come together to form a commonwealth, except from the condition without which, just as a commonwealth would not result; so also would not its power result over its individual parts.

These authors moreover are led to make this assertion: since a community of this type proceeds from nature which instigates and requires it, and the nature itself of the community now arisen demands power in itself over its own individual elements, therefore it is from the natural law and thus directly from God. Victoria confirms this. Since it is prohibited by the natural law for individuals of the commonwealth to put criminals to death, even though they be the very ones that are affected by the wrong, and that under the fifth law of the Decalogue; nay, rather it is also prohibited to the same individuals to punish criminals with other penalties; and since therefore this is lawful for the commonwealth, as from usage itself and from the Scriptures is established and the nature of the matter requires; it comes about that far different is the power that arises in the commonwealth from the union of the particular powers of the individuals, and therefore the commonwealth does not have this power from the authority of the individuals, but immediately from God.

However it would be possible to answer this confirmation, that at all events the families themselves and the heads thereof under the natural law have the power of putting to death and punishing wrong-doers for the very reason that no other superior power has been constituted to which the families could transfer their own power, as farther on we show in Discussion 100, with Navarrus, Gabr. and Angel. Therefore from the fact that the private families in this respect had transferred their own power to the body as a whole of the common-

wealth, because it would be wholly expedient that it should rather repose in the whole body of the commonwealth than in the single families, it would be possible that the commonwealth alone have this power, conferred on it by its own elements, and not directly by God.

But this solution notwithstanding, the opinion of Victoria and Soto pleases us, not only because the latter is in conformity with reason, but also since, granted that the commonwealth does not consist of families but of individuals, the same power would still be in the commonwealth. Furthermore, by the reasoning by which the power of killing external wrongdoers arises in the family from the nature of the matter, which power is not in the individuals of the family in their single and private capacity, why also will not a similar power arise in the commonwealth as a whole, which power has not been communicated to it by the parts of which it consists, actually no legitimate reason can be adduced. Perhaps someone will contend that private persons also can justly take revenge on those that are wronging them and are malefactors when no other superior power would be set up on whom this duty would fall. But in no way would I dare to concede this; for if this were granted, with equal reason it would have to be conceded, in the event that punishment would not follow through the public power, either because the wronged one would fail in his proof, or because the public power would not act on account of its own worthlessness, that a private person could take revenge himself without causing scandal, not otherwise than, without causing scandal, it is possible to take by one's own authority what is owed to one, if he would not be otherwise able to recoup it. Also it would have to be granted that it would be not from the natural law that private persons would not be able to take vengeance on their own account, but from merely positive law, and that therefore men, when they come together to form a commonwealth, would be able to reserve to themselves the power of taking vengeance for themselves, by not renouncing it and by not transferring it to the commonwealth; this must not in any way be conceded. Therefore we must say: the commonwealth does not have its power by the authority of its elements from which it grows, but by divine authority, directly from God, as the Author of nature. It is confirmed, since if the authority of the commonwealth would not be from God directly, by a grant of the parts, clearly then, if someone of those living together would desire not to offer assent to this, the commonwealth would have no power over him; to be sure, since other individuals do not have right and authority over him, and just so far as they would not be able to give to the commonwealth authority over him. Therefore the question

would have to be asked of each one who is born or comes anew into the commonwealth whether he consents to the authority of the commonwealth over him, and his consent would have to be awaited. This would be ridiculous.

DISCUSSION XXIII

THE SUPREME CIVIL POWERS—REGAL OR MONARCHIC, ARISTOCRATIC,
AND DEMOCRATIC; AND WHICH THEN OF THESE IS THE MORE EXCELLENT

Up to this point we have shown only the origin of this civil or political power that reposes in the whole body of the commonwealth by the provision of its own elements. But because the commonwealth with advantage to itself is unable to exercise all this power over its own parts—for it would be burdensome for the commonwealth and morally impossible to perform the individual functions of this power and to await the consent of individuals of the commonwealth, and it would be quite difficult for so great a number of men to come to the same agreement, the light of natural reason teaches that it has been placed in the judgment of the commonwealth to entrust the rule and power over itself to some one, or to several, as far as it has wished and judged to be expedient. From this have their origin the various lawful governments which are seen in the several commonwealths, as each one chooses and constitutes for itself a government, and hands over a greater or lesser degree of power over itself by its own free will.

Further the lawful supreme ruling powers of states, and therefore the commonwealth itself—the name of these is taken from the kind of government that it has—are reduced to three types by Aristotle in *Politics*, Book I, Chapter V, namely, monarchy, the rule of one; aristocracy, or the rule of the optimates; and democracy, or the rule of the people or the crowd. For in fact, first, the commonwealth is ruled by one common head or prince, to whom the power of the commonwealth has been delegated, and then it is called a monarchy or kingdom, and the prince himself is the king and monarch. Today by antonomasia he who rules the whole world, or a great part of it, has been customarily called the monarch, that is, of the whole world. The others, however, who rule one or two provinces usually have been called kings of the province or provinces. Or secondly, the commonwealth is governed by a few, and those optimates, as Rome one time before the emperors and Venice today, and it is called an aristocracy; but the rulers in accordance with the prescription of the commonwealth are called senators or by some other name. Or lastly, the commonwealth is ruled by the many and is called a democracy. Since however the power is derived for the government by the free will of the commonwealth itself, of course it will be possibly be more ample in each kind of state, or less ample; and it is not greater

in the governors of the commonwealth than has been granted to them by the commonwealth. Nay, rather, if the governors extend it and usurp greater powers for themselves, they degenerate into tyranny through injustice which they commit in this respect:

Hence it is that the regal power can be constituted in various ways; first, by granting it to someone only for a lifetime, so that, of course, when he dies, another is selected by the commonwealth, with some certain electors constituted and with a certain prescribed form of election. Secondly, it can be instituted by granting it to someone and to only his male descendants, and, if these are wanting, then the right of election reverts to the commonwealth. Thirdly, it can be done by wholly giving away the right of election, on account of the inconveniences and seditions which can thence arise, and by giving the royal power to someone, so that it may devolve upon whomever of his blood relatives are the nearer and their successors; however with the condition that descendants are preferred to ascendants, and their ascendants are put ahead of collaterals, and always males to females. Also it can be done in various other ways in accordance with the original institution of the kingdom by the commonwealth. In this way in France by the Salic law all women are entirely excluded from succession to the crown. Also greater or less power can be granted to kings, so that some matters are lawful for them or are not, and they are held to some things or they are not. Lastly it must remain fixed for them that what power was granted when the regal power was set up has been definitely determined. And just as the commonwealth cannot vary the power by taking from it or lessening that which was granted at the beginning, yet it would be possible to enlarge it and grant more power; but the prince, if the commonwealth disapproves, cannot increase his power for himself, nor can any one of those things be exceeded which have been constituted at the beginning.

With the regal power for keeping the commonwealth within bounds is the power of making laws by which it is governed. Alphonso a Castro observes, *On the Power of Penal Law*, Book I, Chapter I, when the matter is not clear from another source, in consequence of an accepted practice by which the people are wont to oppose or not those laws passed by kings that oppress the commonwealth, that conjecture must be made whether the people in the original creation of the regal power granted the kings the power of making laws of this kind dependent on the approval of the people or not. For if custom would have it that such laws have no force unless approved by the people, it must be thought that the commonwealth has not granted a greater power to the kings than of making law dependent on the approval of the people. And it is quite likely

that if the people did turn their attention to it they have granted no greater power to the kings; even if they should not turn their attention to it, it seems to have been the intention of the commonwealth, as it put a king over itself, when it did not otherwise express it; and always it is rather to be presumed that the king enlarged his power through his power, since his subjects did not dare to object, than that his subjects decreased the power once granted to him. Therefore it is right for the commonwealth not to accept laws that sensibly burden it when they are not at all necessary for the common good. And if the prince should force the state to it, he will do an injustice. But if, says Castro, the accepted usage has it that the not inequitable laws of princes should be obeyed, we must admit that the commonwealth has wholly granted its power to the king—but this can hardly be believed about any state. This is especially true since, as above it has been stated, kings are wont to extend their power by means of their power, and therefore in this event it would be lawful for the commonwealth, as it were, to appeal from laws burdening it too heavily by applying to the prince that either he should abstain from them or lessen the rigor of these laws, and he ought to listen to the commonwealth or hold just the basis of their appeal; but if the commonwealth should not prove its cause to be sufficient, then indeed it will be possible to apply force, and it will be required to obey. The following I would have cautioned—that if the prince by the law of war had gotten a certain power over a commonwealth, when he did not have from the commonwealth his own power, but had gotten as much power from the law of war as the commonwealth itself was able to give him, and the prince was able to apply to it force in accordance with these laws, which were not so oppressive that they mean injustice; always on the other hand the laws should be bearable so that they do not burden the people and do not turn their minds from good will toward the prince.

But after the regal power has been granted to anyone by the commonwealth, the king is superior not only to the individual elements of the commonwealth but also to the whole commonwealth, so far as the power has been granted to him, so that he is able to use this power not only against the individual elements of the commonwealth but also against the commonwealth as a whole, by punishing it if there be need, as say Soto and Victoria in suitable notation in the places cited. And the commonwealth cannot take away from him this power which has been granted, or diminish it, or impede its legitimate use; for otherwise the regal power would not be a monarchy, which could be reduced to a single head, but a democracy, which in the last analysis be traced to the crowd of the commonwealth. If, however, the king would want to assume

to himself a power not granted to him, the commonwealth could resist him as a tyrant in this particular, just like any stranger that would want to injure it. The reasoning is indeed that neither is the king in this respect the superior of the commonwealth, nor is the commonwealth the inferior of him, but the commonwealth is the same as before it gave this power to him.

Likewise in an aristocracy the commonwealth, when power is granted to, and set up for the optimates by the whole commonwealth by its own free will, it can be instituted in various ways; that is, that there be more or fewer optimates, and that they be chosen in this or that way, or that they may remain a longer or shorter time in office, or that they may have more or less power, and that they depend on the remainder of the commonwealth and the tribune of the common people in this or that measure. And neither in these powers that have been granted, nor in others can they exceed anything. And if they usurp for themselves anything more, they do wrong. Further, the laws which emanate from the optimates of this kind in accordance with the prescription and power granted by the commonwealth to them are called decrees of the senate.

In democracy also the commonwealth can be instituted in accordance with its own free will in a variety of ways, since the power is likewise granted and set up by the whole commonwealth in the hands of the very many who are deputized to rule; and not only as to number but also as to manner of selection, the nature and period of the term of each, and also as to the extent and latitude of the power and dependence of it on others, and similarly it will be wrong for them to exceed in any way. But the laws that emanate from these in accordance with the power granted to them are called decrees of the people. Now when in the first kind of government of the three described a turn is made into injustice, either by seizing the commonwealth, or by administering it for the common good but as a common property unlawfully, or by exceeding the power granted, the rule is called tyranny and the governor, a tyrant, by use of the word in a bad sense. For it is named from the power; at one time it was used in a good sense, wherefore the ones in power were called tyrants. When, however, in the second kind a turn is likewise taken to the unlawful, the government is called oligarchy, the principate of the few. And when in the third, it is called democracy, though today the word is taken by some in a good sense, in which up to this point we have used it. Nevertheless Aristotle, *Politics*, Book III, Chapter V, calls the third type of lawful rule the State, that is, the commonwealth, by accommodating a word, common to these three types of otherwise lawful rule, to signify only the third kind; but the departure from it unlawfully he calls democracy. Of these types of lawful rule that have been explained,

—Insert: not.

monarchy is the best, because by this kind of government public peace and tranquillity are best preserved, and less in this kind than in any other is left a place for seditions. For as correctly after Ennius says Lucan: "No trusting of the kingdom to associates, and all power will be impatient of a partner." And the Lord says, Jeremiah 12: 10, "Many pastors have destroyed my vineyard." Art, moreover, is the more perfect the more it imitates nature; besides in the natural order rule is reduced to unity—by one heart all the members are moved and governed, and by a unique reason all the other powers; one bee is over all the others, and the governance of the whole universe goes back to one supreme governor and moderator, God. Therefore it comes about that monarchy is more outstanding than the other types of government. Nor in it is there less of liberty for the subjects than in the other governments, as Victoria, Civil Power, Number 11, rightly notes: since in it the subjects have only one supreme master, not several, as in others. About this read St. Thomas, The Rule of Princes, Book I, Chapter II.

But, to be sure, the following is referred to by Victoria in the place cited, Number 14, that although in other governments the commonwealth has handed over to no one in particular the power over itself but is ruled through governors that are not removable and who die, it is at any time able, if it wishes, to set up a king over itself, as the Venetians today, or the Geneva Republic will be able to make a king for themselves, if they judge it expedient. For this purpose it will be sufficient if the greater part of the commonwealth would consent; for that consent of the greater portion of it determined by the consideration of the greater portion of itself, which therefore has force over the lesser, and so the lesser is held to stand for it. It is confirmed, since if in the counsels of the commonwealth the opinion and pleasure of the majority would not have to be followed, clearly the commonwealth could not be governed, and it would to a degree be difficult for anything useful to be decided for it. For in such a great multitude of men there never would be someone lacking whom the contrary would please. Victoria adds that since the Christian Church is a unique spiritual commonwealth, for whose purpose and for the common good the end and governments of secular princes who are subject to it are ordained, certainly if the greater part of the Church would consent that there be one common emperor chosen, to defend it and who in that respect would be superior to the other kings, on account of which this would be judged to be strongly expedient, that consent and pleasure would suffice so that the remainder of the Church would be held to hold to it and to consent to the election of such an emperor. Nay, if it should be judged ex-

expedient at all and necessary for the Church for its own conservation, the Pope alone would be able to order and determine it, and all the Church would be obliged to support that decree and law, as must be spoken of in Discussion XXIX.

Now in fact the supreme civil powers, which we have discussed up to this point, are what flow from the commonwealth to the governors. But by positive divine law certain things have flowed, for a particular individual, directly from God. Such were the powers of Moses over the sons of Israel, likewise the powers of Saul and David, who were made kings of Israel by God. Also, by the law of war a single prince will be able to establish lawful power over several commonwealths, and one commonwealth, either an aristocracy or a democracy, over several others, which has not been conferred on it by the commonwealths themselves which are being ruled. And spread out and established in this manner certain empires have grown up, the greatest that have existed up to this time in the world.

From the civil powers that have been set forth have flowed the remaining inferior powers in the commonwealth, such as the viceroys, leaders in war, judges, optimates, marquises, counts, etc. And I say this because we look to the kings and the other supreme governors, as the light of nature teaches and prescribes it, through them or others and to the splendor of the commonwealth to appoint and set them up, because it would not be able directly to administer everything itself.

DISCUSSION XXIV

THE ORIGIN OF THE IMPERIAL DIGNITY, AND THOSE FOUR OUTSTANDING EMPIRES OF THE WORLD, WHICH ARE MENTIONED IN DANIEL 2. WHETHER THEY HAVE BEEN LAWFULLY ESTABLISHED

The imperial dignity goes back to and pertains to the regal and monarchical dignity. In fact it was introduced into the world in this manner. They who were endowed with very many provinces and had many kings subject to themselves, in order to differentiate themselves from the common kings, took for themselves through their superiority the name of emperor. In this way the Roman princes who about the time of the coming of Christ held the greatest part of the known world, were called emperors, even before they received the Christian faith. To be sure, after they bowed to the Church of Christ, and Constantine the Great gave the city of Rome to the Church and removed the seat of the empire to Constantinople in Greece, the emperors were known as patrons and defenders of the Church.

The Gloss, Chapter *Venerabilem, de electione*, on word *transtulit*, asserts from the history books—Since the time of Pope Stephen II, when the imperial power in the western parts had almost been extinguished on account of the various northern nations who had just about possessed it by force of arms, the Roman Church was harassed by Astulphus, King of the Lombards, in a manner to be pitied, and the emperors who were tarrying at Constantinople, while the Pope was frequently and strenuously imploring their help against the incursions of the barbarians, were not bringing help to the Church in its afflicted condition, then indeed Pope Stephen in the year of the Lord 776 transferred the Roman Empire from the Greeks to the Gauls and made Charlemagne, son of Pippin, Emperor, whom afterwards Leo III, with the people acclaiming and demanding, confirmed and crowned as Emperor. Gilbertus Genebradus in Book III, *Chronologies*, about the year 752 A.D., has it along with others, that this was Pope Stephen III about the year 756. It is pertinent that Palmer in the *Chronology of Nauclerus* says that this Stephen also for this reason transferred the insignia, dignities and titles of the Empire to the kings of the Franks because the Emperor of the East was harassing the Catholics.

Moreover, granted that the transfer of the Roman Empire to the Franks seems to have had its origin from the fact that Stephen joined himself to Pippin in France, to obtain help from him against Aistulphus, where he anointed Pippin and his two sons anew as Kings of France in the Church of St. Denis

ORIGIN OF THE IMPERIAL DIGNITY

and also declared the kingdom of France hereditary for their posterity, yet in common with others he affirms that this transfer of the Roman Empire to the Franks was made by Leo III, who in the year of grace 800 or 801 established and crowned Charlemagne as Emperor of the West, while the Eastern Empire remained among the Greeks. From this they say was the origin of anointing and crowning the western emperors by the pope. Rather it is said that Charlemagne made an agreement with Irene and afterwards with Nicephorus that he should hold the Western Empire but they the Eastern, as from Platina and Blondus Genebradus refers in *Chronologies*, Book IV, about the year 800, and Book III, about the same year. Indeed the Western Roman Empire remained among the Franks for about 110 years, even up to Louis IV. When he died without issue, the lineage of Charlemagne ceased in the male line, and the Empire was transferred to the Germans, whose first emperor was Conrad at the time of Anastasius III about the year 912. But neither Louis IV, nor Conrad, nor the other emperors up to Otto I were crowned with the name Great. Otto I was anointed and crowned by John XII about the year 963 as Emperor of the Germans, with the Roman people saluting him as Augustus. Otto III was anointed and crowned by Gregory V about the year 997 as Emperor of the Germans, to whom finally Italy, because with the lineage of Charlemagne extinct it was grievously tormented, granted completely the rule to the Germans. But when Otto III died, a synod was convened at Rome, and it was decided that thereafter the Emperor should be elected according to a majority vote by seven German princes, three ecclesiastical and four secular, namely, the Archbishops of Mainz, Cologne, and Treves, and the Count of the Palatinate, the Duke of Saxony, the Margrave of Brandenburg, and the King of Bohemia who then was the Duke. However the Pope reserved to himself not only examination, approval and confirmation of the person elected Emperor, but also the anointing and crowning of him with the golden crown. And I say this because three crowns are placed on him who is elected and crowned as the Emperor. First, the iron crown by the Archbishop of Cologne in Aix-La-Chapelle of the same diocese. The second, a silver one, by the Archbishop of Milan in a certain town of that diocese in Italy. And the third, a golden one, by the Pope at Rome. And so this custom of electing, confirming, anointing, and crowning the Emperors continued right up to today. In fact Henry II was the first one to be elected Emperor by the seven electors. Further this election of the Emperors was instituted for this purpose—that they should be patrons and defenders of the Church for the purpose of rooting out the heretics and any other enemies of the faith, and for guaranteeing whatever other considerations deemed expedient for the

protection and the defense of the Church. Therefore they offered to the Pope an oath of fidelity for all these and certain other things. Whence it comes about that the protection and defense of the Church by their arms and power is a duty of the Emperors ex officio. All these matters are plain from the Chapter Venerabilem de electione, from Clemens Romanus; and from the glosses in the same work, especially at the word vestigiis de iureiurando (traces of the oath), and in the Great Gloss, at the word illi autem, and from the two glosses following in the text adjoined to it, the Chapter Ad Apostolicae de sententia & re iudicata; and re iudicata, Book VI. Read also Genebradus, Chronology, Book IV, about the year 997 and also about the year 1000.

Further, the Roman Empire, most flourishing in power and glory, rightly is judged to be among those four leading empires of the earth about which Daniel speaks in his first chapter as being set up and spread in great part by war and force; first, the Assyrians and Chaldeans; second, the Medes; third, the Greeks under Alexander; fourth, and last, the Romans, on whose origin and beginning we have very lately spoken. But if the wars by which they were founded were lawful, also the empires themselves were lawful. But if the wars were unjust, the empires also were unlawful, to the extent that it was acquired by an unlawful war and was not set up as the lawful ruling power of that section because it was acquired unlawfully before the people of their own free will tacitly or expressly consented, though, notwithstanding the unlawful war those kings were ruling them. However it is very likely that for the most part the great empires of this kind were unlawfully acquired, and this among others Durandus affirms on the origin of jurisdiction, Albert Pighius, Church Hierarchies, Book I, Chapter XIV, and Driedo, Christian Freedom, Book I, Chapter XV; and for this reason they have it that these empires were revealed to Daniel under the form not of men but of beasts.

But if you object that in the Holy Scriptures it is meanwhile said that these empires were granted by God to these emperors, as to Nebuchadnezzar in the time of Daniel, Jeremiah 27, and to Cyrus, Isaiah 44 and 45, and Ezra 1, it must be replied that these empires were granted by permission and to use these men as instruments to punish the sins of mankind, and for appointing the empire of Cyrus, for the return of the sons of Israel from the Babylonian captivity. If again you would object that Paul in his Epistle to the Romans, Chapter 13, and I Peter, his canonical Epistle, Chapter 2, have spoken of the powers that then existed, which, of course, were the Roman, we must answer that in the first place Peter and Paul spoke of the more sublime powers, meanwhile neither examining nor defining them, whether these or those in particular were lawful;

since, granted that in themselves they were not such, the occasion was not looking to these to teach this, nor was it expedient; and commonly they seem to be reputed to be lawful by their subjects, and when this was granted they were held to obey them. Then we must that at least by agreement in many cases they were lawful, seeing that they were set up through a just war, or the commonwealths themselves of their own accord were submitting themselves to the Romans; and perhaps at that time there was indeed a consent of the peoples, either tacit or expressed, that the Romans rule them. Besides it must be stated that, granted that at that time the Roman emperors were ruling some tyrannically, yet with Victoria in Tract 5 we will say, that for the very reason that some commonwealth tolerated them, because they were unable to shake off their yoke, not only were the orders and judgments of the judges constituted by the emperors binding on the individuals of the commonwealth in the forum of the conscience, but also the orders and judgments of the emperors themselves; not indeed by the peculiar authority of the emperors, but by the authority of the commonwealth itself; and I say this because it must be presumed that the commonwealth wished the regime to have such power, admitted that the commonwealth itself can set up another regime.

DISCUSSION XXV

THE REGAL POWER IN RELATION TO ITS SUBJECTS AND THE POSSESSIONS OF THE ROYAL CROWN; AND WHETHER THE DONATION BY CONSTANTINE TO THE CHURCH WAS MADE LAWFULLY

From the discussion up to this point it is clear that the king—and any other supreme administrator of the commonwealth—is not the owner of the goods of his subjects; but he has only over his subjects the power of prescribing law to them and of defending them and governing them for their common good. For on account of this only was he chosen, and was the power and facility granted to him by the commonwealth. Therefore if he should appropriate the possessions of his subjects to himself for his own pleasure, or give them to another, it is unlawful, and he is held to restitution, nor is such a gift valid. This all is clear of itself, and it is affirmed by Bartolus in proemio veterum, ff, paragraph omnem, at number 3, and by Panormita on the Chapter venerabilem de electione, number 19, by Innocentius and others. Yet he will be able, seeing that he is the administrator of the commonwealth, and all are subject to him for the common good, to make laws which he sees as expedient for the same common good, by which rights of ownership are lost and transferred to others, as the law of prescription, and other like; and this not only for the punishment of remissness, but also for the common good, even if no remissness intervenes. Likewise when reason demands it, he will have the power to expose not only the possessions of his subjects, but also their persons for the common good, and he can exact from them and take whatever is judged expedient for the common good, with an eye to equality among them so far as it is possible to be carried out.

Moreover since the king has been appointed to protect and defend the commonwealth against external enemies and internal criminals, and also to dispense justice, and to conserve the peace and justice among his subjects, and lastly that he may administer the commonwealth for the common good, and for this reason taxes and other emoluments are paid to him, which are necessary to the power, dignity and honor of the king; clearly the king is required from justice and from his duty to perform all his agreements, and in the same manner in their turn his subjects are required to pay him reverence, obedience and taxes and render him other supports which are owed to him for his office. Further, although the king could make donations from the goods of the kingdom such as would not gravely and notably

be prejudicial to it, and he could and should reward the merit of his subjects the more they go to the common good, as is concluded from Book VI, Chapter The Abbot, de sententia & reiudicata, and from other laws; yet he would not be able to give those things which go to the serious and notable prejudice of the kingdom; rather, if he should make such a gift, it is possible to revoke the gift, though he had confirmed it with an oath; and in the same manner his successors can revoke it when the gifts have been made to their disadvantage. This is concluded from the Chapter intellecto on the oath, and Innocentius affirms it, as well as Panormita in that place all the way at number 8; also Bartolus in l. prohibere, paragraph Plane, ss, quod vi aut clam. The reason is, since the king by reason of being furnished the goods of the kingdom's crown is a kind of administrator, for the effects of the crown of the kingdom are bound by their own limit and are granted to the kings by the commonwealth for the defense and the administration of the commonwealth, and not to be squandered and result in the detriment of the kingdom and commonwealth. And although circumstances may remove for a just cause this chain-like impediment that these things have, it cannot be done for one's own pleasure and without a lawful reason.

Hence the teachers doubt that the donation made by Constantine to the Church was valid, since it was on quite a serious matter and was to the disadvantage of his successors. And whatever certain experts in law have said, it must be said with Bartolus in the rubric proemii citati—although it would not be quite applicable—with Panormita in the passage cited, with Major in 4, d. 15, q. 10, part 2, and with many others, that it was not only made and accepted in good faith and without wrong, but also it seems to have proceeded out of divine inspiration to the exaltation, splendor and spread of the Church. And besides that it was done, as it were, in return for salvation, for the victories provided divinely, for the faith, and for the other blessings gotten, it was done for God in His own Church and for the common good of the whole empire, and for the many people of the Church now subjects of the empire. Further, donations which are for the common good of the commonwealth are lawful; it is the business of the civil commonwealth to endow and exalt the Church, from which, as from its mother, it receives so many blessings, and to whose end the temporal end of the commonwealth is ordered. And especially is it the duty of princes in the name of the whole commonwealth, and the donations for pious purposes are much more susceptible of approval in law than the others, under the prescription and doctrine of the natural light. It is added that it was ac-

cepted by the most holy Sylvester, and most holy and learned popes abided by it, and to it the succeeding emperors and commonwealths agreed.

But as rightly Albertus Pighius notes in Church Hierarchies, Book V, Chapter VI, that whole donation made by Constantine expired after that ancient empire became extinct in Italy and the other sections of the West, as has been mentioned in a preceding discussion, and a far different origin those possessions have which the Roman Church afterwards took possession of as its own, as I shall just now add from that ancient source. Though the donation made by Constantine had not expired, since (as has been shown in a preceding discussion) the German Empire, which today is in the Church, is far different from that ancient one of Constantine and his successors, clearly not at all do those possessions which were given by Constantine to the Roman Church pertain to the German emperors who are now in being. But as to the property which has reference to the patrimony of the Roman Church having a far different origin from that ancient one, very well does Albertus Pighius show it, and it is clear from others to whom the same author and Genebradus refer. For Arithpertus, King of the Lombards, gave to the Roman Church the exarch of Ravenna (which contains many cities) and many other things. Afterwards Pippin and his son Charlemagne, after the Lombards had been completely rooted out of Italy, increased these donations. After that Countess Matilda at her death left to the Roman Church all that lies between the River Pisano and the holy Quirican territory of Sena to Ceperano between the Apennines and the sea. This is what is especially called the Patrimony of St. Peter. Besides later the Benevento dukedom was added to the lands of the Church, and still later the both Sicilies, freed from the Saracens and the Greeks by the courage of the Norman brothers, sons of Tancred.

But kings, as they are not able to give to the notable prejudice and detriment of the kingdom, so neither can they divide their kingdom, nor give one part to one of their sons and another to another; and much less can they cede the kingdom to a foreigner, if the commonwealth does not consent, unless by chance it has been captured by the law of war. Finally, they cannot change anything in the kingdom concerning the rule and succession. So says among others Major place cited. Read also Panormita, Chapter intellecto, de iureiurando, number 5, and Innocentius, Book VI, Chapter Grandi, de supplenda negligentia praelatorum.

DISCUSSION XXVI

WHETHER THE REGAL POWER IS FROM THE NATURAL LAW

Victoria, in the Relection On the Civil Power, Number 8, asserts that the regal power is from the natural law; to that Covarruvias seems to subscribe in Practical Questions, Chapter I, Number 6. Moreover it is possible to persuade one of this. First, since the power of the commonwealth over the individual elements is from the natural law, as has been shown in Discussion XXII. But this power is the same as the commonwealth transfers to the king, that is, since, when a king is set up, there do not remain two powers, namely, one in the commonwealth, and another in the king, but when the commonwealth gives up its power and transfers it to the king, there remains only one power—that of the king; therefore just as the power of the Pope is from the divine law, although the conferring of it to one or another, whoever is elected to the Pontificate, would depend on the will and the choice of men; so the power of the king will be from the natural law, through the conferring of it on this man or that, whoever is elected king, would depend on the free grant and choice of the commonwealth.

Secondly, not only does the power of the commonwealth arise solely from the natural law, but also, because it entrusts it to a man or to several, it comes from the natural light and law itself, for the reason that the commonwealth as a whole would in no way be able to exercise it all for its own advantage. Therefore whether the commonwealth would choose for itself a government of kings, or aristocracy, or democracy, clearly the supreme civil power, which it selects by its own free will and act, always will be from the natural law. And led by this argument, Covarruvias persuades himself to this opinion.

yet it must be said with Durandus, in q. 1, On the Origin of Jurisdiction; with Driedo, Christian Liberty, Book I, Chapter XV; and with Alphonso a Castro, in his Penal Law Power, Book I, Chapter I, and with others, that not only regal, but also any other supreme civil power, which by its own will the commonwealth chooses for itself, is directly from the commonwealth, and indirectly from God through the natural light and power that He granted to the commonwealth, so that it might delegate civil power for its own benefit so far as it wanted to and judged it to be expedient. Therefore it comes from the natural law, and yet it is purely of the human law of the commonwealth choosing for itself by its own free will not only the person or persons to whom it gives the power, but also the

limit, extent and duration of such power. For just as the laws of the pope are derived from the power which he has by divine power to make them, yet they are purely of human law; so also it is lawful that the supreme civil power which the commonwealth by its free will chooses for itself be derived from the natural power that it has to determine this, and yet it is of human law. Now there is not the same reasoning about the supreme civil power and the supreme ecclesiastical of the pope to the effect that that they are not of the human law. For the power of the pope neither is set up by the Church, nor can it be changed, lessened or abridged by it, but the grant to the Church by Christ was only that according to the laws which the popes themselves prescribe it has the faculty of electing persons to whom this power should be attached. But, on the other hand, the supreme civil power is constituted by the commonwealth as such and such, and so great and so great, and restricted in this or that degree, and descends from an other or others, in accordance with the free will of the commonwealth itself.

Therefore with respect to the first argument on the contrary the minor premise should be denied. For far different is the power that the commonwealth gives to the king from that which it has within itself; and it can give him a greater or less power, as has been said. But as the proof of the minor it must be said that, after a king has been set up, there do not in fact exist two powers of which either could proceed directly and justly to the act of exercising jurisdiction and rule over the elements of the commonwealth. For truly whatever power the commonwealth has granted for the future to the king independent of itself, just that much power it takes away from itself, so far as the immediate use of it is concerned, nevertheless it must not be denied that two powers exist, one in the king, the other, indeed, habitual in the commonwealth, meanwhile impeded from acting whilst that other power endures, and so much precisely impeded as the commonwealth for the future has granted that power independent of itself to the king. But when that power has been done away with, the commonwealth can wholly use its own power. Besides, as long as that power lasts, the commonwealth can resist it, if it does aught unjustly against the commonwealth, or exceeds the limits of the power granted it. Also the commonwealth can exercise directly any function of its own power that it has reserved to itself.

As to the second argument, if the foregoing is conceded, the consequence must be denied. For just as it is of the natural law that the commonwealth or prince could order or cause malefactors to be punished, but yet it is of the positive law that by this rather than by that punishment they would cause

this or that dereliction to be punished; for the reason that what they would have wished to decide in this matter would depend on their own free will and on the law; so it is permissible that it be from the natural law that the commonwealth select some one or several governors to whom it will give the rule, because it would be unable as a whole to rule itself; yet it is of the positive law of the commonwealth itself as to whatever kind of government it should in particular select, because it depends on the free will of itself to select this rather than some other.

DISCUSSION XXVII

BY WHAT REASONING THEN ALL LAWFUL SECULAR POWERS ARE OF GOD

Since all lawful lay powers either are of the natural law, as the power of the father over the children, husband over wife, the commonwealth over its elements, and therefore are of God as the Author of nature, or descend from the natural law and are constituted by positive law, partly from the power directly granted to it by the natural law, as are all the supreme law powers, and, if any others, are directly constituted from the whole body of the commonwealth; but partly through the power derived indirectly for this purpose from the natural law, such as are the other powers which indirectly are constituted by the whole body of the commonwealth as a channel, as the regal, and by the other powers created by it (the State) and through the power granted for this purpose to them for the common good of the commonwealth; it certainly follows that all the lawful lay powers are proximately or remotely from God and so are constituted in accordance with the divine good pleasure and will. Whence it is permissible that powers that are legally constituted or prescribed by the regal or other lawful inferior powers are of the positive law; yet the fact that they are obeyed after they are so constituted is of the natural law, as the natural light of understanding itself, out of the very nature of things, so teaches it and prescribes it, and thus it is of the divine law from God, so constituted by the ordinary nature of things.

Therefore it comes about that the laws and precepts, not unlawful, of the lay powers are of human law, but the fact that we obey them is of the natural and divine law. For as our most excellent and very great God governs this whole world as for natural matters through natural subordinate means, of which some are directed from Him as the angels, the heavens and the stars, on which depend the government and procreation of these that live within, but some directly, with some other secondary causes in between, by which process He is said to come into contact with everything strongly from end to end and to dispose all things smoothly, by not excluding the influence and operation of the causes, since still to His wisdom and providence is attributed the governance of the whole universe as to natural matters; so clearly it is He Who governs and directs all creatures endowed with free will for their own purposes, not only natural but also supernatural, through lawful powers derived from and constituted very proximately or remotely by Himself. So it is that all lawful powers which we are

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held to obey are from God and hold the place of God, each in his own order and degree, so that while we obey them and observe their precepts, we are obeying God equally in them. Therefore Paul in Romans 13, speaking about these lay and secular powers, says: "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whoso resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation." And after a few other things: "For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake (that is, that ye may avoid punishment). For this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing." And Timothy 3 (Should this read Titus 3? Editor): "Put them in mind to be subject to principalities and powers, to obey magistrates"; I Peter 2: "Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king as supreme; Or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well. For so is the will of God." And below: "Honour the king. Servants, be subject to your masters with all fear; not only to the good and gentle, but also to the froward." And Paul says, Ephesians 5: "Submitting yourselves one to another in the fear of God. Wives, submit yourselves to your own husbands, as unto the Lord. Therefore as the Church is subject unto Christ, so let the wives be unto their own husbands in every thing. And Ephesians 6: "Children, obey your parents in the Lord: for this is right. Servants, be obedient to them that are your masters according to the flesh, with fear and trembling, in singleness of your heart, as unto Christ; Not with eyeservice, as menpleasers; but as the servants of Christ, doing the will of God from the heart; With good will doing service, as to the Lord, and not to men."

From this it is clear that the secular powers are of God, and God Himself refers to them as ministers of God. Besides, when we obey them we obey God and observe the will and precept of Him. Hence is further easily plain how foolish is the error of those that assert that the regal rule is contrary to natural law and that all kings are tyrants and that their government is contrary to Christian freedom and the evangelical law. For nothing that is in consonance with right reason and is derived from the natural law and wholly agrees with the Holy Scriptures can be against the natural law. Besides Melchisedec was King of Salem and priest of the Most High God.

Joseph was the deputy of King Pharaoh of Egypt. David and Saul were appointed kings by God. And in Deuteronomy 17 it was granted to the sons of Israel to set up kings for themselves, and the laws of the kingdom are prescribed in that passage. Likewise in Proverbs 8 says God: "By me kings reign, and princes decree justice." But since nothing is prohibited in the Gospel that is not prohibited in the natural law, and the freedom of the Gospel is based on this—that we have been freed from the yoke of the old law, and that from the slavery of sin we are made free by justice, it is wholly ridiculous and entirely inappropriate to assert that the regal government is repugnant to the Gospel and the freedom of the Gospel.

In consequence of these considerations which have been mentioned not only in this but in nine other preceding discussions, it will be more easily clear to anyone that there are some infidel nations, and that there is no reason at all why among the inhabitants of these nations there should not be true kings to rule them, and that some other secular powers are lawful. Nor likewise is there any impediment to the infidel lords of these states being themselves lawful, which as private individuals they possess as their own. For jurisdictional and proprietary dominion is common for the whole human race, and the foundation of them is neither faith nor charity, but indirectly or directly they arise out of the very natures of things and from the first constitution of these things, by reason of nature being dissolute through sin, and of the division of things having been made for this reason, as has been explained.

DISCUSSION XXVIII

WHETHER CHRIST, SO FAR AS HE WAS MAN, WAS A TEMPORAL KING AND LORD OF THE WORLD

Since the supreme lay power has been explained, to compare that with the ecclesiastical power of the pope, and to derive the matter from its egg, as they say, we must inquire how much power Christ had in respect to temporal matters. Now it is at least plain that Christ, as God, is the Lord of all by the law of creation, as shown in Discussion XVIII. But it is doubtful as man, whether He is also Lord of the earth, as if by the gift of the Father he received the dominion of the temporal jurisdiction over the whole world, and was constituted by Him as king of the whole world over all the princes of the earth.

The affirming group is comprised of Burgensis in the addition 2 to Matthew 1; Nicholas the Great on that passage of Hebrews 1, "whom he hath appointed heir of all things"; Roffensis, article 25 against Luther; Albert Pighius, Church Hierarchy, Book V, Chapter III; Almain, On Church Power, Chapter VIII; Bachonius, Book IV, q. 1, Prologue, art. 2, and q. 11; Navarrus, Chapter Novit., de iudiciis, notab. 3, number 8, and 130; Hostiensis, Chapter Quod super his, de voto; and others of the experts in the law, who, having leaned on this foundation, assert that the pope who received this power from Christ which Christ held on earth is temporal lord of the whole world. With this opinion agree Durandus, On the Origin of Jurisdiction, q. 3; Torquemada, Summa, Book II, Chapter CXVI, ad 2; St. Anthony, Part III, Title III, Chapter III, at the beginning; and St. Thomas, De regimine principum, Book III, from Chapter XII to Chapter XV; likewise he seems to make the claim in Part III, p. q. 59, art. 4, on John, explaining these words, "if my kingdom were of this world." Bernard asserts this opinion without any enigma in 3, De consideratione to Eugenius at the beginning in the following words: "Direction has been entrusted to you over the world; possession has not been given. You are not he of whom the prophet said: 'And all the earth will be his possession.' Christ is He who claims possession for himself, both by the law of creation, and by the merit of redemption, and by the gift of His Father. For to Him it was said, 'the . . . Other: 'Ask of me, and I shall give thee the heathen for thy inheritance, and the uttermost parts of the earth for thy possession'."

Cede possession and dominion to Him; you have the care of it." Thus spoke Bernard.

This opinion is argued as follows. First, it seems to pertain to the dignity and excellence of Christ; nay, it even seemed owed to Him in consequence of the unity of humanity with the Word, through which humanity, so far as being a man, He was constituted head and master not only of men, but also of angels. Paul indeed says, Colossians 2: "which is the head of all principality and power." As he adds in Ephesians 1: ". . . and set him at his own right hand in the heavenly places, Far above all principality, and power, and might, and dominion, and every name that is named, not only in this world, but also in that which is to come: And he hath put all things under his feet, and gave him to be the head over all things to the church, . . ." Moreover it seems that the Eternal Father did not deny to the Son what pertained to His dignity and preeminence, whatever the Head of all creatures claimed in consequence of the gift of union as if by His own right.

Secondly, Apocalypse 19, we read that it was written about Christ: "he has written on his vestment and on his thigh, 'King of Kings and Lord of lords' ". Psalm 2, "Ask of me, and I shall give thee the heathen for thy inheritance, . . . and for thy possession." Psalm 103: "his kingdom ruleth over all." Matthew 28: "All power is given unto me in heaven and in earth." All, says Christ, and not only the spiritual. John 13: ". . . the father had given all things into his hands, . . ." Hebrews 1: ". . . whom he hath appointed heir of all things, . . ." Moreover it is very clear that not as God, but as man he has been appointed heir of all things. And in Chapter 2 Paul says of Christ: "Thou hast put all things in subjection under his feet." He adds, "For in that he put all things in subjection under him, he left nothing that is not put under him." This he explains more fully in I Corinthians 13 and adds: ". . . it is manifest that he is excepted that put all things under him." Therefore Christ, as man, is the Lord of all created things.

Thirdly, Christ had used at some time temporal power. For in Matthew 8, when the devils besought Him: "If thou cast us out, suffer us to go away into the herd of swine," He said, "Go, . . . and they perished in the waters." Matthew 21: He cursed the fig tree and it withered. Likewise, with a scourge He drove from the temple those buying and selling. Moreover in these matters Christ did no injustice, but He used His own right and power.

Nevertheless, to be sure, the contrary opinion is that Christ neither had dominion over temporal things nor was a temporal king, but His kingdom was a spiritual one of the

Church militant first in this world and later triumphing forever in the other world (on the account that both Churches are exactly one and the same, differing only in the diverse states, as we have shown in q. 1, of that 2, 2, art. 1) and this opinion is asserted by Victoria, Relection I, On the Ecclesiastical Power, next to last question from number 15; So to, in 4, d, 25, q. 2, art. 1 & 4; On Justice, q. 4, art. 1; John of Paris, On the Regal and Papal Authority, Chapters VIII and IX; and Bartholomew de Medina, 3 Part, q. 59, ad art. 4; and St. Thomas. The same opinion is reflected in Abulensis . . . on Matthew 21, q. 3, explaining this saying of Zacharias, "Behold, thy King cometh, etc."; Augustine and others on those words of John: "My kingdom is not of this world"; and Ambrose, Book III, on Luke, near the end.

But it can be proved. First, since when in the Holy Scriptures mention is made of the kingdom of Christ it is the spiritual kingdom, not the temporal; therefore without any basis is it asserted that Christ is a temporal king. Above it is proved from that passage in Psalm 2: "Yet have I set my king upon my holy hill of Sion," that is, the Church, which is His kingdom; following this, John the Baptist, Matthew 3: "Repent ye, for the kingdom of heaven is at hand." This Christ teaches more clearly Himself in John 18, as He says: "My kingdom is not of this world." For by these words He clearly taught that He is not a temporal king, and yet He has a kingdom of the other kind different from the mundane and perishable. For when Pilate asked Him, "Art thou the King of the Jews?" Christ answered him, "Sayest thou this thing of thyself, or did others tell thee of me?" For if he spoke of himself, being ignorant of the law, clearly he thought of the temporal kingdom. But if not of himself, but if he was speaking because of the accusation of the Jews, doubtless the saying was about the kingdom of the Messiah, nor indeed did Christ make Himself out to be a king other than by professing Himself to be the Messiah. Therefore that Christ might better instruct Pilate, He interrogated him: "Sayest thou this thing of thyself, or did others tell thee of me?" Therefore when Pilate added that his question had its origin from the accusation of the Jews, saying, "Thine own nation and the chief priests have delivered thee unto me: what hast thou done?" Christ answered, "My kingdom is not of this world"; as if He would say, "Do not be deceived, Pilate, My kingdom, which has regard for Me as the Messiah and concerning which the Jews accuse me, is not of this world." But when Pilate said then, "Art thou a King then?" Christ answered, explaining the limit and kind of His kingdom: "To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth," to be sure,

by teaching men the faith and the way of eternal life. This is that same thing which Psalm 2 after the words referred to had predicted ("I will declare the decree") And also this is the kingdom of the Messiah about which the angel in Luke 1 spoke to the Blessed Virgin: "and the Lord God shall give unto him the throne of his father David": that is, promised David His father that it would be for the Messiah, promised to the same David from his own seed, and whose prototype David was in his own kingdom. Moreover this throne and this kingdom of the Messiah plainly are none other than the Church, which is one and the same from the beginning of the world, and it goes from militant to triumphant, and from the Church of the natural law of the synagogue it has been transformed into the Christian Church, made out of two folds into one fold under one shepherd Christ and His Vicar the Pope, by the destruction and laying aside of the wall of the old law which divided those folds before the death of Christ, as above, 2, 2, question 1, article 10, we have set forth. But because when the angel was speaking with the Blessed Virgin almost the whole Church militant was only the synagogue, which house and offspring was Jacob, to whom especially the Messiah had been promised, and which was to be transferred into the Church of Christ, and with continuing, while God raised up in the synagogue that prophet and lawgiver of which Moses had spoken in Deuteronomy 18: "The Lord thy God will raise up unto thee a Prophet from the midst of thee, of thy brethren, like unto me; unto him ye shall hearken"; and farther on God Himself said: "I will raise them up a Prophet from among their brethren, like unto thee, and I will put my words into his mouth; and he shall speak unto them all that I shall command him. And it shall come to pass that whosoever shall not hearken unto my words which he shall speak in my name, I will require it of him." Therefore about Christ the angel added: "And he shall reign over the house of Jacob [that is] for ever; and of his kingdom there shall be no end." Therefore the Church, or the kingdom of the Messiah, is called the kingdom of David, because to David, his offspring it was promised, and because the kingdom of David was the prototype of the kingdom of the Messiah. For as David was appointed king over the people, the elect of God, so is Christ, over the Church, the elect of God. And as David was anointed king before he attained the kingdom, and only came to his kingdom through many tribulations and disturbances, before he reigned in Judah and Benjamin and afterwards in the three tribes; yea, he afterwards even extended his rule to the nations; so Christ was anointed by His Father in the kingship of the Church before He founded it and acquired it for Himself by

His own blood through His death and various tribulations, and first He reigned among those who were converted to the faith among the Jews; but afterwards He brought the kingdom of the Church to the nations far and wide. And for these reason Ezekiel 34 and 37 says that the Messiah to be would be known under the name of David: "And I will set up [saith the Lord] one shepherd over them, and he shall feed them, even my servant David, and he shall be their shepherd." And again, "And David my servant shall be king over them; and they all shall have one shepherd." About the same kingdom of the Messiah, about which the angel spoke to the Blessed Virgin, also Isaiah prophesied in Chapter 9. For after he had said such and such— "For unto us a child is born, unto us a son is given: and the government shall be upon his shoulder: and his name shall be called Wonderful, Counsellor, The mighty God, The everlasting Father, The Prince of Peace," he added: "Of the increase of his government and peace there shall be no end, upon the throne of David, and upon his kingdom, to order it, and to establish it with judgment and with justice from henceforth even for ever." This clearly agrees only with the kingdom of the Church by reason of the Church triumphant. For though all the earthly kingdoms will have an end with the world itself, clearly the kingdom of the Messiah, which in Luke 1 is said to be eternal and have no end, and in Isaiah 9, is said to have to be established with judgment and with justice from henceforth even for ever, and in Daniel 7 is asserted to be everlasting, which shall not pass away, is none other than the kingdom of the Church, as it embraces its state of militant and triumphant. And about this kingdom in Psalm 89 God says: "I have made a covenant with my chosen, I have sworn unto David my servant, Thy seed will I establish for ever, and I will build up thy throne unto all generations." But this passage in Isaiah 9 we have set forth at great length I p., q. 27, a. 1, discussion 2.

Secondly, this same opinion is proved, since in Jeremiah 22 its is spoken of Coniah: "Write ye this man childless . . . : for no man of his seed shall prosper, sitting upon the throne of David, and ruling any more in Judah." But Christ was of the seed of Coniah, as is established by the Gospel. Therefore the kingdom of Christ on the throne of David was not temporal and earthly, of which Jeremiah was speaking in this passage, but spiritual, such as has been explained a little while earlier and concerning which the angel and Isaiah spoke in a literal sense. Also in the same manner Jerome, on the cited testimony of Jeremiah, and Ambrose, passage cited, very copiously and learnedly, and other teachers generally reconcile the testimony of Jeremiah with the testimonies of Luke 1 and Isaiah 9. Therefore Christ was not a temporal king, having lay power.

Thirdly, since in Luke 12, when there was a controversy and discussion about temporal inheritance, Christ said: "Man, who made me a judge and divider over you?" If however He had been constituted a temporal king by God the Father, surely He would not have denied that He had been constituted a judge.

Fourthly, since this power would be in Christ in vain, which He never was to use; for power does not exist except for employment.

Fifthly, it is proved since that power was not at all conducive to the end of redemption of mankind through the humility and poverty of Christ; nay, rather the contrary was more expedient and more becoming to Christ Who was intending to show Himself as the example of perfect poverty and contempt for human possessions, for that poverty is the more perfect that not only gives up for itself the use of things, but also the right, dominion and property in them, than that which surrenders only the use. To what purpose likewise would Christ receive dominion over temporal things, which Paul counts as dung and of which and of which He was not to have the use?

It is added in the Extravagants, *Cum inter nonnullos: Et quia quorundam, de verborum significacione*, that it is held that Christ and the disciples had dominion of few things; therefore Christ as a man was not lord of all things.

With this explanation what we think of the matter will become plain from the following conclusions.

First conclusion. Christ as a man is king of the Church militant on earth and triumphant in Heaven with plenitude of power over all things which are necessary for the proper supernatural purpose of the Church. And this is the proper kingdom of the Messiah, of which Christ spoke in saying, "My kingdom is not of this world," that is, it is not such as the transitory and perishable kingdoms of the earth, but spiritual and eternal, and for a purpose far different from the proper end of the earthy principates. This is the dogma of the faith in which we all agree. In fact, this is confirmed by almost all the arguments which have been proposed on both sides of the question.

Second conclusion. Christ had plenitude of power not only in spiritual matters for the founding of the Church which He obtained with His own blood—to give it laws, to institute sacraments, and the ecclesiastical powers by which it is administered, and for all the purposes which He judged suitable to its supernatural purpose; but also for the same end He had a plenitude of power in temporal matters clearly to the extent that He could and can change and determine kings and all other things in temporal matters which He deemed to be expedient

for the supernatural purpose of the Church. In this conclusion Victoria and Soto agree, *loc. cit.*, with the teachers of the prior opinion.

Lastly, it is the common opinion of the teachers—and while the arguments prove it the least which were proposed in the later proposition, and while it will be made more clear by the things that we will set forth in the following discussion—that the Pope has plenary power in temporal affairs over the members of the Church, to the degree exactly necessary for the supernatural end of the Church. For these same things prove this very point, not only from Christ as man this power is derived by the Pope, but also that it was entirely becoming that just as Christ left to His Vicar power in temporal matters over all the members of the Church which He subjected to him to the degree that He judged it to be necessary for the supernatural end of the Church; so also the Eternal Father granted to Christ the power of preeminence in temporal matters over the whole world for the preparation of the Church for its supernatural purpose, which He was founding and whose King, Head and Master He was being created.

Third conclusion. Christ, so far as He was descended from David by carnal propagation, neither was by hereditary right lord of the earth nor King of Judea. The first of these is common to all, since neither David nor any of his progenitors was lord of the world, and thus Christ by hereditary right, so far as He was descended from David, could not be lord of the world. But the second is contrary to Armachanus [Richard Fitzralph, Bishop of Armagh] *De questionibus Armenorum*, Book IV, Chapter XVI, Burgensis and Bachon, *Lo-cis citatis*, who assert that by hereditary right the temporal kingdom of Israel was due Christ as its lord, so far as either by reason of the Blessed Virgin, or by reason of Joseph, of whom Christ was the legal heir, he was descended from David. Yet by far the opposite of this is asserted by Victoria, Soto, Almain and the common opinion of the doctors. And indeed granted that it has been established that the Blessed Virgin and Joseph were descended from the regal branch of David, yet it is not established that there were not other descendants of David to whom rather by hereditary law this kingdom of David would pertain; nay, rather the contrary is by far probable. Besides, the temporal kingdom of David in Jeconiah, or in Zedekiah, his uncle, following the prophesy of Jeremiah cited, was ended. Add also, that the Maccabees were lawful princes, who however through the masculine line were not descended from David, but they were priests of the tribe of Levi. Nay, rather there is no mention that they traced their ancestry through the feminine

*Insert: not.

line from David, or that to them the administration of the Commonwealth pertains, because they were the posterity of David. But rather they, not as kings, but as judges and leaders, who were at the same time priests, were holding the helm of that state. But if the kingdom then of Judea pertains to the posterity of David, they clearly would have been tyrants, which should by no means be said of most holy men. Yet it should not be doubted that they descended from the tribe of Levi by the feminine line, and for this reason even up to the coming of Christ, following the prophecy of Jacob in Genesis 49, the scepter did not depart from Judah, nor a lawgiver from between his feet. Grant that these were not kings, nevertheless they were lawgivers and judges of the Jewish people; and so even up to the coming of Christ there was not wanting of the tribe of Judah one who would rule the people of the Jews. Moreover though in the last chapter of Numbers it was prohibited to the sons of Israel to take wives from another tribe, yet this only had place when there was danger on account of the lack of men that the immovable goods of one tribe would go to another tribe, and for this reason inheritances would be confused, as St. Thomas as says in 1, 2, q. 105, a. 2 ad., and it is very plain in the chapter itself. For in that passage the only reason for that law is given from which the legitimate meaning of that law should be taken. Further openly it is there intimated that when the peril ceases the women can marry whom they please, and the men can marry whom they wish. This is also most plainly proved from other parts of the Scriptures. For II Chronicles, the sister of the king of Judah married Jehoida the priest who was from the tribe of Levi. Michal, who was of the tribe of Benjamin, married David, who was of the tribe of Judah. And Elizabeth of the tribe of Levi was the cognate of the Blessed Virgin, who was of the tribe of Judah. Also there are very many other examples of this kind in the Holy Scriptures. Therefore, since the tribe of Levi would have no inheritance beyond the other tribes, it was blameless for the women of the tribe of Levi to marry whom they wished, as affirms St. Thomas in 4, d. 30, q. 2, a. 1, last small question to the fourth. And now it was laid down in the customs that the tribe of Judah and the tribe of Levi were mingled by marriages. Read, if you please, Cano 2, de locis, c. 14, ad 1.

Fourth conclusion. Christ, as a man, in this sense was not the lord of the world nor of temporal kings, because He took away neither the rights nor dominions of kingdoms and of other things from others and did not usurp them for Himself, but they each remained just the same with their rights of kingdoms as if Christ had not come into this world. And

this is true not as a gift of Christ so far as He was man, as if He had received these things first and afterwards bestowed them on men, but because just as He despised the administration of kingdoms and the possessions of other temporal things, so also the kingdoms themselves and the other things proper to them He left to the lords. This is sufficiently proved by the reasons by which we have confirmed the following opinion. And nothing more do Augustine and Ambrose desire, as is manifest to the reader.

Fifth conclusion. Christ, so far as He was man, had by the gift of His Father the power of preeminence over all temporal things and right over all creation, not only exactly so far as was expedient for the spiritual and supernatural purpose of the Church Universal, but also absolutely, to such an extent that, without injustice to anyone, He could have, and could now, assert His right to all the kingdoms of the world, to depose kings, and finally could make determination with respect to all temporal matters at His pleasure by right and His power which He has over all things. Thus it is that for this reason, so far as He was man, he could be called the Ruler of the world and the King of kings, even as far as temporal things go, because all temporal things are wholly subject to Him, and He Himself is the Head and Lord of all. And I say this because I think that to the degree that God, as God, is the Universal Ruler of all things, the particular dominions, granted to creatures endowed by God with free will, are not inconsistent with this sole Ruler, as has been set forth in Discussion XVIII; so also He granted Christ, because He is man, the right and absolute power over all creation, by fully subjecting all to Him, even in temporal matters; since this the dignity and preeminence of Christ required, and since in consequence of the gift of union, by which He was created Head of men and angels out of the nature of the matter for this very reason, as if He was purchasing it by His own right for Himself. Now this did not take from other men the rights and power over kingdoms and the other things that God had granted to them, but God only subjected all these things to Christ in such a way that they depend on His power and will; not indeed that dominion over things has been conferred on men by Christ, as man, and not by God, but because these very things depend immediately on Christ as fully and naturally subjected to Him.

Soto in 4, loc. cit. seems to intimate the conclusion explained in this manner, when he affirms that Christ, as man, could have, if He had wished, taken the universal dominion of the whole world, even secular, but He did not take it, except the spiritual kingdom. Therefore he indicates that in Christ,

as man, has been granted by God the Father power and right over all secular matters for Himself; for if He did not have this, surely He would not have been able to take the dominion over the world, which nevertheless by no means did He take. Besides, if Christ as man did not have power and right of this kind over all temporal and secular matters, plainly His poverty and rejection would not have been so commendable, seeing that without injustice He would not have been able to lay claim to the administration and dominion over the kingdoms and other temporal matters; because as man He would not have a right to this power and therefore it would not have been within the exercise of Christ's will. Moreover in this he elucidates especially the example of Christ as to poverty, humility and self-denial, that although everything was subjected to Him and He was able to lay claim to all for Himself, He desired to take neither the use nor the administration of his own possessions, and He desired to lead a very poor life. And also this is what Paul teaches II Corinthians 8 when he says plainly in these words: "For ye know the grace of our Lord Jesus Christ, that, though he was rich, yet for your sakes he became poor, that ye through his poverty might be rich." For he speaks of Christ as man and says: "Though He was rich, certainly with the right and the power which He had of taking for Himself all as the Lord of all things, as a man He was made needy for your sakes, desiring nothing, but choosing for Himself a lowly and humble life." Matthew 17 confirms this same conclusion in the following: "For when those collecting tribute had spoken to Peter, saying, 'Doth not your master pay tribute?' Christ prevented Peter, saying, 'What thinkest thou, Simon? of whom do the kings of the earth take custom or tribute? of their own children, or of strangers?' And when Peter had answered, 'Of strangers,' Christ concluded, 'Then are the children free.'" As if He would say, How much more therefore I, though I be a man and am the Son of the King of all kings, will be free and immune from all power of temporal kings. "Notwithstanding, lest we should offend them [though I am bound by no law of tribute] go thou to the sea, and . . ."—clearly this is the plain and genuine sense of the passage, which does it no violence; others are foreign and violent. Therefore I wonder that some adduce the passage of John 18: "Thou couldst have no power against me, except it were given thee from above," to prove that the power of kings and rulers is of God; as if the power of Pilate over Christ was legitimate and granted to Pilate from God. Of course, by divine law Christ was exempt from all created powers; nay, rather as man he held all powers

subject to Himself, and this the dignity and preeminence of Christ properly demanded. Moreover with respect to that expression, "except it were given thee from above," likewise it here signifies what was permitted for the redemption and blessing of mankind. It is confirmed since the power which Pilate exercised over Christ was unjust; for he knew Him to be innocent and to have been handed over through envy, and for this reason Christ said to him, "therefore he that delivered me unto thee hath the greater sin"; that is, as if He would say, you commit a sin in that you judge me without cause and treat me wickedly, but he who delivered me to you has the greater sin. Therefore it happens that the power which Pilate exercised against Christ was not of God, for only just power comes from God. Plainly all these arguments sufficiently prove and establish our fifth conclusion, which we put forth at the beginning of this discussion for the confirmation of the prior opinion. Rather I suspect that the authors of the later opinion would not have opposed it, if, as explained and proposed by us, it had been proposed to them. For they seem to have wanted only what our fourth conclusion asserts; and this I believe the authors of the prior question would not oppose. Therefore all seem to agree.

There remains that the arguments of each opinion be refuted which seem to conflict with the fourth and the fifth conclusion. As to the first of the prior opinion it must be said, that the sole power and right over all creation, according to those things which have been said in the fifth conclusion, pertain to the dignity and preeminence of Christ; but not the temporal kingdom and monarchy of the world through the usurpation and ownership from private individuals, or through use, possession and administration of temporal things, as is explained in the fourth conclusion. As to what pertains to the testimony adduced in the second conclusion, clearly these things prove that not only the spiritual dominion of Christ over the Church, by which plan He was created the complete judge of all, to Whom every knee will bow, and Who will give to each according to his works, but also everything, or surely very many things, prove His power, right and dominion over all temporal things as a whole, as we have explained in our fifth conclusion. But all those matters of which mention was made in the third conclusion were lawful for Christ, not only because it was expedient for the spiritual good of the Church which He was founding, in the order for which He had most plenary power over temporal things, but also absolutely and entirely, to the extent He naturally had right and dominion over all cre-

ation in accordance with the second conclusion.

To the first of the later opinion it must be said that mention is not made only of the kingdom of the Church in the Holy Scriptures as the plenary power of Christ is wholly explained by us in the fifth conclusion, but also at the same time Christ's power of king is delivered, as has been shown, which, nevertheless, is rightly called a kingdom not of this world, since indeed it was not to have the use and administration of temporal matters, as have the powers of earthly princes.

To the second it must be said that it only proves that Christ did not have a kingdom temporal and of this world in the sense very accurately explained; but not that He did not have that very plenary power, and also the right and dominion over temporal matters, which the fifth conclusion teaches.

To the third it must be answered that it indeed very well proves that Christ did not assume the office and duty of a temporal judge; but yet it does not prove that He was of a power, so that, if He should wish, He could do it; nor did Christ deny it, but He only intimated that He had not been appointed and deputized by anyone for doing this duty, which is not untrue.

To the fourth we must say that it was not in vain; not only because it through itself was becoming to Christ and was due Him from the very nature of the matter, although the full use of it was not expedient in all cases; but also because it was conducive especially to commend and exalt the example of poverty, humility and voluntary denial of Christ; and lastly because Christ had used this power at some time, although quite rarely, as in the events about which there is discussion in the last argument of the prior opinion.

To the fifth we must say that power, about which our fifth conclusion speaks, was not too little conducive to the end of redemption through humility and poverty and voluntary abasement of Christ, who, although He was rich, on account of us was made poor. Moreover that power, united with the act, that is, with possession, use and administration of things, temporal, is such as is not at all conducive to the end of redemption; and this Christ did not have, nay, rather, as dung, much more than Paul, He considered it. As to this, that it is said that the poverty is more perfect which gives up not only the use but also the dominion and right to these very things, it must be said that this is very true in us in whom there is the peril lest if we would leave the dominion and right to the use to ourselves, we again and again would be enmeshed in the use, administration and possession of temporal things, and we would be impeded in the worship of God and the quietude of

prayer, and we would be retarded from attaining perfection; but it is otherwise in Christ in Whom there was no such danger, and Whose voluntary poverty and denial especially the right and dominion over all things commended, which was in Him by the power of grace and the gift of the Father alone.

To the last we must say that in those Extravagants there is talk of the dominion over property in things in particular in such as way, of course, that the dominion over those things went from prior dominions to Christ and the apostles, by which covenant Christ and the apostles held dominion over very few things.

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DISCUSSION XXIX

WHETHER THE POPE HAS THE DOMINION OF TEMPORAL JURISDICTION AND SUPREME POWER OVER THE WHOLE WORLD

Many of the experts in law, to whom Navarrus in the Chapter Novit. de iudic. notabili 3, num. 19, refers, are of this opinion, as they proclaim. The Pope has the supreme civil power, or temporal jurisdiction, which is called also the temporal sword. However, Panormita, same chapter, and the Chapter si duobus, de appellatibus, and some others say he has that power, as it were, as his possession, and held in his shield, that is, granted to him, not exercising it himself, except in necessity, but exercising it through princes and secular powers, who owe the use of it to the nod of the Pope. To this opinion subscribe St. Antony 3 Part, tit. 22, chapter 5, paragraph 8, and Sylvester, at word Pope, question 7 and from question 10 to 14, and at word legitimate, question 4 near the end, having followed Hostiensis and Augustine of Anchona. Also Sylvester confidently asserts that the power of the Emperor and other secular princes is that of a delegate, by the provision of the Pope, and derived from God through the medium of things that Constantine gave to the Church he gave in recognition of the supreme temporal power of the Pope over the whole world; but on the contrary the Pope gave Constantine empire and lay power so far as the use goes. He adds also that if the Pope does exercise temporal jurisdiction beyond the patrimony of the Church, that is not from a defect in his power, but to avoid dispute and keep the peace. Some (as John of Paris, On the regal and papal power, at the beginning and Chapter 11 says) attribute to the Pope not only temporal jurisdiction over the whole world, but also proprietary dominion in such a way that if he should give up the use he would not be held thereafter to make restitution as usurer for what he had acquired through injustice, and if he should grant the property of one to another, the deed would hold, though the Pope should work a wrong. Yet this proprietary dominion Sylvester, St. Antony and the remaining doctors cited in common deny is proper for the Pope. First, the opinion of all these doctors can be urged, that Christ as a man is Lord of the world, or as we have shown in the preceding discussion has the supreme power in temporal matters, so that not only all the lay powers are wholly subject to Him, and He can at will dispose of them, but also all creation is wholly under Him, so that without

*Insert: not

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wronging anyone He can grant them to whom He pleases; but Christ left this power which He had to His Vicar; therefore he has this power conferred in temporal matters; and this the authorities cited attributed to him as conferred.

Secondly. Christ instituted the Commonwealth of the Church in a most perfect form, which, like a monarchy, would be reduced to only one supreme head; therefore the lay powers in temporal affairs are wholly subjected to the Pope no less than the optimates are subject to their own king; otherwise if in temporal matters they would not be subject to the Pope, then the government of the ecclesiastical Commonwealth would be reduced not to one supreme head, but to several, like a monstrous body.

Thirdly. The Pope, as has been said in Discussion XXIV, transferred the Empire from the Greeks to the Germans, and he gave the power of electing the Emperor to seven German princes, though the final authority of approval or annulment of the election was reserved to himself. Further, the Pope can, even if an Emperor has been already confirmed and crowned, if there be a need, depose him, as in fact Innocent IV. deposed Frederic. See Chapter 2, ad Apostolicae desertent. & re iudicata, lib. 6. Likewise Zacharias deposed Childeric, King of the Franks, because he was useless to the realm, and put forward Pippin, father of Charlemagne, as Gelasius, Chapter alius 15, qu. 6, says. And Innocent IV in the Council of Lyons gave to Sancho II, among four Lusitanian kings, because he was too remiss and negligent of mind, his brother Alphonso as his vicar and administrator of the realm, as is known from Book VI, Chapter Grandi, de supplenda negligentia praelat. Besides, when the imperial throne was vacant, the Pope dealt out justice to the subjects of the Empire, as is manifest from Clementina Pastoralis near the end, de re iudicata. But these considerations and several others clearly would not apply to the Pope unless he had the supreme power of temporal jurisdiction over all lay powers.

Fourth. The opinion of these doctors seems definite from Nicholas II, Chapter 1, 22, d. For he says: "He alone founded the Church, and He erected it on the rock of faith then growing, and He entrusted to the Blessed Key-bearer to eternal life the rights of ruling over both the earthly and heavenly empires." And much more definite it seems from Boniface VIII in Extravagant Unam sanctam de majoritate & obedientia. For he says: "In this Church and for its power there are two swords, that is, spiritual and temporal, we are taught in the Gospel. For when the apostles said, 'Behold, here are two swords,' (in the Church, of course, since

the apostles were speaking) the Lord did not reply that it was too much, but 'enough.' Surely, he who denies that there is a temporal sword in the power of Peter attends poorly to the words of the Lord as He says: 'Put up thy sword into the sheath.' So then there are both in the powers of the Church, namely, the spiritual sword and the material one; but the latter must be exercised for the Church, while the former, by the Church; the former is in the hand of the priest, the latter, in that of the kings and the soldiers, but at the nod and potential power of the priest. Moreover the sword should be under the sword, and the temporal authority should be under the spiritual power; for when the apostle says, there is no power but of God: the powers that be are ordained of God; they would moreover not be in good order unless the sword were under the sword, and as though the inferior were reduced by the other to its final form." And after a few words: "Moreover how much the spiritual excels in dignity and nobility the earthly power we should more clearly confess to the degree that the spiritual excels the temporal." Also he submits other things for the same opinion. Other reasons of less moment and the solutions to them—see, if you please, among others, in the works of John of Paris, On the Regal and the Papal Power, Chapter XII and following, and in Navarrus loc. cit.

Some have gone off into an extreme opinion, that the Pope has no power at all in temporal affairs, but in spiritual only. This opinion can be urged, since Christ the Lord entrusted to Peter and to his successors only the keys to the kingdom of heaven; since, this realm is far different from the earthly and the temporal; it follows really that all the power of the Pope is in spiritual affairs, and none in the temporal. It is confirmed from Titus 2: No man that warreth for God entangleth himself with the affairs of this world, and therefore Christ left him no power in temporal affairs. Other reasons and their solutions read in Torquemada, Book II, Summae, Chapters 115 and 116, and in Navarrus, loc. cit.

Between these two extreme opinions a certain middle ground should be adopted, which may be embraced in certain conclusions, in which agree Victoria, Relection of the Ecclesiastical Power, next to last question, and the Relection on the Island Indians, P. I, from Number 26; Soto, in 4, d. 25, q. 2, art. 1, a 3. conclusiones; Navarrus, Chapter Novit. de iudiciis, notabil. 3; Torquemada, Book II, Summae, Chapters 113 and 114; Henricus, quodlibet, 6, quaest. 23; Albert Pighius, Ecclesiastical Hierarchy, Book V; Pierre de Palu, On Ecclesiastical Power, Thomas of Walden, Teaching of the Faith, Bk. II, Chapters 3, 76, 77, 78; Sanderus, visibilis Monarchiae, Book II, Chapter IV;

Driedo, On Christian Liberty, Book I, Chapters XV & XVI, and Book II, Chapter II; Cajetan, in Apologia Volume I, Opusculorum tractatu, Chapter XIII ad 8, and supra in hac 2, 2, quaest. 43, artic. 8; Durandus, de origine Jurisdictionis, q. 3; John of Paris, On the Regal and Papal Power; and others. However, John of Paris somewhat more rightly restricts the power of the Pope in temporal affairs in favor of the secular princes. In this matter to him n. 4, Discussion XXIV, q. 3, is not of less importance in Jean Major.

But before we subjoin our conclusions this should be first noted. We do not speak of the lands rightly given to the Roman Church for its splendor and authority, likewise as a help to administering spiritual affairs, which therefore are said to pertain to the Patrimony of the Roman Church and St. Peter. For in lands of this type the popes have supreme power and temporal jurisdiction just like kings in their own realms, as Innocent II affirms in the Chapter per venerabilem qui filii sint legitimi. Therefore in these he has both swords very completely.

The following must be also observed with Driedo, Chapters XIV and XVI, loc. cit., Durandus, loc. cit., and others. Although the lay power, as has been shown in Discussion XXI, in the same subject is not inconsistent with the ecclesiastical power, and for this reason in the Church of Christ the counts and other optimates, who are appointed into bishoprics and other dignities, would by no means be bound to leave their temporal dominions, if they had any in their own patrimony, and besides, not only the Roman Church would have certain temporal jurisdiction for its splendor and prestige and also as an aid in administering spiritual matters, but also some inferior churches, as Toledo, Braga, Condeixa, etc.; although, as I say, these things are so, nevertheless it is wrong for the ecclesiastics, especially the prelates, to entangle themselves in temporal cares and affairs more than right reason requires, and than their responsibility and duty in the spiritual allows, to which before all things they are bound to devote themselves. Therefore because the responsibility of the Church Universal in spiritual matters is not compatible with the rule and the administration of the Empire in temporal affairs, for the reason that one does not suffice for both duties, it would be wrong either for the Pope to receive the Empire, or the Emperor, if he retains the Empire, to be elected Pope; rather also Paul says in the following words: "No man that warreth for God entangleth himself with the affairs of this life"; the contrary he teaches, and Christ in a far different manner taught His ministers, when in Luke 22 He said: "The

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kings of the Gentiles exercise lordship over them, etc. . . . But ye shall not be so, etc. . . . And I appoint unto you a kingdom, as my Father hath appointed unto me." By this it comes about that the temporal jurisdiction in the clergy should be limited, so that it does not exceed the responsibility, honor and authority which the dignity and status of each requires, and which may be exercised through the ministers appointed for this purpose.

With these preliminary notations, let the first conclusion be, that the Pope neither has the power of temporal jurisdiction in such a way that he be lord of the world, or that he can claim the name of king or emperor for himself, nor in such a way that the dominion of temporal jurisdiction is* from him to the kings; but the regal power is entirely diverse from the papal, which has its origin from God, by means of the commonwealth appointing a king by consent and selection for itself for the administration of temporal affairs and for a natural end; but the papal power has its origin from God through Christ creating it for the rule by furnishing it for a supernatural purpose so far as necessary. This conclusion is clear from those considerations which we have mentioned in Discussion XXI and what follows it, and Pope Nicholas expressly affirms it in his letter to Emperor Michael, Chapter Cum ad verum, 96, d, where he says: "When we come to the truth, besides neither does the Emperor seize the prerogatives of the pontificate for himself, nor does the Pope usurp the title of Emperor; since the same Mediator of God and man, the man Jesus Christ, by proper acts and distinct dignities separated the duties of both powers." And Gelasius in his epistle to Emperor Anastasius said the same things, d. 96, Chapter Duo sunt. "There are two, Emperor Augustus, by whom this world is ruled like a prince—the holy authority of the Popes and the regal power." He desires that the regal and the imperial power be subject to the popes to the extent that the popes, as pastors, are able to excommunicate kings and emperors and to coerce them when the spiritual end for which the power of the popes was ordered demands it. Pope John says in the Chapter Si Imperator eadem, d.: "The Emperor is the son, not the director of the Church. What belongs to religion it is becoming for him to learn, not to teach. He has the privileges of his power, which he has divinely acquired for administering the Church; God willed that what was to be determined by the Church pertains to the priests and not to the worldly powers, which, if faithful, he willed to be subject to the priests of His Church." And farther on, "Christian emperors should subject their own jurisdictions to the ecclesiastical prelates, not to prefer the former over the latter." And Innocent III,

*Insert: derived

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To the Emperor at Constantinople, Chapter, Solita de maiore itate & obedientia, says: "We do not deny that the Emperor takes precedence in temporal affairs as far as is required over those who undertake temporal affairs from his hand; but the Pope is preeminent in spiritual matters, which are more worthy than temporal affairs to the degree that the soul is superior to the body." Farther on, "For the firmament of the heaven, that is, for the Church Universal, God made two great lights, that is, two dignitaries, which are the Pontifical authority and the regal power. But the former, which is over the daylight, that is, the spiritual, is the greater; but what is over the carnal is less; so that as much difference is recognized as between the Popes and the kings as between the sun and the moon." And the Chapter per venerabilem qui filii sint legitimi, Innocent III says the same thing—that in temporal matters he does not have power over the King of the Franks, about whom at that point of the discussion he is speaking, and whom he says has no superior in temporal matters. Also in the Chapter Novi, 1, de iudiciis, he says that he does not intend to disturb nor to diminish the jurisdiction of the King of the Franks in temporal matters; as the King of the Franks does not wish to, nor ought he, impede the jurisdiction of the Pope, but he only wishes to proceed against him by the means of fraternal correction for sin in accordance with the form of the Gospel, and he states that judgment concerning a fief because it is a temporal matter, and does not pertain to the Apostolic See, but to the King of the Franks. Also Pope Miltiades, question 12, 1, Chapter Futurum, says that the chair of St. Peter got the estates and the city of Rome by the gift of the emperors. This also appears from the Chapter Constantinus, 96, disp.—therefore the popes are not the lords of the earth in temporal matters. Whence Bernard, 1, de consideratione to Eugenius, says: "In crimes, not in possessions is your power, since for the former, and not for the latter you have received the keys to the Kingdom of Heaven." Also later: "These things of the lowest and the earthy have as judges their own kings and princes of the earth. Why do you invade the bailiwicks of others? Why do you put your sickle into the harvest of another? Why do you put your sickle into the harvest of another?" And yet Bernard thinks that it is not beyond the power of the Pope to judge of temporal matters, not only in the lands of the Patrimony of the Church, but also about other things, when the necessity of the spiritual end requires it, but what he wishes is— "That what can be done be executed by others, but not by himself, except incidentally, and when something else cannot be done." He adds, "Not because you are unqualified, but because it is not becoming for you to insist on such things, seeing that you

have more preferable occupations. Finally when necessity demands, hear what, not I, but the Apostle thinks—'And if the world shall be judged by you, are ye unworthy to judge the smallest matters? But it is one thing incidentally to volunteer in this, even if indeed there is urgent cause; it is something else to apply yourself to your duties that are great and worthy of such and such intention.' So says Bernard. And at the end of the book he says: "These cases— it will not be necessary that all come to you— which necessarily will have to come before you I should like you to be accustomed to decide diligently but quickly." Further— "Certain business, as I have said, do not hear, but entrust it to others. What your hearing thinks worthy terminate with a short cut that is trustworthy and suited to the case." Besides Bernard excellently affirms in several places—in Book II, from that remark on Matthew 20 and Luke 22: Ye know that "the kings of the Gentiles exercise lordship over them: . . . But ye shall not be so," and from many other places: "Then, if the Pope were lord of the world, either it would be by natural law, or by human, or positive divine; it is not of natural law, or by human, as is plain; nor also is it of positive divine; since certainly to Peter and his successors it only was said: "And I will give unto thee the keys of the kingdom of heaven," and "Feed my sheep," in which is understood only the spiritual power for the purpose of the supernatural end; and not the temporal, unless as a consequence, as far as will be deemed necessary for the supernatural end. Therefore the Pope is not the lord of the earth, nor do the kings get their power from him, nor otherwise supernatural purpose, and also to this extent in other matters are they exempt and wholly independent.

Further the Pope has no greater power in temporal than in spiritual matters; nay, rather he has no power in spiritual things over infidels, since Paul in I Corinthians 5 says: "For what have I to do to judge them also that are without?" But he has only the power to set before them and to explain the Gospel and to invite them to the Faith; therefore he is not the lord of them in temporal affairs, and therefore he is not lord of the world. Add that since from the fact that men because converted to the Faith are not in a worse condition and do not lose their own rights and dominions (for that would be a very grave matter, to impose a yoke on men along with the Faith and to make it odious to them), it comes about that he is not the lord of Christians in temporal matters. Likewise by the coming of Christ into the world men did not lose their rights and dominions, nor from Him as man did they

receive them, or do they, as has been shown in the preceding discussion; therefore Christ did not institute the Pontificate so that men should receive their rights and possessions from the Pope, nay, nor that they should be dependent on him in these matters; for that was by no means expedient. Moreover, that power in Christ over temporal matters which we set forth in the previous discussion is in Him as a power of preeminence, which, just as it did not give him the power of preeminence in spiritual matters over which He was placing him, therefore He did not communicate to the Pope. Add, that grace and faith do not destroy but perfect nature; wherefore since before men took the faith of Christ they were true kings independent in their own temporal dominion from any other person, and this, through the power communicated to them by the Commonwealth, which had it by natural law; it truly follows from this that because they assumed the faith they had not at all lost that power and dominion; so that they may be coerced by him when they through abuse go astray. From these considerations it is known that Albert Pighius, in Book V of his not sufficiently praised Ecclesiastical Hierarchy, Chapters VII and XIV, was somewhat excessive when he allows that the Pope has no effect on the dominion of the world and attributed to him no jurisdiction over those who are without the Church; yet he wants the kings by the very fact that they come into the Church and are subject to the supreme head of it to hand over themselves and their scepters to the Church of Christ, and to recognize that these things are, as it were, received from the Church, and to rule as kings and emperors by reason of its judgment, as well as to be removed from their realms by it. For if he should wish the scepters and dominion of jurisdiction to be not peculiar to the princes themselves, to be dependent on the Church and its head and subject to him not otherwise than so far as the supernatural end generally requires, he affirms surely a falsity and to him we must not hearken.

From these things I infer first, that it does not pertain to the Pope in an ordinary situation and when the cause of the Faith is not at stake, and the exigency is not unlimited but is only to a degree grave with respect to working for the supernatural end either to make kings and other lay powers nor to depose them; but that this pertains to the commonwealths themselves, whose business it is, just as it is to make kings, so also, to depose them, as right reason dictates, and as a just cause comes up and urges. Yet the best plan is that when there can be a suspicion of any doubt, and when the commonwealth is not a unit, but only a majority agrees, the

Pope be consulted, so that by the intervention of his authority a greater degree of justice in the case may result; especially since for the most part the common spiritual good depends, this granted, on this—it looks to the Pope to interpose his authority and to aid the common good by censures and other means by compelling those who try to stand in the way of what the common good and the spiritual salvation of the commonwealth require. Indeed for this reason, when the majority of the optimates of the commonwealth demanded it, Zacharias deposed Hilderic and put forward Pippin in the kingdom of France; and Innocent appointed an assistant and supervisor for the King of Portugal, by compelling those with censures who were trying to stand in the way. Therefore the kings do not depend on the Pope in such a manner that they have been appointed by that bishop throughout different places as persons whom the supreme pastor and moderator of the Church in spiritual matters can create and remove; although he should not remove them without reasonable cause. Nor likewise do they depend on him as the optimates of the realm depend on the king, and just as the king, or other princes, not exempt from the Emperor, depend on him; granted that they are not susceptible of being removed by the Emperor. But rather the kings are exempt from the Emperor as the Emperor himself, and they are supreme powers in temporal affairs, being dependent on no one. But in a certain manner there is a greater dependence of the Emperor of the German Empire, with the people and Otto II consenting, was created conditionally, on the approval and confirmation of the Pope, as Discussion 24 shows.

Secondly, I infer that in the Pope there is no power of judging cases, suits and quarrels among the temporal princes directly, nor likewise is the Pope able to nullify those civil laws of the secular princes which do not derive from the supernatural purpose, nor can he decide that the secular judges should appeal to him in those cases whose legal investigation looks to the secular powers. And although he may legitimate any men who look to spiritual matters, as for taking orders for the obtaining of ecclesiastical benefices, and generally to those matters which look to the ecclesiastical jurisdiction; yet he cannot legitimate in those matters which pertain to the civil and temporal jurisdiction, as in the succession to inheritances and other matters which in the civil law are legally prohibited to illegitimate children; unless by chance the secular princes consent that the Pope should legitimate also in this respect, or unless the common spiritual good should in some event demand it; then indeed even if the secular prince were opposed, he would be in a position to judge in those matters which by their nature pertain to the secular

jurisdiction. And Innocent III wished nothing else in his Chapter *Per venerabilem, qui filii sint legitimi*. All these matters are manifest from the fact that the secular princes and their tribunals in the temporal administration of the commonwealth are exempt from the power of the Pope, except in these matters which pertain to the supernatural end, if ever they deviate from it, or ever anything at all would be necessary for the common spiritual good, as they say. Also indirectly, through the means to brotherly correction they can introduce themselves, both the Pope and the other inferior prelates, into secular affairs and controversies of the princes in the manner which is explained in the Chapter *Novit de iudiciis*, which more broadly we have explained in the material on fraternal correction and which we will follow in Tract V—yet on the condition that a prejudgment is not made in a secular forum. Whence Bernard in 1, *de consideratione* to Eugenius, to which a little before we have referred, says: "Your power is not in possessions. These mundane things here below have as judges their own princes of the world." And Alexander III, Chapter *Causam, 2, extra, qui filii sint legitimi*, says: "We, lest in directing our attention to judge in such possessions what pertains to the king and what to the Church, we seem to be detracting from the right of the King of the English, who asserts that the judgment in these matters pertains to himself, direct your fraternity that, leaving to this extent the judgment of possession to the king, you rather fully inquire into the main case, namely, whether the mother of the aforesaid king was born of a legal marriage, and that you determine a case of this type." And something similar Innocent III says, Chapter *Novit de iudiciis*, as has been mentioned above. Also Alexander III, Chapter *Si duobus*, paragraph *denique de appellat.*, says: "Do you ask, if an appeal has been made from a civil judge for a hearing by us, either before judgment, or after, whether an appeal of this kind should hold? It indeed holds in the cases of people who are subject to our temporal jurisdiction; but in the cases of the others, even if according to the custom of the Church it would hold, we believe, strictly following the law, it does not hold; because, of course, the secular tribunal in temporal matters is exempt from the Pope." Second conclusion. It is lawful for the Pope to have universal jurisdiction over the temporal goods of the Church; yet he is not the possessor of these, but the steward and the director, who therefore cannot at his whim dispose of them, but only in accordance with reasonable cause, and therefore if he should give them away without any reason, the gift is a nullity, and he himself as the donor should be held to resti-

tution of them to that church to which they pertain. This is the view of Torquemada, Book II, Summa, Chapter CXIII, proposition 6, and Cajetan, in this 2, 2, q. 43, article 8, in which place we have shown it, and it is common. But the reason for it is since possessions of this kind are not conferred on the Pope, or on other prelates of the Church, but certain were given to the Roman Church, indeed some were given to particular churches, as to Toledo, Eborac and others. Thus the ownership of these things is not in the Pope, or other prelates, but in the churches themselves, to whom the wealth has been given; but the prelates are the stewards and the governors of these things. But the Pope indeed, so far as he is the Head of the Church Universal, should be the over-all steward and director of all these goods, not only of those things belonging to the Church of Rome, but also of everything everywhere pertaining to churches which by its very nature pertains to the Church in its universal aspect, of which the Pope is the Head and Director, having as his subordinates and depending on him the stewards and directors of all the possessions of the individual churches. Therefore the Pope is lawfully the steward of and has jurisdiction over all the possessions of the Church Universal—yet he is not the owner of these things, nor can he lawfully dispose of them at his own whim. In comparison with the goods, however, which are particular and belong to individuals as well as secular as ecclesiastical, neither he nor a king, nor the Emperor has the right of proprietorship; nay, neither do they have the dispensing of them, because they are not goods of the community, so that the dispensing of them pertains to the directors of the community, but they belong to the individuals, whose giving is their business, and it does not pertain to the rulers of the multitude.

Third conclusion. The spiritual power of the Pope for the spiritual purpose has added to it, as if in consequence, a supreme and most full power of temporal jurisdiction over all princes and others who are of the Church, yet exactly as the supernatural end demands to which the spiritual power is ordered. Therefore if the supernatural end requires it, the Pope can depose kings and deprive them of their realms. Also he can judge as between them in temporal matters and invalidate their laws and execute everything else among all Christians which have been judged necessary for the spiritual end and the common spiritual salvation, not by whatsoever reasoning, but in accordance with the decision of a prudent man; and this, not only by using the force of censures, but also by external punishments, and by force, and by arms—not otherwise than as any other secular prince; even though to the

highest degree that it may be expedient, the Pope, not himself, but through secular princes do this. And so by this reasoning truly the Pope is said to have two swords and the supreme power both temporal and spiritual. Observe, nevertheless, that this supreme power of temporal jurisdiction, which resides in the Pope, since it is ordained not only for temporal matters themselves, but also for the spiritual end, is not merely a temporal power, but is also a spiritual one in consequence of its purpose. Therefore it results that the lay power should not be appealed to but the ecclesiastical, yet of the temporal jurisdiction, so that we may distinguish it from the strictly spiritual power, which has it annexed thereto.

The conclusion is explained in this manner is proved as follows. First, since the Christian Church, over which the Pope is placed by divine law as head and supreme governor, and any other secular commonwealth of any Christian prince are not two different commonwealths, such as the commonwealths of the Spaniards and the French, but they are mutually subordinated, so that one is included in the other, and the natural end of each secular commonwealth, as imperator takes care; but when two lord or moderators to this extent are subordinated that the end of one is subordinated to the end of the other, the superior lord and moderator prescribes the laws and limit to the inferior, so far as the superior end requires, as in the equestrian art is manifest in the manufacture of bridles and Aristotle teaches in Ethics, Book I, Chapter I. Therefore the Pope, who is over the Church for a supernatural end, has to order and prescribe to the secular princes and the other faithful of Christ, so far as he shall judge expedient, for the supernatural purpose. And clearly Christ would have insufficiently provided for His Church unless He had left all the Christian secular princes and other faithful subordinate and subject to the Pope in this regard, with very fullest power in the Pope to coerce them in his duty for that which he would plainly deem necessary for the supernatural end. Even more on this very account that Christ entrusted the supreme responsibility of the Church to Peter and his successors, it may be thought that in consequence He granted to them the power of which we speak. For God and nature do not fail in necessary matters; and when a duty or some government has been given to somebody, those faculties are thought to have been given him without which he cannot rightly do this duty, as is held in the Chapter praeter ea, de officio delegati, and as says the text On Coercive Force for the Purpose Enjoined.

But here this must be considered with Victoria, Relection On the Ecclesiastical Power, next to last question, 9 and

others. The power of the king does not wholly depend on the power of the Pope in the same manner as the art of providing reins depends on the equestrian, or the art of providing ships, on the art of navigation. For the arts of providing reins and ships are absolutely ordered for the purpose of the art of riding and navigating, in such a way, of course, that if there were no use of the horse reins would not be made, and if there were no navigation, ships would not be built; and therefore the arts of riding and of building ships wholly depend on the equestrian art and the art of navigation, and therefore on their purposes. But, granted that there were no supernatural end, nor consequently any power ordered for it, yet there would be a natural end to which the administration of the commonwealth is ordered, and therefore the power of the king for this purpose. And hence it is that the power of the king for his own natural end viewed in himself is independent of the Pope, and therefore the Pope cannot interject himself into the government of the secular princes, so far precisely as it has to do with the political and natural purpose of the commonwealth. Yet because the Christian secular prince can deviate in his government from that which the supernatural purpose of the Church especially demands, to this extent his government depends on the Pope, and the Pope can then control him and stop what he has thus ordered; nay, even, if there is need, punish him, and he is held in his administration to be under the Pope and to stand for everything that has been rightly prescribed for him for the supernatural purpose.

The second conclusion is proved as follows. Since the Pope has been appointed the Universal Pastor of the whole Christian flock by Christ, according to John 21, "Feed my sheep"; moreover it is the pastor's duty to recall them in to the path and collect to the way in whatever manner he can the wandering sheep, of whatever order and dignity, and this in the duty of the pastor is thought to have been granted and enjoined; therefore for this very reason that he has been appointed by Christ as the pastor of the Church Universal the aforesaid power is thought to have been given him. Also Innocent III uses this argument against a certain emperor at Constantinople, Chapter *Solitae majoritate & obedientia*, to show him that it was right for him to remove the emperor.

Third, no less is the Pope powerful now in temporal affairs than once was the high priest under the old law, but, as is held in Deuteronomy 17 when a dubious case has arisen, which the secular judges could not sufficiently define, the supreme judiciary looked to the high priest with the sentence of death for the man who was not willing to stand for his sentence; therefore to the Supreme Pontiff in the Church also jurisdiction

in temporal affairs pertains at least so far as the spiritual purpose over which he presides demands it. The words of Deuteronomy 17 are: "If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea, and between stroke and stroke, being matters in controversy within thy gates; then shalt thou arise, and get thee up into the place which the Lord thy God shall choose; and thou shalt come unto the priests the Levites, and unto the judge that shall be in those days and enquire; and they shall shew thee the sentence of judgment: And thou shalt do according to the sentence, which they of that place which the Lord shall choose shall shew thee; and thou shalt observe to do according to all that they inform thee: According to the sentence of the law that they shall teach thee, and according to the judgment that they shall tell thee, thou shalt do: thou shalt not decline from the sentence which they shall shew thee, to the right hand, nor to the left. And the man that will do presumptuously, and will not hearken to the priest that standeth to minister before the Lord thy God, or unto the judge, even that man shall die: and thou shalt put away the evil from Israel. And all the people shall hear, and fear, and do no more presumptuously."

Fourth. Since this is the expressed sentiment of Bernard, 4, *De consideratione*, to Eugenius, of whom these are the words: "Why should you try to usurp anew the sword which you once were ordered to replace in the sheath? Nevertheless he who denies your word seems to me not to sufficiently hold to the word of the Lord who says: 'Put up thy sword into the sheath.' Yours, therefore, and it, perhaps, at your nod, and if not by your hand, must be drawn. Otherwise, if also that in no way pertains to you, the Lord to the Apostles who were saying, 'Behold, here are two swords,' would have responded not, 'It is enough,' but 'It is too much.' Evidently therefore the Church has both swords, the spiritual and the material, but indeed the latter must be used for the Church, but the former, by the Church; the former by the hand of the priest, the latter by the hand of the soldier, but clearly at the nod of the priest and by the order of the Emperor." Where you see the words Boniface VIII in *Extravagant unam sanctam*, they have in great part been taken out of Bernard. These other sayings of Bernard it is also agreeable to add from 2 *De consideratione* to Eugenius where he says: "Come, let us further search out more diligently who you are, what person evidently you bear according to circumstances in the Church of God. Who are you? The high priest, the Pope; you are the chief of bishops, you are the heir of the Apostles, you are in primacy Abel, in governorship Noah, in the patri-

archate, Abraham, in order, Melchisedec, in dignity, Aaron, in authority, Moses, in judicature, Samuel, in power, Peter, in anointment, Christ." Also he adds much more in which he extols the dignity and power of the Pope. Since he indeed says in authority, Moses, in judicature, Samuel, clearly he teaches that there is in him power concerning temporal matters, which we intend to prove.

Fifth, it is proved from the Popes Nicholas and Boniface, above cited, who in the sense explained by us asserted that Peter at the same time received rights of earthly and heavenly power and holds both swords and the supreme power in temporal and spiritual matters.

Soto, Victoria and others from their words in the passages cited conclude that when the conservation of the faith of the Church or the common spiritual good demands it the Pope can depose kings. And for this reason he correctly transferred the power from the Greeks to the Germans and deposed Hilderic and deprived a certain king of Portugal of the administration of his kingdom; although Torquemada and Paludanus in THE POWER OF THE CHURCH very well add that, though the Pope may be able to depose kings, yet he cannot set up new ones, by depriving him of his kingdom to whom with respect to the defect of the deposed the right of ruling pertains in other ways, or if it would be necessary to choose another on account of the deficiency of the deposed, with the Pope only selecting and without the concurrence of the others in the election to whom the right of election pertained such as the commonwealth and its optimates. Victoria says— if nevertheless some Christian commonwealth should wish to select for itself an infidel king or another person by reason of whom the spiritual good would not lightly be endangered and though advised would not want to desist, the Pope could stop it; although the commonwealth would resist, he would be able to set up another in his place, even if the commonwealth vigorously protests and opposes. Moreover, if some prince should become a heretic or schismatic, the Pope could use against him the temporal sword and proceed even up to deposition and expulsion of him from his kingdom. And in the same way if some prince should offer aid to heretics or schismatics or other infidels opposing the Church, or would do anything else that is detrimental to the Church, he could in like manner use the temporal sword against him. So also, when Christian kings are contending among themselves for some principate or any other temporal things, and are breaking out into war, if therefore really a great hurt would be feared in spiritual matters; or because meanwhile the enemies of the faith were plundering the Church,

or because very grave spiritual injuries and sins would result, as are wont to occur from wars of this kind among Christians, the Pope could, to obviate these evils, hold court on a case of this kind and publish his opinion, even to unwilling people, and they would be held to stand for his judgment. But if he should not do this, say Victoria, Albert Pighius, Durandus, Torquemada and others, it is not that he does not have the power granted to him by divine law, but because he does not dare, fearing that thence may come rebellion from the Apostolic See, or other grave inconveniences. Likewise when princes are engaged in strife the laws that give way to the grave spiritual detriment of the very near and favor wrongs the Pope can order their makers to revoke; but if they should be unwilling, he himself can revoke them, and by this very act they lose all their force, though they are ones that would have force if the revocation were set aside. In this way the Pope abrogated that civil law by which it was laid down that after some certain time a possessor in bad faith could offer a pretext, as is clear from the Chapter vigilanti, and from the last Chapter de praescriptionibus; for that prescription without wrong on the part of the one offering the pretext could not exist, and it was inviting men to rapine and other sins. Moreover when one prince inflicts wrong on another in temporal matters, whence, however, grave hurt to the common spiritual good would not threaten, that case would not come within the purview of the Pope, unless through the means of the fraternal, or rather the paternal, correction, such as is the prerogative of the spiritual father and prelate to subject that prince to himself to eradicate sin from him; in this way all sins are a matter for the tribunal of the Apostolic See, as is held in the Chapter Novit de iudiciis. And this not only when they are public and appear as an offense, but also when they are secret and have an influence on the future; then indeed it is the duty of the Pope to compel and restrain offenders of this type, so that they will depart from sinning, not only by reproof, but also by other external penalties, as even fines and imprisonment, or exile, if the sin demands it, as sometimes concubinage is wont to demand. Yet by this procedure no prejudice ought to be inferred to the secular court in drawing to the ecclesiastical court cases which pertain to the former and which the lay powers have been prepared, according as it would be expedient, to accelerate in this manner. Very well Victoria observes in the Relection on the Insular Indians, Part I, Number 29— power for temporal purposes, as far as spiritual matters require, not only resides in the Pope in respect to all that are of the Church, but also in any bishop in respect to his subjects; and

bishops in the same manner could punish and restrain secular wrongs, not only by reproof, but also by exterior punishments of money and exile and other things; provided then that they do not do it from greed and for gain, but from necessity and for the convenience of spiritual things; and very badly do they act, either princes or temporal magistrates, who stand in the way of the bishops in this regard. Further the Pope in his own order and the other bishops in their degree have the power of exacting from the secular rulers subject to them the owed assistance for the administration of spiritual affairs and for compelling them in this; but since a case of this kind has reference to the spiritual purpose, it pertains to the ecclesiastical court. Likewise as a king, when an urgent necessity of the secular commonwealth arises, has the power of exacting aid from his subjects by which he may be helped in that predicament when otherwise he is unable sufficiently to be aided; so I think that the Pope, when an urgent necessity of the Church Universal arises, which otherwise would not be aided to advantage, has the power of requiring from Christian princes and his other subjects support and aid necessary for this purpose and of compelling them to be responsible for this emergency. The reason is, that the commonwealth of the Church should not be less sufficient to itself than any secular commonwealth, nor is less power believed to exist in this regard in the supreme Head of the Church than in the administrators of the secular commonwealths; nor are the members of the Church less held to conserve their own spiritual commonwealth than their temporal one. Torquemada affirms this, Summae, Book II, Chapter CXIV, Proposition 8, and Victoria seems to agree in his On the Ecclesiastical Power, question cited. Finally the Pope has the very fullest authority in temporal affairs, yet to the exact extent according to the exigency of the supernatural purpose.

Nevertheless correctly Victoria and Soto in the passages cited observe the following—that the Pope in the aforesaid events should not at once unsheathe the temporal sword, unless in delay there would be an instant peril, but he should first use the spiritual power and sword, giving some preliminary order, either directly, or under some threatened censures. For the ordinary method of the Pope is the use of the spiritual power, to which the temporal power is joined as an aid, and so not sooner must the sword of the temporal jurisdiction be drawn than by trial it has been discovered that the strength of the spiritual sword does not suffice.

Someone will ask—but if the Pope should give a preliminary advice to a secular prince to revoke some law, or to

change something else in the secular government because he judged it not at all fitting; but on the other hand the secular prince should judge it to be fitting; whose opinion should stand? Victoria responds, On the Ecclesiastical Power, loc. cit., Number 14—if the Pope should give the order because he judged it to be by no means fitting for the temporal government viewed in itself, then he should not be obeyed; because the judgment of the temporal government in its own affairs and for attaining of the natural end looks not to the Pope, but to the secular prince. Even grant that the Pope should speak the truth, that order in no way pertains to the authority and the power of the Pope on the very account that the matter, about which the action is, would not be antagonistic to the salvation of souls and to the Christian religion. But if the Pope should give the warning on the account that he judged it to tend to the detriment of the salvation of souls, as if he should advise the revocation of some law which he judged could not be kept without sin, or it was against divine law, or fostered sin; then the judgment of the Pope must be stood for; because, as the judgment on spiritual matters, so this on the temporal for the attainment of spirituality looks not to secular princes, but to the Pope. And I say this because it is his duty to consider the means to attain the end whose prerogative it is to consider the end itself. Besides, the power of the Pope is the superior and is the master architect in comparison with the power of the secular princes, and therefore they are held to obey the Pope in those matters which look to the supernatural purpose. Yet the following must be understood when the matter is not wholly certain. For if it were well known that the Pope were in error, or were ordering something as a fraud on the lay power, the secular princes would not be held to obey him. Observe in this place that the Pope should take care that he is acting for the temporal convenience of the administration of the commonwealth, nor ought he at once to order whatever offers itself at first blush as conducive to the promotion of religion and Christian piety, without any consideration for the convenience of the temporal commonwealth; especially since the people and kings would not be held, nor could they be forced to the best plan of Christian life, but only to a Christian life within certain limits and boundaries.

There remains that we should respond to the arguments set forth at the beginning. As to the first argument the minor premise must be denied. For that power of Christ concerning temporal affairs was of the preeminence of Christ, which therefore is denied was left to the Pope. As to the second it must

be said that it only proves that the lay powers are wholly subject to the Pope in temporal matters so far as there is a necessity for the supernatural purpose. For to this degree the temporal commonwealth is subordinated to the Commonwealth of the Church Universal and is, as it were, included in it, however in itself the temporal commonwealth is a certain integral commonwealth in itself, of which the highest power is the secular prince.

As to the first, what is adduced in the third argument must

be answered in that this transfer of power was permitted to the Pope as far as it was necessary for the conservation of the Church. Moreover since Germany assumed that duty of the Emperor-ship and defender of the Church and offered his resources for that purpose, right reason demanded that the election of the Emperor pertained to the German optimates; wherefore there was, as it were, a certain covenant in the time of Otto III that the election pertained to those optimates, and the approval and confirmation of the Emperor, to the Pope; and on this account neither is the Pope able without legitimate cause to deprive them of this right, nor can the right be taken from the Pope which he holds to approve and confirm the election.

But to the second, which is adduced as to the deposition of the Emperor, we must reply, that the deposition of the Emperor for just cause pertains to the Pope; both in view of the most full power which he has in temporal affairs which the spiritual good and the supernatural end requires; and also since by peculiar law the approval, crowning and anointing of the Emperor is his prerogative; and finally since the duty of the Emperor to defend the Church of Rome Universal has been instituted, as it were, the Emperor is like a minister of the Pope, exercising with his own power the sword of temporal jurisdiction at the nod of the Pope, and he swears the oath of the faithful defender of the Church to the Pope.

To the third which is adduced, we must say, that both are lawful for the Pope; because both are necessary for the spiritual good of the kingdoms. Besides to both concurs the sense of the demand of the optimates and the peoples of their realms.

As to the last, which is adduced in the same argument, we must say, since the Emperor left neither a successor nor anyone to whom the Empire was owed, in which manner at the death of kings regularly a legitimate successor to the kingdom is wont to remain; and the office of Emperor, after it was transferred to the Germans in the time of Otto III, as if by an agreement and by law was very much dependent on the Apostolic See itself, it is not surprising, if the Emperor's place is vacant, that it would pertain to the Apostolic See to sit in judgment on the subjects of the Roman Empire. However today with the Emperor

alive, a king of the Romans is chosen who is approved and confirmed by the Apostolic See, so that by the very fact that the Emperor was dead, without any election and approbation he succeeds to the Empire; and therefore a vacant Empire is not given.

The fourth argument only proves that in the Pope is the supreme power for temporal affairs, or the temporal sword, in the sense explained in the third conclusion, nor would two Popes wished anything else. Therefore the argument proved the third conclusion.

To the argument by which the other extreme opinion is urged we must say, that the keys of the Kingdom of Heaven and the power in spiritual matters added as a consequence have power in temporal matters in accordance with spiritual exigency, as has been shown.

To the confirmation it must be said that to use power in temporal affairs, in accordance with spiritual exigency and for these things as for a purpose is not to become implicated in secular affairs, but to bring it about that the temporal zealously serve the spiritual, and that the former do not deviate and cause a destruction of the latter. Furthermore, to take temporal jurisdiction, to the degree as is becoming to the authority and splendor of the Apostolic See, and is conducive to a better use of spiritual things and support for their temporal administration, is not to entangle itself in temporal matters, but to bring it about that the temporal take care of the spiritual, which Paul in no way intends to prohibit.

DISCUSSION XXX

WHETHER THE EMPEROR IS THE LORD OF THE WORLD

Some of the juriconsults, among whom should be numbered Bartolus, in l. hostes. ff. de capit. & post l. revers. & in Extravaganti ad reprimendam, quae est Henrici septimi, in verbo totius orbis, asserted that the Emperor is the Lord of the whole world. Indeed Bartolus finally on l. hostes proceeded to the point that he asserted that to affirm the contrary is perhaps heretical, actuated by that passage of Luke 2: "There went out a decree from Caesar Augustus, that all the world should be taxed." Nevertheless this opinion is plainly ridiculous, as is manifest from those matters which we have mentioned in Discussion XXIV on the origin of this power, added to those that have been mentioned in the preceding Discussion. But here I add only this one argument against this opinion. If the Emperor were the Lord of the world, either this would be by natural law—and this assertion would be silly—or by the election of the whole world, which would have shown its consent that there be one common emperor of all; which without any probability and foundation would be affirmed; or by the law of war, and this is well known to be false, since no one ever, not only legally, but never illegally subjected to himself all the nations everywhere, especially since in our times very many have been found which before were entirely unknown, and many others even now are unknown; or by the positive law of man, and that either of the Pope—and this is not so, since in fact he is not himself ruler of the world—or of the emperors themselves, or of somebody else, which likewise cannot be true; because such a law as he might have made could not have bound those not his subjects; or lastly by divine law, which is not less false, because no sufficient proof for this can be adduced. Therefore the Emperor is not the Lord of the world.

But this passage from Luke 2 proved indeed that an edict went out from the Roman Emperor that the whole world should be taxed, whether this was just or unjust; but not that the Roman Emperor was the true Lord of the whole world. Add, in this passage by the expression "whole world" is not understood the whole earth, but by hyperbole that largest part of the then known world, over which the Roman ruled, is called the whole world. And in the same sense the emperors arrogantly called themselves at some times masters of the whole world

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and universe. Add also, that it is frequent in the common use of speech that a part of the world is called the world, like this—"You Arabs have come into a world unknown to you."

If you should want a longer discussion of this matter, read among others Victoria in the Relection on the Insular Indians, Part I a, Number 24; Soto, 4, On Justice, question 4, article 2; and Covarruvias, Rule peccatum, Part 2, paragraph 9, from number 5.

WHETHER THE CLERGY ARE EXEMPT FROM CIVIL POWER; BY WHAT LAW

Now that the civil and the ecclesiastical power have been explained, and how far the jurisdictional dominion of each extends, something should be said about the exemption of the clergy from the civil power.

On this subject let the following be the first conclusion. The clergy now are exempt from the civil power, so that they cannot be judged either in criminal or in civil cases by a secular judge, but only by ecclesiastical courts. They are also exempt from taxes and other burdens. These matters are manifest ex tota ll. q. ex capit. non minus de immunitat. Eccl. ex cap. quanquam, de censibus lib. 6, and from several other laws. But on each part of the conclusion in the following the discussion will be more complete.

Second conclusion. In merely ecclesiastical cases the clergy are exempt by divine law from the civil and lay power, as in creating bishops and priests, in distributing dioceses and parishes, in cases growing out of these, and finally in all those cases which of themselves look to the ecclesiastical power alone. This is proved, since the ecclesiastical power, as is shown in Discussion XXI and after that, is distinct from and superior to the civil power, and also was directly instituted by Christ and handed over to Peter, the Apostles, the disciples, and their successors; but the civil power arose from God through the Commonwealth and only extended itself to natural matters; therefore in cases solely ecclesiastical, which are peculiar to the ecclesiastical power, the clergy are exempt by divine law from the civil power. Therefore the responsibility of the administration of the Church, and in the same way their successors have always carried on. Therefore rightly affirmed Wycliffe and John Hus were condemned in the Council of Constance, sessions 8 and 15, Marsilius of Padua was condemned by John XXII; the former asserted that Christ paid tribute, not

from liberality and condescension, but forced by necessity. Likewise it pertains to the Emperor to correct and instruct the Pope. Likewise it emanates from the Emperor that one priest is greater and has greater power than another priest has, and that the Emperor can take away this power as he has conferred it. He added that neither the Pope nor the whole Church could punish anyone by compulsion, unless the Emperor had granted the authority. All these things conflict with the freedom of the Church. The errors of this heretic and the learned confutation of them read in Albert Pighius, the Ecclesiastical Hierarchy, Book V. The same conclusion is confirmed in the Chapter si Imperator 96th distinction, where Pope John, amongst other things, says: "To priests God willed that it pertain as to what should be done for the Church, not to the powers of the world." This also from other laws cited in Discussion XXIX. It is confirmed also by that remarkable deed of Constantine the Great in the Council of Nicaea, which Rufinus mentions in Book X of Church History and refers to in the Chapters Continua, and Sacerdotibus II, question 1. For when the bishops carried to Constantine the booklets of accusations of certain against others, he called them together and said, "To you God gave the power of judging us, but you cannot be judged by men." And all the booklets offered to him he threw in their presence into the fire; a thing which he seems to have gotten from a suggestion of Sylvester. But this which Constantine affirmed has the most powerful reality in pure Church cases; therefore the matters that are solely ecclesiastical do not pertain to the secular powers. Therefore they who have the right of giving patronage to bishops and other Church benefices have it only by leave of and by concession of the Church power, though it is wont to be granted to them in gratitude for the temporal assistance which they have conferred on the institution of benefices or for other just cause. Cajetan, Small Works, Book I, Tract I, Power of the Pope, Chapter 27; Victoria, Relection I, On the Ecclesiastical Power, last question, number 3; and Soto, in 4, Distinction 25, question 2, article 2; and Driedo, 2, Christian Liberty; these assert that if the Pope should openly abuse the power ecclesiastical toward the destruction of the Church, by conferring corruptly ecclesiastical benefices, resulting in the ruin of subjects, the secular princes could resist him and not obey those things which are evilly ordered by him and could deny possession of the benefices to the men selected in this manner. But although this be true, especially since the incomes of the benefices are contributed by laymen, so that the pastors and rectors may be assigned to them to have the care of their spiritual

affairs, yet it must ^{not} be extended much, nor impudently, but the resistance to the Pope, the Vicar of Christ, should be with reverence and submissiveness.

Third conclusion. Not every exemption of the clergy is of the divine law. In this agree Soto, Victoria and Driedo in the places cited; Cajetan, in his Summa, at word excommunication, in Chapters XXXI and XXXVII; Navarrus in his Manual, Chapter XXVII, Number 119; and others; and there is St. Thomas in his piece on Romans 13, "For this cause pay ye tribute also." Although Panormita, Chapter II, de major. & obedient., and others affirm that the clergy, so far as their persons and goods go, are exempt from the lay power by divine law. Nevertheless our conclusion is proved, since there is no place whence it is sufficiently concluded from the divine law. Some adduce that passage of Joseph, Genesis 47: who made all the land tributary to Pharaoh except the land of the priests. Yet this is nothing to the point; for it was an act of kindness on the part of the king, with right reason demanding it. Further, they adduce Matthew 17: "Of whom do the kings of the earth take custom or tribute? of their children, or of strangers?" And a little farther on, "Then are the children free." But this is only proof about Christ, as is shown in Discussion XXVII. But if it is probably proof about any other person, it is only about the Pope, the Vicar of Christ; as we will submit. Likewise they bring forth Psalm 105: "Touch not mine anointed." Yet in this passage it is only directed that no hurt be inflicted on the ministers of God, in whom also the secular princes are understood to be included. The proposed conclusion is made more fully manifest from the following.

Fourth conclusion. To divine law and very greatly to natural law it is agreeable that the clergy be exempt from the secular courts especially in crimes. I think that the Pope by divine law is wholly exempt from every earthly power everywhere. But the other persons of the clergy, not by divine law, but by human law seem to be exempt from the secular powers. The first part is proved, because since the ministers of the Church have been appointed by divine law with ecclesiastical power to be free for spiritual matters they pertain, premehead to whose court in spiritual matters they have been so appointed, likewise their grade and dignity and natural light itself demand that they be wholly removed from the court of the seculars who are subject to them in spiritual matters. Then that they may be rendered more free for being available for spiritual matters, they should by no means be drawn away to

different tribunals, as could often happen at the same time. Then also, to better conserve their authority over their own subjects, it would certainly be unbecoming that the bishop and the parish priest, to whom the secular judges as children should be subject in spiritual matters, should be judged by them in temporal matters and punished; and therefore very many unbecoming and strongly absurd situations could arise when the clergy on account of the fear of the seculars, on whom they would depend in secular matters, then would be daring to exercise toward them their responsibilities in spiritual matters. Also, the reverence which seculars ought by divine law to exhibit to the ecclesiastical persons, as fathers and those called and consecrated to the worship of God, would be greatly lessened, and they would become contemptible among the seculars, which is by no means expedient for the honor of God The Best and The Greatest, and for the spiritual salvation of these people. The same part is confirmed from that remarkable act of Constantine the Great above mentioned, likewise from that other of Joseph, Genesis 47, who on the requirements of right reason left the land of the priests free from tax.

The second part, namely, that the Pope by divine law is entirely exempt from all earthly power everywhere Driedo seems to affirm, On Christian Liberty, I, Chapter XV, where he says that the Pope can be judged or punished by no earthly power outside of the case of heresy; and that the Pope himself, in the same manner that he cannot put himself to death, thus cannot give the power to another to kill him, and for this reason he cannot be killed for any crime, though of his own free will he is willing to submit himself to the judgment of another. This very point many seem to affirm, whom we have cited in this I, 2, question 1, article 10, when they assert that the Pope, except for heresy, cannot be deposed by anyone from the Pontificate or punished; on this account by divine law he is exempt from all; and Victoria agrees at the end of the Relection cited, where with Cajetan On the Power of the Pope, Chapter XVII, he affirms that the Pope by divine law by no one for any crime whatsoever can be put to death. And clearly if the heathen emperors could have punished delinquent popes when they tarried in their lands, since the same secular power (though he stood on the divine law only) was in Constantine and the other emperors who have come into the bosom of the Church (although in spiritual matters they were subject to the Pope) the Christian emperors are qualified to punish a delinquent pope. At all events that would by no means be repugnant to the divine law, but it would only be against the exemption conferred by

the emperors by human law on the Church and the popes. Moreover we can prove this part since it was most becoming that the Pope, as the Head of the Christian Commonwealth, to whom seculars should be subject, should have this exemption, especially since, as we shall say, through his own power he could remove clerics from the power of the secular princes who are subject to the Church; but Christ could have given him such exemption; therefore it is probable that He did give it to him, and so he is exempt by divine law from the lay power, especially if he is one of the members of the Church. It is confirmed, since Christ had this immunity, as is shown in Discussion XXVIII; since therefore He left the Pope as His Vicar on earth, it is probable that He granted him this. This Matthew 17 seemed sufficiently to indicate, where, after in Chapter 16 He had promised the Papacy to him, when the publicans were collecting the tribute and Christ was concluding with, "Then are the children free," He added: "Notwithstanding, lest we should offend them, go thou to the sea, and cast an hook, and take up the fish that first cometh up; when thou hast opened his mouth, thou shalt find a piece of money: that take, and give unto them for me and thee." Then only to avoid offense He ordered the tribute to be paid, also for His Vicar, joining him with Himself, of him after Himself making mention; but no mention of the others of the Apostles.

The third part of the conclusion, that the other persons of the clergy, not by divine law, but by human seem to be exempt from the secular powers, from this is manifest, that, as is said in the preceding conclusion, sufficient testimony cannot be adduced from divine law by which this may be rightly proved. But you will ask, "By whom then have they been exempted?" I answer, in the first place by the emperors and the other Christian princes, with the consent of the people, because the thing itself demands it. Indeed this exemption once given and granted to the Church they cannot recall without the consent of the Church. Next I answer, that the Pope alone through the power which he has for temporal matters consequent to spiritual exigency, could wholly exempt clerics from the lay power, and also by the nature of the matter, have taken them out from under his own ecclesiastical laws, which in this condition ought to be obeyed. For it has been shown—the exemption of the clergy was expedient very especially as suitable and for the common good of the whole Christian Commonwealth and was very agreeable to natural and divine law; and for this reason in this matter the Church laws must have preference over the civil.

Victoria and Soto observe in the passages cited that, if the freedom of the cleric results in the manifest hurt of the secular commonwealth, and if through lack of punishment of the of the clergy laymen are killed, and the latter do not wish to apply the remedy of the admonition of the Pope, of course the secular princes can take counsel of their own subject, for the immunity and privilege of the clergy is no impediment. The reason is that since the civil commonwealth is sufficient unto itself, therefore in the same manner that it can defend itself by its proper authority and save itself unharmed from any other commonwealth, so also from the clerics. But rightly also they advise that this power is in the prince but not in the judges and magistrates; and therefore it is wrong for the latter to proceed by their own authority against the freedom of the Church by infringing ecclesiastical or civil laws in this regard, or by seizing the clergy, or by dragging malefactors from the churches, or by transgressing the laws in any other manner; though they in repelling force with a moderation of defense that is not blameworthy can defend themselves and make themselves safe against the ecclesiastics.

Fifth conclusion. The clergy so far as their goods are concerned are exempt from taxes not by divine law but by human, as right reason demands. St. Thomas has this in his comment on Romans 13, "For this cause pay ye tribute also," where he says—the exemption of the clergy from taxes has equity, yet it is not of necessity, as if it would be by divine law. But the equity by which under human laws they are exempt is this. Since when tribute is offered to kings for the support of the temporal commonwealth and for its works and administration by which they administer it in temporal affairs, but the clergy not less work offer to the same commonwealth in spiritual administration; it is clearly equitable, and the dignity of the clergy demands it, that not less than the nobles who at some time have been useful to the commonwealth in war or in other well done matters they should be exempt from taxes. The conclusion is confirmed from the same cited passage of Paul, for the order was to call without distinction to offer tribute to the princes, nor did the clerics get exemption. For he said: "For by this cause pay ye tribute also: for they are God's ministers, attending continually on this very thing. Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour. Owe no man anything, but to love one another." Of course the clergy who tarry in the commonwealth of the infidels are held to pay tribute to the princes of that state. For certainly

those princes administer and defend the commonwealth not less for the good of those than others; wherefore since they were not exempted from the privilege of those princes, and the Pope has no power over that commonwealth, since it is not subject to the Church; they are held in the forum of the conscience to pay the taxes. Nay, rather, so in civil cases as in criminal ones they were subjected to the princes of that state, as Albert Pighius, *On the Ecclesiastical Hierarchy*, Book V, Chapter VII, correctly affirms. The conclusion besides from the chapter on Tributes, with the following eleven, question 1, where Ambrose admits it, is stated. Moreover for the same reason and from the very same question it is well known that the clergy were exempted from the lay power so far as the person was concerned with respect to taxes. The same conclusion is confirmed by those things which have been said in the preceding conclusion about the exemption in the matter of the person. But if you nevertheless object that in the subhead on property, Book VI, it is asserted that the churches and clerical persons and their property are exempted not only by human law but also by the divine, it must be said with Dominicus, cited by Soto, that the churches and the clerical persons and their possessions are exempt even by divine law only so far as the cases are merely ecclesiastical; but as for the remainder of the cases it is consonant only with divine law and the natural light according to the sense above explained.

Sixth conclusion. Ecclesiastics neither by divine law nor by human are exempt from those civil laws which are not counter to the freedom of the Church, but are instituted for the good administration of the commonwealth, such as are those by which the prices of the grain and other things are set, and by which such and such type of building is prohibited, or something is set down on the manner of succeeding to an inheritance, and other like matters common to all citizens. This is Victoria's and Soto's idea in the passages cited, and Sylvester's at the word *lex*, question 15, and is common. It is proved, since the clergy are part of the Commonwealth and have the same common king or governor with laymen; therefore they are held to be subject to his laws common to the whole Commonwealth to the extent that under the circumstances it does not run counter to their freedom and exemption. Especially since the Commonwealth's government needs laws that are common to all its citizens; and it does not pertain to the Pope but to their princes to determine them in temporal affairs. If therefore the clerics sell grain above the price justly set by the commonwealth, both do they sin just like the laymen, and they are held to make restitution. Yet they cannot be brought in on this matter to be judged by the secular judge, but before

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an ecclesiastical court, who is held to observe laws of this kind by inflicting on them the due penalties, so that they fully restore what they have taken beyond the price lawfully set by the commonwealth.

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