

De Indis De Jure Belli/Part 2

From Wikisource

< De Indis De Jure Belli

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

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

SUMMARY OF THE FIRST SECTION.

1. How a person in doubt on any matter, to obtain safety of conscience, should consult those whose business it is to give instruction in such matters.
2. After one in doubt has taken such advice he ought to follow what the wise have laid down, else he will not be safe.
3. Whether one in doubt ought, consistently with safety of conscience, to follow the advice given by the wise in a doubtful matter when they lay down that to be now lawful which in other circumstances is unlawful.
4. Whether the Indian aborigines before the arrival of the Spaniards were true owners in public and in private law; and whether there were among them any true princes and overlords.
5. Examination of the error of those who assert that persons living in mortal sin can not have ownership of anything at all.
6. Mortal sin does not preclude civil ownership of the true kind.
7. Whether ownership is lost by reason of unbelief.
8. The divine law does not make heresy a cause of forfeiture of the heretic's property.
9. Whether heresy causes loss of ownership by human law.
10. A heretic incurs the penalty of confiscation of his property as from the date of the commission of his offense.
11. But although the heretic's offense is patent, the fisc may not seize his property before condemnation.
12. Even though condemnation issues after the heretic's death, confiscation of property dates back to the time of the commission of the offense, no

matter who is vested with the property.

13. Sales, gifts, and all other modes of alienation by a heretic are void as from the date of the commission of the offense, etc.

14. Whether a heretic before condemnation is the owner of his property in the forum of conscience.

15. A heretic may lawfully live of his own property.

16. A heretic may make a gratuitous conveyance of his property, as byway of gift.

17. A heretic whose offense has rendered him liable to process may not convey his property for value, as by way of sale or dowry.

18. In what case a heretic may lawfully alienate his property for value.

19. Barbarians are not precluded by the sin of unbelief or by any other mortal sins from being true owners alike in public and in private law.

20. Whether the use of reason is a pre-requisite of capacity for ownership.

21. Whether a boy can be an owner before he has the use of reason.

22. Whether a person of unsound mind can be an owner.

23. Inasmuch as the Indian aborigines were not of unsound mind, they are not precluded from being true owners on the pretext of unsoundness of mind.

24. These aborigines were true owners alike in public and in private law before the advent of the Spaniards among them.

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

As regards the first part, it might seem at the very outset that the whole of this discussion is useless and futile, not only for us who have no concern either to inquire whether the men in question have conducted their administration with propriety in every detail or to raise any doubts about that business or to correct any fault that may have been committed, but also for those whose concern it is to attend to and administer these matters.

Firstly, this may so seem because neither the sovereigns of Spain nor those at the head of their councils are bound to make completely fresh and exhaustive examination of rights and titles which have already been elsewhere discussed and settled, especially as regards things of which the sovereigns are in bona fide occupation and peaceful possession; this is so because, as Aristotle says (Ethics, bk. 3), "if any one were to be continually inquiring, settlement would be indefinitely postponed"; and sovereigns and their advisers could not attain security and certitude of conscience, and, if they had to trace the title of their rule back to its origin, they could not keep anything they had discovered. Moreover, inasmuch as our sovereigns, namely Ferdinand and Isabella, who were the first to occupy those regions, were most Christian, and the Emperor Charles V was a most just and scrupulous sovereign, it is not to be believed that they did not make a thoroughly complete and exact investigation into everything that could affect the security of their estate and conscience, especially in such a great matter. On these accounts, then, it may seem not only useless but also presumptuous to raise any question about the matter; it is like looking for a knot in a bulrush and for wickedness in the abode of the righteous.

In meeting this objection we must bear in mind what Aristotle says (Ethics bk. 3), namely, that just as there can be no questioning or deliberation about matters either impossible or necessary, so also there can be no moral investigation about those which are certainly and notoriously lawful and seemly, or, on the other hand, about those which are certainly and notoriously unlawful and unseemly. For no one can properly raise a question whether we ought to live a temperate and brave and upright life or a wicked and base life, nor whether we ought to commit adultery or perjury, or cherish our parents, and other matters of this kind. Certainly such discussion would not be Christian. When, however, some project is on foot concerning which there is a genuine doubt whether it be good or bad, just or unjust, it is then advantageous to take advice and to deliberate and to abstain from premature action before finding out and determining how far it is or is not lawful. Such is the case with matters which, when viewed from different sides, look good or bad, as happens in many kinds of barter and contract and other businesses. And in all these cases the circumstances are such that, even if the thing in question were in itself lawful, it would be sinful for any one to do it before deliberating and assuring himself of its lawfulness; and he would not be excused on the ground of ignorance, for the ignorance would manifestly not be invincible, since he does not do what in him lies to inquire into the lawfulness or unlawfulness of the matter. For in order that an act, the goodness of which is otherwise uncertain, be good, it must be done in accordance with the investigation and determination of the wise, it being (Ethics, bk. 2) one of the conditions of a good act that it be done in accordance therewith. Accordingly, when, in a doubtful case, the doer omits to take the advice of the wise, he is without excuse. Nay, even if we grant that the act in question is lawful in itself, yet, if there be any doubt thereon, the doer is bound to take the advice, and to act in accordance with the award, of the wise, even though they be themselves in error.

Accordingly, if anyone, without consulting the doctors, were to make a contract, concerning the lawfulness or unlawfulness of which men were doubtful, he would undoubtedly sin, even though the contract were otherwise lawful and even if the doer thought so, not, however, on the authority of the wise, but of his own inclination and judgment. And on the same principle, were one in a doubtful matter to consult the wise and they were to rule against its lawfulness and yet he were to follow his own judgment

and do the thing, he would sin even though the thing were otherwise lawful in itself. For example, suppose a man is in doubt whether so-and-so is his wife and he seeks advice whether he is bound to render the marital debt or whether it is right for him to do so, or whether he may exact it from her, and the doctors reply that it is not at all right, and yet he be led by his wife's affection and his own desire to refuse to accept that reply and thinks that his act is lawful, it is certainly sinful for him to approach his wife, although such approach be lawful in itself (as it really is), because he is acting contrary to the conscience which he ought to have. For in those matters which belong to his salvation a man is bound to yield credence to the teachers appointed by the Church, and in a doubtful matter their ruling is law. For just as in the contentious forum the judge is bound to judge in accordance with what is alleged and proved, so in the forum of conscience a man is bound to base his judgment, not on his own sentiments, but on demonstrable reason or on the authority of the wise; else his judgment is presumptuous and exposes him to the risk of going wrong, and indeed he does err in the very fact. This accords with what was laid down in the Old Testament (Deuteronomy, ch. 17):

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

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

It is, therefore, not enough for security of life and conscience that a man should deem himself to be doing right, but in doubtful matters he must needs rely on the authority of others whose business is therewith. For it is not enough that merchants should abstain from doing what they themselves deem wrong, if they nevertheless enter into illegal contracts without the advice of the wise. And so I do not agree with Cardinal Cajetan when he says that if a doubt arises about something which really is lawful in itself and some preachers or confessors who otherwise have authority to pronounce thereon declare it unlawful or declare it mortal sin when it is venial, yet the man who, following his own inclination in the matter, disbelieves them and determines in his own conscience that it is not a mortal sin, does not sin.

As an example, Cajetan takes the use by women of paint and other superfluous adornments, a thing really not a mortal sin, but which he assumes might be pronounced a mortal sin by preachers and confessors. If, says he a woman is so given to such adornment that she does not yield assent to them, but

thinks it lawful or not a mortal sin, she does not commit a mortal sin when she resorts to such adornment. Now this I declare dangerous. For in those matters which are necessary to salvation a woman is bound to yield assent to the wise and she exposes herself to danger if contrariwise she does what the wise pronounce to be a mortal sin. And, on the other hand, if in a doubtful matter a man has taken counsel with the wise and has accepted their ruling that the thing is lawful, he is safe in conscience -- at any rate until he receives a second opinion and is driven to doubt or to believe the contrary by a person of such authority, or by reasons of such cogency, as ought to affect his judgment. This is notorious, for he does all that in him lies and so his ignorance is invincible.

The premises, then, establish the following propositions:

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

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

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

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

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

settle questions of this sort. Nor am I sure that in the discussion and determination of this question theologians have ever been called competent to pronounce on so grave a matter. And as the issue concerns the forum of conscience, its settlement belongs to the priests, that is, to the Church. Accordingly in Deuteronomy, ch. 17, it is enjoined on the king that he take a copy of the law from the hand of the priest. Thirdly, in order that the whole of the matter be adequately examined and assured, is it not possible that so weighty a business may produce other special doubts deserving of discussion? Accordingly I think I shall be doing something which is not only not futile and useless, but well worth the trouble, if I am enabled to discuss this question in a manner befitting its importance.

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

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

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

FIFTH. Now, some have maintained that grace is the title to dominion and consequently that sinners, at any rate those in mortal sin, have no dominion over anything. That was the error of the poor folk of Lyons, or

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

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

SIXTH. But against this doctrine I advance the proposition that mortal sin does not hinder civil dominion and true dominion. Although this proposition was established in the Council of Constance, yet Almain (4, *Dist.* 15, qu. 2), following Ailly, bases an argument in favor of it, on the fact that a person already in mortal sin who finds himself in extreme need their property by civil law, and the Pope rules that the same is to hold for the crime of heresy. And Joannes Andreae seems to hold the same opinion, in his comment on the afore-mentioned chapter *cum secundum leges*. And it seems to be had from the law *Manichaeos* (*Cod.*, 1, 5, 4), whereby heretics are precluded from sale or gift or any dealing with their property. Also, civil laws bind in the forum of conscience, as St. Thomas teaches (*Prima Secundae*, qu. 96, art. 4).[1]

TENTH. Let the third proposition in the course of our exposition be:

A heretic incurs confiscation of his property from the day of the commission of his offense. This is commonly held by the doctors and is the ruling in the *Directorium inquisitorum* (bk. 3, tit. 9), and also in the

Summa of Baptista de Salis on the word absolutio (§ 17), and it seems settled in the afore-mentioned chapter cum secundum leges and in the afore-mentioned law Manichaeos (Cod., 1, 5, 4).

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

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

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

FOURTEENTH. A fifth proposition: Nevertheless **a heretic continues to be owner in the forum of conscience until he is condemned.** This proposition seems to be at variance with Conrad and with the Directorium inquisitorum and Joannes Andreae; it is, however, the proposition of Sylvester, under the word haeresis, I, § 8. Adrian also maintains it, discussing the matter at some length (Quotlibeta, 6, qu. 2), and Cajetan seems to hold the same view in his Summa, under the word poena. The proposition is proved, first, by the fact that this deprivation in the forum of conscience is a penalty; therefore, it ought in no wise to be inflicted before condemnation. Nor am I sure whether human law could effect this at all. It is also proved by what is clear from the above-named chapter cum secundum leges, namely, that property is confiscated in the same way by the very fact of an incestuous marriage; as also when a free woman who has been ravished marries her ravisher. Nay, if any one fails to pay the accustomed dues on imported merchandise, the goods are forfeit by the very fact; as also in the case of an exporter of contraband merchandise, such as arms and iron, to the Saracens. All the details will be found in the above-named chapter cum secundum leges and in Cod., 5, 5, 3, and Cod., 9, 13, 1, and in X, 5, 6, 6, and in Dig., 39, 4, 16 (?). Aye, and the Pope expressly says in the afore-named chapter cum secundum leges that, just as confiscation takes place in the cases named, so he intends it to take place in a case of heresy. But no one denies that an incestuous person and a ravisher and one who supplies the Saracens with arms and one who does not pay customs remain true owners of their property in the forum of conscience. Why, then, does not a heretic also? Conrad himself treats as identical the cases named and the case of a heretic. It would, moreover, be over severe to require a man who has just been converted from heresy to give up his property to the fisc.

FIFTEENTH. **It follows as a corollary that a heretic may lawfully live of his own property.**

SIXTEENTH. Secondly, it follows also that he can make a gratuitous

conveyance of his property, as by way of gift.

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

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

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

TWENTIETH. It remains to ask whether the Indians lacked ownership because of want of reason or unsoundness of mind. This raises the question whether the use of reason is a precondition of capacity for ownership in general. Conrad, indeed (bk. I, qu. 6), propounds the conclusion that ownership is competent to irrational creatures, alike sensible and insensible. The proof consists in the fact that ownership is nothing more than the right to put a thing to one's own use. But brutes have this right over the herbs and plants (Genesis, ch. 1): "Behold I have given you every herb bearing seed which is upon the face of all the earth and every tree in the which is the fruit of a tree yielding seed; to you it shall be for meat and to every beast of the earth." The stars, too, have the right to shine for light (Genesis, ch. 1), "And God set them in the firmament of the heaven to give light upon the earth and to rule over the day and over the night." And the lion has dominion over all animals that walk, whence he is called the king of beasts. And the eagle is lord among the birds whence in Psalm 103 the verse about his house being their leader.[2] Sylvester (under the word dominium, at the beginning) is of the same opinion as Conrad, saying that the "elements exercise dominion one over the other."

I answer by the following propositions:

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

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

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

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

Nor is there any force in Sylvester's remark that dominion sometimes does not signify right, but only power, in which sense we say that fire has dominion over water. For, if this is enough to confer dominion, a robber has dominion over his victim even up to death, because he has power to kill him, and a thief has power to seize his victim's money. Further, as regards the statement that the stars exercise dominion and that the lion is king of beasts, obviously this is said metaphorically and by way of figure.

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

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

TWENTY-THIRD. However this may be, let our fourth proposition be:

The Indian aborigines are not barred on this ground from the exercise of true dominion. This is proved from the fact that the true state of the case is that they are not of unsound mind, but have, according to their kind, the use of reason. This is clear, because there is a certain method in their affairs, for they have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the use of reason; they also have a kind of religion. Further, they make no error in matters which are self-evident to others; this is witness to their use of reason. Also, God and nature are not wanting in the supply of what is necessary in great measure for the race. Now, the most conspicuous feature of man is reason, and power is useless which is not reducible to action. Also, it is through no fault of theirs that these aborigines have for many centuries been outside the pale of salvation, in that they have been born in sin and void of baptism and the use of reason whereby to seek out the things needful for salvation. Accordingly I for the most part attribute their seeming so unintelligent and stupid to a bad and barbarous upbringing, for even among ourselves we find many peasants who differ little from brutes.

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

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

SUMMARY OF THE SECOND SECTION.

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

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

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

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

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

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

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

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

And they prove the allegation first from can. 41, C. 7, qu. 1, where Gregory[3] says that there is one king among bees, and in the world one Emperor, and also from Dig., 14, 2, 9, where the Emperor Antoninus says:

I indeed am lord of the earth," and Cod., 7, 37, 3, § 1, "everything is understood to belong to the Emperor."

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

ch. 8). But these two had successors. Therefore.

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

Also, the things which are outside nature ought to imitate things natural. But in things natural there is always one governor; as in the body, it is the heart; in the soul, it is reason. Therefore in the world there ought to be one governor, just as there is one God.

1. Now, this contention is baseless. Let our first conclusion, then, be:

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

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

"There is no power but of God"; and (*Proverbs*, ch. 8): "By me kings reign and princes decree justice." Further, Nebuchadnezzar had not a legal rule over the whole earth, as Bartolus thinks, for the Jews were not legal subjects of his.

Another proof that there was by divine law no ruler over the whole world lies in the fact that the Jewish nation was free from the foreigner; nay, the Jews were forbidden by their law to have any foreigner as their lord (*Deuteronomy*, ch. 17): "Thou mayest not set a stranger to be king over thee." And, although St. Thomas (*De regimine principum*, bk. 3, ch. 4 and 5) says that the Romans were entrusted with empire by God because of their justice and their patriotism and the excellence of their laws, yet this is

not to be taken to mean that they had their empire by divine grant or institution, as St. Augustine also says (*De civitate Dei*, ch. 18), but that in the divine providence it befell that they should obtain the sovereignty of the world. This, however, was not in the way in which Saul or David had his kingdom from God, but in some other way, such as by just war or other title.

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

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

This reasoning is, however, quite inadmissible: In the first place, because of the doubt attaching to the statement that Christ as regards His manhood was temporal Lord of the world. The probability indeed is that He was not, and our Lord seems to have asserted as much in the passage: "My Kingdom is not of this world."^[4] Accordingly, St. Thomas remarks in this connection that Christ's dominion is directly appointed for the soul's salvation and for spiritual profit, although it is not excluded in matters temporal in the same fashion as it is appointed in matters spiritual. This shows that in St.

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

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

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

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

2. Second conclusion: Granted that the Emperor were the lord of the world,

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

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

In this matter there are some jurists, who hold that the Pope has full jurisdiction in temporal matters over the whole earth, and they even add that the power of all secular princes comes to them from the Pope. This is the tenet of Hostiensis on X, 3, 34, 8; also of the Archbishop (pt. 3, tit. 22, ch. 5, § 8); and also of Augustinus Anconitanus. Sylvester holds the same doctrine, making a much more ample and liberal concession of this power to the Pope, under the word *infidelitas* (§ 7) and under the word *Papa* (§§ 7, 10, 11 and 14), and under the word *legitimus* (§ 4). He has some singular remarks on this topic in the passages mentioned, as, for example, that "the power of the Emperor and all other princes is sub-delegated as regards the Pope, being derived from God through the medium of the Pope," and that "all their power is dependent on the Pope," and that "Constantine gave lands to the Pope in recognition of his temporal power," and on the other hand that "the Pope gave the Empire to Constantine to his use and profit," nay, that "Constantine's act was really not a gift, but merely the return of what had previously been taken away," and that, "if the Pope does not exercise jurisdiction in temporal matters outside the patrimony of the Church, this is not for want of authority, but in order to avoid the scandal of the Jews and in order to promote peace"; and many other things even more empty and absurd than these. The sole proof that he gives herefor is in the passages "The earth is the Lord's and the fulness thereof,"[5] and "All power is given unto me, both in heaven and in earth,"[6] and the Pope is the vicar of God and of Christ, and (Philippians, ch. 2) Christ "for our sake became obedient even unto death," etc. Bartolus, too, seems to be of this opinion in his comment on the Extravagans, *Ad reprimendum*, and St. Thomas seems to favor it at the end of the second book of the *Sententiae*, the closing words of which are by way of solution of the fourth argument, which is the last of the whole book, namely, that the Pope holds the summit of both kinds of power, both secular and spiritual, and Herveus is of the same opinion in his *De potestate Ecclesiae*.

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

furnishes a good ground for making war on them and seizing their lands, etc. Hostiensis, place cited, expressly makes this point, so does Angelus in his Summa.

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

3. First: The Pope is not civil or temporal lord of the whole world in the proper sense of the words "lordship" and "civil power." This is the conclusion arrived at by Torquemada (bk. 2, ch. 113), and by Joannes Andreae and by Hugo, on can. 6, Disc. 96. And the most learned Innocent admits, in the above cited X, 1, 6, 34, that he has not temporal power over the Kingdom of France. And it seems the definite opinion of St. Bernard in the second book of his *De consideratione*, addressed to Pope Eugenius III. The opposite opinion seems contrary to the precept of our Lord who, (St. Matthew, ch. 20, and St. Luke, ch. 22), says, "Ye know that the princes of the Gentiles exercise lordship over them," etc. "But it shall not be so among you." And contrary also to the precept of the Apostle Peter, "neither as being lords over [God's] heritage but being ensamples to the flock,"[7] And if Christ the Lord had not temporal power, as has been shown in the foregoing discussion to be more probable and as is also the opinion of St. Thomas, much less has the Pope it, he being Christ's vicar. The above-mentioned thinkers attribute to the Pope that which he has never claimed for himself; nay, he admits the contrary in many passages, as I have shown in the *Relectio* referred to. And the proof is sufficient, like that given above concerning the Emperor, for no lordship can come to him save either by natural law or by divine law or by human law. Now, it is certain that none comes to him by natural or by human law, and none is shown to come to him by divine law. Therefore the assertion is ungrounded and arbitrary.

Further, our Lord's injunction to Peter, "Feed my sheep,"[8] clearly shows that power in spiritual and not in temporal matters is meant. It is, moreover, demonstrable that the Pope has not the whole world for his sphere. For our Lord said (St. John, ch. 10) that there should be "one flock and one shepherd" at the end of the age. This is sufficient proof that at the present day all are not sheep of this flock. Again, assuming that Christ had this power, it is manifest that it has not been entrusted to the Pope. This appears from the fact that the Pope is no less vicar of Christ in spiritual than in temporal matters. But the Pope has no spiritual jurisdiction over unbelievers, as even our opponents admit, and, as seems (I Corinthians, ch. 5) to have been the express teaching of the Apostle: "For what have I to do to judge them also that are without?" Therefore he has it not also in temporal matters. And of a truth there is nothing in the argument that, as Christ had temporal power over the world, therefore the Pope also has it. For Christ undoubtedly had spiritual power over the whole world, not less over believers than over unbelievers and could make laws which bound the whole world, as he did with regard to baptism and the articles of faith. And yet the Pope has not that power over unbelievers and may not excommunicate them or forbid their marriage within the degrees permitted by the divine law. Therefore. Also, the fact that, according to the doctors, Christ did not entrust supremacy in power even to the Apostles shows that there is no force in the consequence: Christ had temporal power over the world; therefore the Pope has it too.

4. Second proposition: Even assuming that the Supreme Pontiff had this secular power over the whole world, he could not give it to secular

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

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

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

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

opponents deny.

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

7. The corollary follows that even if the barbarians refuse to recognize any lordship of the Pope, that furnishes no ground for making war on them and seizing their property. This is dear, because he has no such lordship. And it receives manifest confirmation from the fact (as will be asserted below and as our opponents admit) that, even if the barbarians refuse to accept Christ as their lord, this does not justify making war on them or doing them any hurt. Now, it is utterly absurd for our opponents to say that, while the barbarians go scatheless for rejecting Christ, they should be bound to accept His vicar under penalty of war and confiscation of their property, aye, and penal chastisement. And a second confirmation is furnished by the fact that the ground, according to the persons in question, for disallowing compulsion, even if they refuse to accept Christ or His faith, is that it can not be evidently proved to them by natural reasoning. But the lordship of the Pope admits of this proof still less. Therefore they can not be compelled to recognize this lordship.

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

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

follows the canonists. What has been said demonstrates, then that at the time of the Spaniards' first voyages to America they took with them no right to occupy the lands of the indigenous population.

Accordingly, there is another title which can be set up, namely, by right of discovery; and no other title was originally set up, and it was in virtue of this title alone that Columbus the Genoan first set sail. And this seems to be an adequate title because those regions which are deserted become, by the law of nations and the natural law, the property of the first occupant (Inst., 2, 1, 12). Therefore, as the Spaniards were the first to discover and occupy the provinces in question, they are in lawful possession thereof, just as if they had discovered some lonely and thitherto uninhabited region.

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

Accordingly, a fourth title is set up, namely, that they refuse to accept the faith of Christ, although it is set before them and although they have been adjured and advised to accept it. This title might seem to be a lawful one for occupying the lands of the barbarians, firstly, on the ground that the obligation of the aborigines to receive the faith of Christ results from the passage: "Whoso believeth and is baptized shall be saved, but he who believeth not shall be damned." [9] But damnation is not visited on any one except for a mortal sin, and "There is no other name given among men whereby we must be saved" (Acts, ch. 4). Therefore, as the Pope is the minister of Christ, at least in things spiritual, it would appear that at any rate by the authority of the Pope they can be compelled to receive the faith of Christ, and if they reject the demand to receive it they may be proceeded against under the law of war. Nay, it would seem that princes may do this on their own authority also, seeing that they are God's ministers (Romans, ch. 13), and "revengers [to execute] wrath upon them that do evil." But those, indeed, do evil who do not accept the faith of Christ. Therefore they can be coerced by princes.

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

A third argument is: If the barbarians publicly blasphemed Christ, they could be compelled by war to cease from such blasphemies, as the doctors admit and as is true. For we could take measures of war against them, if they made a mock of the crucifix or in any other way abused Christian

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

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

This proposition is opposed to the teaching of many doctors and especially to that of *Altissiodorensis*, 3 p.,[10] on the question, *Utrum fidei possit subesse falsum*, where he says that ignorance not only of Christ, but of any article of faith is not invincible ignorance in any one, for if a man does what in him lies, God will illuminate him either through the doctor that is within him or through a doctor outside, and so it is always a mortal sin to believe anything contrary to articles of faith. He takes an illustration from an old woman to whom a bishop might preach something contrary to an article of faith. And he lays down the general proposition that ignorance of divine law excuseth none. William of Paris was of the same opinion and supported it by the same kind of argument. For either, says he, such an one does what in him lies and therefore will receive illumination, or if he does not this, he is without excuse. And Gerson (*De spirituali vita animae*, lect. 4) appears to be of the same view. "Doctors are unanimous," says he, "that in matters of the divine law there is no room for invincible ignorance, seeing that God will always help him who does what in him lies, and He is ready to enlighten the mind as far as will be necessary for salvation and the avoidance of error." And Hugo de Sancto Victore ([11]bk. 2, pt. 6, ch. 5) says that none is excused by ignorance for breach of the command to receive baptism, for he could have heard and known, had it not been for his own fault, as was the case with Cornelius (*Acts*, ch. 10).

Adrian gives precision to this doctrine, in his *Quodlibeta*, qu. 4. "There is," says he, "a two-fold distinction in matters of the divine law. There are some matters to the knowledge of which God does not oblige every one universally, such as the nice problems of the divine law and difficulties

with regard to this law and with regard to Holy Scripture and the Commandments; in these matters there may well be a case of invincible ignorance, even if a man does all that in him lies. There are other matters to the knowledge of which God obliges all men generally, such as the articles of faith and the universal commandments of the law; of these it is true, as the doctors assert, that ignorance thereof is not excused. For if any one does what in him lies, he will be illuminated of God through either the doctor that is within him or a doctor from without."

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

This shows that Adrian was also mistaken in another point, with regard to the subject-matter of their ignorance; for in the same note he says, with regard to the subject-matter of morals, that if a man bestows all industry and diligence in getting to know that which behoves him, this is not enough to procure him an excuse for his ignorance, unless by repentance of his sins he specially prepares himself to be illuminated by God. Suppose, then, a man is in doubt about a certain business arrangement and makes inquiry of learned men and tries in other ways to find out the truth and thinks that the thing is lawful; if it really is not lawful and he does it, he is without excuse, if in another respect he is in sin, because he does not do all that in him lies to conquer his ignorance, and although it be admitted that were he to render himself amenable to grace he would not receive illumination, still he is without excuse so long as he does not remove the hindrance in question, that is, his sin. Accordingly, if Peter and John are in doubt in the same case and business matter and bestow equal human diligence, and each thinks the thing is lawful, but Peter is in grace, while John is in sin, Peter's ignorance is invincible, but John's is vincible, and if they both embark on the business, Peter is excused and John is not. Adrian, I say, makes a mistake here, as I have shown at length in my discussion on *Prima Secundae* on the topic of ignorance. For it would be strange to say that there is no topic of the divine law on which an unbeliever, aye, any one who is in mortal sin, can be invincibly ignorant. Nay, it would follow in the case of the above-named Peter, who was in grace and whose ignorance on some point about usury or simony was invincible, that his ignorance would become vincible merely by his falling into mortal sin, which is absurd.

9. I say accordingly on this point that negligence with regard to the subject-matter is requisite for ignorance, even though it be vincible, to be imputed as, and to be, a sin, as, for example, that the man refused to hear or did not believe what he did hear; and on the other hand I say that for invincible ignorance it is enough that the man bestowed human diligence in trying to learn, even if in other respects he is in mortal sin. And so on

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

10. Second proposition: The Indians in question are not bound, directly the Christian faith is announced to them, to believe it, in such a way that they commit mortal sin by not believing it, merely because it has been declared and announced to them that Christianity is the true religion and that Christ is the Saviour and Redeemer of the world, without miracle or any other proof or persuasion. This proposition is proved by the first:

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

11. From this proposition it follows that, if the faith be presented to the Indians in the way named only and they do not receive it, the Spaniards can not make this a reason for waging war on them or for proceeding against them under the law of war. This is manifest, because they are innocent in this respect and have done no wrong to the Spaniards. And this corollary receives confirmation from the fact that, as St. Thomas lays it down (*Secunda Secundae*, qu. 40, art. 1), for a just war "there must be a just cause, namely, they who are attacked for some fault must deserve the attack." Accordingly, St. Augustine says (*Liber 83 Quaestionum*): "It is involved in the definition of a just war that some wrong is being avenged, as where a people or state is to be punished for neglect to exact amends from its citizens for their wrongdoing or to restore what has been wrongfully taken away." Where, then, no wrong has previously been committed by the Indians, there is no cause of just war. This is the received opinion of all the doctors, not only of the theologians, but also of the jurists, such as Hostiensis, Innocent, and others. Cajetan (*Secunda Secundae*, qu. 66, art. 8) lays it down clearly and I know of no doctor whose opinion is to the contrary. Therefore this would not be a legitimate title to seize the lands of the aborigines or to despoil the former owners.

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

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

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

seem both by their lives and example and their diligent preaching to have bestowed sufficient pains and industry in this business, had they not been hindered therein by others who had other matters in their charge.

15. Sixth proposition: Although the Christian faith may have been announced to the Indians with adequate demonstration and they have refused to receive it, yet this is not a reason which justifies making war on them and depriving them of their property. This conclusion is definitely stated by St. Thomas (*Secunda Secundae*, qu. 10, art. 8), where he says that unbelievers who have never received the faith, like Gentiles and Jews, are in no wise to be compelled to do so. This is the received conclusion of the doctors alike in the canon law and the civil law. The proof lies in the fact that belief is an operation of the will. Now, fear detracts greatly from the voluntary (*Ethics*, bk. 3), and it is a sacrilege to approach under the influence of servile fear as far as the mysteries and sacraments of Christ. Our conclusion is also proved by the canon *de Judaeis* (can. 5, Dist. 45), which says: "The holy synod also enjoins concerning the Jews that thenceforth force be not applied to any of them to make him believe; 'for God has compassion on whom He wills, and whom He wills He hardens.'" [12] There is no doubt about the doctrine of the Council of Toledo, that threats and fears should not be employed against the Jews in order to make them receive the faith. And Gregory expressly says the same in the canon *qui sincera* (can. 3, Dist. 45): "Who with sincerity of purpose," says he, "desires to bring into the perfect faith those who are outside the Christian religion should labor in a manner that will attract and not with severity; ... for whosoever does otherwise and under cover of the latter would turn them from their accustomed worship and ritual is demonstrably furthering his own end thereby and not God's end."

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

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

case of the sins which are against the law of nature, it can be shown to them that they are offending God, and they may consequently be prevented from continuing to offend Him. Further they can be compelled to keep the law which they themselves profess. Now, this law is the law of nature.

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

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

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

sit in judgment and visit punishment upon them.

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

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

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

a new prince without the assent of the populace. Seeing, then, that in such cases of choice and acceptance as these there are not present all the requisite elements of a valid choice, the title under review is utterly inadequate and unlawful for seizing and retaining the provinces in question.

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

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

SUMMARY OF THE THIRD SECTION.

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

1. How the aborigines might have come into the power of the Spaniards on the ground of natural society and fellowship.
2. The Spaniards have a right to travel to the lands of the Indians and to sojourn there so long as they do no harm, and they can not be prevented by

the Indians.

3. The Spaniards may carry on trade among the Indian aborigines, so long as they do no harm to their own country, by importing the goods which the aborigines lack, etc., and taking away gold and silver and other articles in which the Indians abound; and the princes of the Indians can not prevent their subjects from trading with the Spaniards, etc.

4. the Indians can not prevent the Spaniards from a communication and participation in those things which they treat as common alike to natives and to strangers.

5. Any children born to Spanish parents domiciled in those parts who wish to become citizens thereof can not be excluded from citizenship or from the advantages enjoyed by other citizens.

6. What course ought to be adopted if the aborigines desire to prevent the Spaniards trading with there, etc.

7. If the Spaniards, after resort to all moderate measures, can not attain security among the aborigines or Indians save by seizing their cities and reducing them to subjection, whether they can lawfully do this.

8. When and in what case the Spaniards can resort to severe measures against the Indians, treating them as faithless foes, and employ all the rights of war against them and take away their property and even reduce them to captivity, aye, and depose their former lords also and set up new lords.

9. Whether the Indians could have come under the sway of the Spaniards, in the interest of the spread of Christianity. Christians have a right to preach and publish the Gospel in the lands of barbarians.

10. The Pope could entrust to the Spaniards alone the task of converting the Indian aborigines and could forbid to all others not only preaching, but trade too, if the propagation of Christianity would thus be furthered.

11. The Indians are not to be warred into subjection or despoiled of their property, if they give the Spaniards unhindered freedom to preach the Gospel, and this whether they accept the faith or not.

12. How the aborigines who hinder the spread of the Gospel, whether it be their lords or the populace, may be coerced by the Spaniards, so long as no scandal is caused. And what is to be said of those who, while admitting preaching, prevent conversion, either by killing or punishing or terrorizing those who have been converted to Christianity?

13. How the Indians might have come under the sway of the Spaniards by the fact that, when they had been converted and become Christians, their princes desired to bring them back to idolatry by force or by fear, and so they were taken into the protection and guardianship of the Spaniards.

14. The Indians might have come under the sway of the Spaniards by the fact that, after the conversion of a large part of them to Christianity, the Pope, either with or without a request on their part, might on reasonable grounds have given them a Christian prince, such as the King of Spain, and driven out their infidel lords.

15. Whether the Indians could have come under the sway of the Spaniards because of the tyranny of their lords or because of tyrannical laws which injured innocent folk.

16. The Indian aborigines could have come under the sway of the Spaniards through true and voluntary choice.

17. The Indians might have come under the sway of the Spaniards by a title of alliance and friendship.

18. Whether the Spaniards could have reduced the Indians into their power, if it were certainly clear that they were of defective intelligence.

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

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

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

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

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

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

Quod genus hoc hominum? quaeve hunc tam barbara morem Permittit patria?

hospitio prohibemur arenae.

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

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

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

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

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

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

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

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

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

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

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

reasonable.

Also, thirdly, the sovereign of the Indians is bound by the law of nature to love the Spaniards. Therefore the Indians may not causelessly prevent the Spaniards from making their profit where this can be done without injury to themselves.

A fourth reason is that such conduct would be against the proverb:

"Thou shall not do to another what thou wouldest not wish done to thyself."

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

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

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

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

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

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

It is, however, to be noted that the natives being timid by nature and in other respects dull and stupid, however much the Spaniards may desire to remove their fears and reassure them with regard to peaceful dealings with each other, they may very excusably continue afraid at the sight of men strange in garb and armed and much more powerful than themselves. And therefore, if, under the influence of these fears, they unite their efforts to drive out the Spaniards or even to slay them, the Spaniards might, indeed, defend themselves but within the limits of permissible self-protection, and it would not be right for them to enforce against the natives any of the other rights of war (as, for instance, after winning the victory and obtaining safety, to slay them or despoil them of their goods or seize their cities), because on our hypothesis the natives are innocent and are justified in feeling afraid. Accordingly, the Spaniards ought to defend themselves, but so far as possible with the least damage to the natives, the war being a purely defensive one.

There is no inconsistency, indeed, in holding the war to be a just war on

both sides, seeing that on one side there is right and on the other side there is invincible ignorance. For instance, just as the French hold the province of Burgundy with demonstrable ignorance, in the belief that it belongs to them, while our Emperor's right to it is certain, and he may make war to regain it, just as the French may defend it, so it may also befall in the case of the Indians -- a point deserving careful attention. For the rights of war which may be invoked against men who are really guilty and lawless differ from those which may be invoked against the innocent and ignorant, just as the scandal of the Pharisees is to be avoided in a different way from that of the self-distrustful and weak.

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

8. Seventh proposition: If, after the Spaniards have used all diligence, both in deed and in word, to show that nothing will come from them to interfere with the peace and well-being of the aborigines, the latter nevertheless persist in their hostility and do their best to destroy the Spaniards, then they can make war on the Indians, no longer as on innocent folk, but as against forsworn enemies, and may enforce against them all the rights of war, despoiling them of their goods, reducing them to captivity, deposing their former lords and setting up new ones, yet withal with observance of proportion as regards the nature of the circumstances and of the wrongs done to them. This conclusion is sufficiently apparent from the fact that, if it be lawful to declare the war, it is consequently lawful to pursue the rights of war. And it is confirmed by the consideration that the aborigines ought not to hold a better position merely because they are unbelievers. But all the things enumerated would be lawful against Christians, when once a just war has arisen. Therefore they are lawful against the aborigines, too. Also, it is a universal rule of the law of nations that whatever is captured in war becomes the property of the conqueror, as is laid down in Dig., 49, 15, 28 and 24, and in Decretum, pt. 1, dist. 1, can. 9, and more expressly in Inst., 2, 1, 17, where it is said that "by the law of nations whatever we take from the enemy becomes ours at once, to such an extent that even men may be brought into slavery to us. Further (as the doctors say on the topic of war), a prince who has on hand a just war is ipso jure the judge of his enemies and can inflict a legal punishment on them, condemning them according to the scale of their wrongdoing. Everything said above receives confirmation from the fact that ambassadors are by the law of nations inviolable and the Spaniards are the ambassadors of Christian peoples. Therefore, the native Indians are bound to give them, at least, a friendly hearing and not to repel them. This, then, is the first title which the Spaniards might have for seizing the provinces and sovereignty of the natives, provided the seizure be without guile or fraud and they do not look for imaginary causes of war. For if the natives allow the Spaniards to traffic peaceably among them, the Spaniards could not allege in this connection any just cause for seizing their goods any more than the goods of Christians.

9. Another possible title is by way of propagation of Christianity. In this

connection let my first proposition be: Christians have a right to preach and declare the Gospel in barbarian lands. This proposition is manifest from the passage: "Preach the Gospel to every creature," etc.,[13] and also, "The word of the Lord is not bound" (II Timothy, ch. 2). Secondly, our proposition is dear from what has been already said, for if the Spaniards have a right to travel and trade among the Indians, they can teach the truth to those willing to hear them, especially as regards matters pertaining to salvation and happiness, much more than as regards matters pertaining to any human subject of instruction. Thirdly, because the natives would otherwise be outside the pale of salvation, if Christians were not allowed to go to them carrying the Gospel message. Fourthly, because brotherly correction is required by the law of nature, just as brotherly love is. Since, then, the Indians are all not only in sin, but outside the pale of salvation, therefore, it concerns Christians to correct and direct them; nay, it seems that they are bound to do so. Fifthly and lastly, because they are our neighbors, as said above: "Now the Lord has laid a command on everyone concerning his neighbour" (Ecclesiasticus, ch. 17). Therefore it concerns Christians to instruct those who are ignorant of these supremely vital matters.

10. Second proposition: Although this is a task common and permitted to all, yet the Pope might entrust it to the Spaniards and forbid it to all others. The proof is in the fact that, although (as said above) the Pope is not temporal lord, yet he has power in matters temporal when this would subserve matters spiritual. Therefore, as it is the Pope's concern to bestow especial care on the propagation of the Gospel over the whole world, he can entrust it to the Spaniards to the exclusion of all others, if the sovereigns of Spain could render more effective help in the spread of the Gospel in those parts; and not only could the Pope forbid others to preach, but also to trade there, if this would further the propagation of Christianity, for he can order temporal matters in the manner which is most helpful to spiritual matters. And if in this case that is how spiritual matters would be best helped, it consequently falls within the authority and power of the supreme Pontiff. But it seems that in this case this is the course most conducive to spiritual welfare, because, if there was to be an indiscriminate inrush of Christians from other parts to the part in question, they might easily hinder one another and develop quarrels, to the banishment of tranquillity and the disturbance of the concerns of the faith and of the conversion of the natives. Further, inasmuch as it was the sovereigns of Spain who were the first to patronize and pay for the navigation of the intermediate ocean, and as they then had the good fortune to discover the New World, it is just that this travel should be forbidden to others and that the Spaniards should enjoy alone the fruits of their discovery. For, just as in the interests of the preservation of the peace among princes and of the spread of religion the Pope could make such a distribution of the land of the Saracens among Christian princes as would prevent one from crossing over the lands of another, so also for the good of religion he could appoint princes, especially where there were aforesaid no Christian princes.

11. Third proposition: If the Indians allow the Spaniards freely and without hindrance to preach the Gospel, then whether they do or do not receive the faith, this furnishes no lawful ground for making war on them and seizing in any other way their lands. This has been proved above,[14] where we confuted the fourth alleged title, and it is self-evident, seeing that there can not be a just war where no wrong has previously been done (Secunda Secundae, qu. 40, art. 1).

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

Careful attention must, however, be paid to what St. Paul says (I Corinthians, ch. 6): "All things are lawful unto me, but not all things are expedient." So everything said above must be taken as spoken absolutely. For it may be that these wars and massacres and spoliations will hinder rather than procure and further the conversion of the Indians. Accordingly, the prime consideration is that no obstacle be placed in the way of the Gospel, and if any such be so placed, this method of evangelization must be abandoned and another one sought for. What we have been showing is what is lawful in itself. I personally have no doubt that the Spaniards were Bound to employ force and arms in order to continue their work there, but I fear measures were adopted in excess of what is allowed by human and divine law. The title under consideration might, then, be a second lawful title whereby the Indians might fall into the power of Spain. But regard must ever be had to what has just been said lest what in itself is lawful be made in the circumstances wrong, for goodness springs from the one complete[15] cause, but badness from individual defects, according to Aristotle (Ethics, bk. 3) and Dionysius (De divinis nominibus, ch. 4).

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

14. Another possible title is the following: Suppose a large part of the Indians were converted to Christianity, and this whether it were done lawfully or unlawfully (as by means of threats or fear or other improper procedure), so long as they really were Christians, the Pope might for a reasonable cause, either with or without a request from them, give them a Christian sovereign and depose their other unbelieving rulers. The proof hereof is in the fact that, if this were expedient in order to preserve Christianity because of a fear that under unbelieving rulers converts would apostatize, that is, would lapse from the faith, or that their rulers would seize the opportunity to harass them, the Pope can change rulers in the interests of the faith. And confirmation is found in the fact that, as the doctors assert and as St. Thomas expressly says (*Secunda Secundae*, qu. 10. art. 10), the Church could free all Christian slaves who are in bondage to unbelievers even if that bondage was in other respects lawful. Innocent expressly declares this, in the above-mentioned X, 3, 34, 8. Therefore much more will he be able to free other Christians who have been reduced to bondage but not as stringently as slaves. Confirmation hereof is also to be found in the fact that a wife is as much bound to her husband as a bondsman is to his lord, and even more so, seeing that marriage is a tie of the divine law and bondage is not. But in the interests of the faith a believing wife is freed from an unbelieving husband, if he persecutes her for her religion, as appears from I Corinthians, ch. 7, and X, 4, 19, 7. Aye, the custom now is that by the very fact of one spouse being converted to the faith he or she is freed from the other who is an unbeliever. Therefore also the Church, in the interests of the faith and to avoid risks, may free an Christians from obedience and subjection to unbelieving lords, provided this be done without scandal. So we justify this fourth legal title.

15. Another possible title is founded either on the tyranny of those who bear rule among the aborigines of America or on the tyrannical laws which work wrong to innocent folk there, such as that which allows the sacrifice of innocent people or the killing in other ways of uncondemned. people for cannibalistic purposes. I assert also that without the Pope's authority the Spaniards can stop all such nefarious usage and ritual among the aborigines, being entitled to rescue innocent people from an unjust death. This is proved by the fact that "God has laid a charge on every individual concerning his neighbor,"[16] and they all are our neighbors. Therefore, any one may defend them from such tyrannical and oppressive acts, and it is especially the business of princes to do so. A further proof is given by Proverbs, ch. 24: "Deliver them that are drawn unto death, and forbear not to free those that are being dragged to destruction." This passage is not to be taken as applying only when victims are actually being dragged to death, but the natives can also be compelled to abstain from such ritual. And if they refuse, it is a good ground for making war on them and proceeding against them under the law of war, and if such sacrilegious rites can not otherwise be stopped, for changing their rulers and creating a new sovereignty over them. In this connection we find the opinion of Innocent and the Archbishop to be sound, namely, that punishment can be inflicted for sins against nature. And it is immaterial that all the Indians assent to rules and sacrifices of this kind and do not wish the Spaniards to champion them, for herein they are not of such legal independence as to be able to consign themselves or their children to death. So we may find a fifth lawful title here.

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

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

17. Another title may be found in the cause of allies and friends. For as the Indians themselves sometimes wage lawful wars with one another and the side which has suffered a wrong has the right to make war, they might summon the Spaniards to help and share the rewards of victory with them. This is what the Tlaxcaltecs are said to have done against the Mexicans, the former arranging with the Spaniards to help them to overcome the latter and to receive whatever could fall to them under the law of war. For there is no doubt, as Cajetan also asserts (*Secunda Secundae*, qu. 40, art. 1), that the cause of allies and friends is a just cause of war, a State being quite properly able, as against foreign wrongdoers, to summon foreigners to punish its enemies. And this is confirmed by the fact that this was a method very much in vogue among the Romans for the extension of their Empire; that is, they brought aid to their allies and friends and so making a just war came, by right of war, into possession of fresh provinces. Yet the Roman Empire is approved by St. Augustine (*De civitate Dei*, bk. 5) and by St. Thomas (*Opusculum* 21) as a lawful one. And Sylvester reckoned Constantine the Great as Emperor, as St. Ambrose did Theodosius. Now, there does not seem any other juridic title whereby the Romans came into possession of the world, save in right of war, and the most especial cause of their wars was the defense and protection of their friends. In just the same way Abraham championed the cause of the King of Salem and of other kings who had struck a treaty with him, and he fought against four kings of that region, though they had done him personally no wrong (*Genesis*, ch. 14). This is the seventh and the last title whereby the Indians and their lands could have come or might come into the possession and lordship of Spain.

18. There is another title which can indeed not be asserted, but brought up for discussion, and some think it a lawful one. I dare not affirm it at all, nor do I entirely condemn it. It is this: Although the aborigines in question are (as has been said above) not wholly unintelligent, yet they are little short of that condition, and so are unfit to found or administer a lawful State up to the standard required by human and civil claims. Accordingly they have no proper laws nor magistrates, and are not even capable of controlling their family affairs; they are without any literature or arts, not only the liberal arts, but the mechanical arts also; they have no careful agriculture and no artisans; and they lack many other conveniences, yea necessities, of human life. It might, therefore, be maintained that in their own interests the sovereigns of Spain might undertake the administration of their country, providing them with prefects and governors for their towns, and might even give them new lords, so long

as this was clearly for their benefit. I say there would be some force in this contention; for if they were all wanting in intelligence, there is no doubt that this would not only be a permissible, but also a highly proper, course to take; nay, our sovereigns would be bound to take it, just as if the natives were infants. The same principle seems to apply here to them as to people of defective intelligence; and indeed they are no whit or little better than such so far as self-government is concerned, or even than the wild beasts, for their food is not more pleasant and hardly better than that of beasts. Therefore their governance should in the same way be entrusted to people of intelligence. There is clear confirmation hereof, for if by some accident of fortune all their adults were to perish and there were to be left boys and youths in enjoyment, indeed, of a certain amount of reason, but of tender years and under the age of puberty, our sovereigns would certainly be justified in taking charge of them and governing them so long as they were in that condition. Now, this being admitted, it appears undeniable that the same could be done in the case of their barbarian parents, if they be supposed to be of that dullness of mind which is attributed to them by those who have been among them and which is reported to be more marked among them than even among the boys and youths of other nations. And surely this might be founded on the precept of charity, they being our neighbors and we being bound to look after their welfare. Let this, however, as I have already said, be put forward without dogmatism and subject also to the limitation that any such interposition be for the welfare and in the interests of the Indians and not merely for the profit of the Spaniards. For this is the respect in which all the danger to soul and salvation lies. And herein some help might be gotten from the consideration, referred to above, that some are by nature slaves, for all the barbarians in question are of that type and so they may in part be governed as slaves are.

Now, it seems to follow from all this discussion that, if there be no force in any of the titles which have been put forward, so that the native Indians neither gave cause for just war nor wished for Spanish rulers, etc., all the travel to, and trade with, those parts should be stopped, to the great loss of the Spaniards and also to the grave hurt of the royal treasury (a thing intolerable). My first answer to this is: There would be no obligation to stop trade, for, as already said, there are many commodities of which the natives have a superfluity and which the Spaniards could acquire by barter. Also there are many commodities which the natives treat as ownerless or as common to all who like to take them, and the Portuguese, to their own great profit, have a big trade with similar people without reducing them to subjection. Secondly, there would probably be no diminution in the amount of the royalties, for a tax might quite fairly be placed on the gold and silver which would be brought away from the Indians, as much as a fifth or even more, according to quality, and it would be well-earned, inasmuch as the maritime discovery was made by our sovereign and it is under his authority that trade is carried on in safety. Thirdly, it is evident, now that there are already so many native converts, that it would be neither expedient nor lawful for our sovereign to wash his hands entirely of the administration of the lands in question.

1. St. Thomas' *Conclusio* here is "Justae leges humanae obligant homines, in foro conscientiae ratione leges aeternae qua derivantur." -- TRANSL.
2. This is founded on a mistranslation of the Hebrew; see A. V., Ps. 104, v. 17. -- TRANSL.
3. Victoria has Hieronymus here following the *editio Romana* of the *Corpus*

Juris Canonici, which attributes this to St. Jerome.

4. St. John, ch. 18, v. 36.

5. Psalm 24, v. 1.

6. St. Matthew, ch. 28, v. 18.

7. I Pet., ch. 5.

8. St. John, ch. 21, v. 17.

9. St. Mark, ch. 16, v. 16.

10. Summa aurea sententiarum: Paris edition (1500), fol. CXXXV, col. 4 at end.

11. De Sacramentis Christianae fidei.

12. Romans, ch. 9, v. 18.

- Otherwise to be blamed.

13. St. Mark, ch. 16, v. 15.

14. In the immediately preceding section.

15. The reference to Aristotle can not be traced with certainty; but the text follows Dionysius closely. He wrote, literally translated, "The good is from the one and complete (mia kai ol) cause but the bad from many and partial defects." -- TRANSL.

16. Ecclesiasticus, ch. 17, v. 12.

Retrieved from "https://en.wikisource.org/w/index.php?title=De_Indis_De_Jure_Belli/Part_2&oldid=3766318"

-
- This page was last modified on 15 April 2012, at 19:59.
 - Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy.